

5-15-1975

## California Planning Law: Requirements For Low And Moderate Income Housing

C. Foster Knight

Follow this and additional works at: <https://digitalcommons.pepperdine.edu/plr>



Part of the [Housing Law Commons](#), and the [Land Use Law Commons](#)

---

### Recommended Citation

C. Foster Knight *California Planning Law: Requirements For Low And Moderate Income Housing* , 2 Pepp. L. Rev. Iss. 3 (1975)

Available at: <https://digitalcommons.pepperdine.edu/plr/vol2/iss3/9>

This Symposium is brought to you for free and open access by the Caruso School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Law Review by an authorized editor of Pepperdine Digital Commons. For more information, please contact [bailey.berry@pepperdine.edu](mailto:bailey.berry@pepperdine.edu).

# California Planning Law: Requirements For Low And Moderate Income Housing

C. FOSTER KNIGHT\* \*\*

Public awareness of the increasing lack of adequate housing for low and moderate income households has been dramatic during the past few years. Land developers, labor unions, citizen activists concerned about the welfare of low income groups, enlightened environmentalists and governmental agencies have created task forces and committees to study the problem and recommend solutions. The California Attorney General's office, for example, last year established a statewide task force on low and moderate income housing to recommend legislative and law enforcement measures to insure greater provision of housing for lower income families. The forces constraining the development of adequate low and moderate income housing are numerous and complex—including high interest rates, inflation, inadequate housing subsidy programs, and deliberate policies to exclude low income groups from the suburbs.

The lack of adequate low and moderately priced housing is aggravated by the continuing migration of industrial and commercial

---

\* Deputy Attorney General; Supervising Attorney of the Attorney General's Environmental Unit for the Fourth Appellate District.

\*\* The views expressed in this paper are not necessarily those of the California Attorney General's Office.

enterprises to the suburbs. Central city workers in industry that relocates to distant suburbs are put to the sometimes intolerable choice of electing to stay in their existing homes and commute up to four hours a day to their new suburban job locations, or seek new employment in the central city area; housing near their newly relocated suburban employer typically is far above their means. The result is not only a social and economic problem affecting the workers but an environmental problem as well, since enforced long distance commuting to their new suburban job locations means higher gasoline bills, increased energy consumption and more air pollution.

The scope of this presentation is the application of California planning and zoning law to the low and moderate income housing issue, and how related local and regional planning authority is being used to promote low income housing and minimize exclusionary land use practices. The presentation will conclude with a few thoughts on where California appears to be heading on this question.

#### HOUSING ELEMENTS AND GENERAL PLAN REQUIREMENTS

The most specific planning legislation concerning provisions for housing is contained in California's Planning and Zoning Law. All local governments including charter cities must have adopted general plans containing nine mandatory elements.<sup>1</sup> One of these mandatory elements is the housing element which must contain standards and plans for both improvement of housing and provision of adequate sites for housing. "This element of the plan shall make adequate provision for the housing needs of *all* economic segments of the community."<sup>2</sup> Gov. Code § 65302(c). (Emphasis added.) A separate code provision, which must be read together with the housing element requirements, specifically prohibits governmental discrimination against individuals or groups in ". . . the enjoyment of residence, land ownership, tenancy or any other land use. . . ." because of religious or ethnic reasons.<sup>3</sup> That provision also specifically prohibits governmental discrimination against low or moderate income housing projects. In addition, that provision contemplates and permits affirmative action plans by local governments to encourage federally assisted or subsidized housing projects for low income persons, and allows special or different treatment of such low income housing projects if that different treatment is

---

1. CAL. GOV'T CODE §§ 65302 and 65700 (West Supp. 1974).

2. CAL. GOV'T CODE § 65302(c) (West Supp. 1974).

3. CAL. GOV'T CODE § 65008 (West Supp. 1974).

aimed at improving the quality and supply of federally assisted or subsidized housing. This is an important provision because it explicitly recognizes both that there is a need for local governments to develop affirmative plans for providing low income housing and that special treatment favoring subsidized or assisted housing for lower income persons is in the public interest or is consistent with the general welfare of the community.<sup>4</sup>

Since it is a fundamental tenet that planning and zoning be comprehensive and be based on the needs and interests of the *entire* community, planning and zoning which essentially benefits only upper income groups will not comply with California law. This does not mean that communities composed almost entirely of upper income people *per se* are in violation of California planning and zoning law. It does mean, I think, that planning and zoning, which is aimed at serving the interests of upper income persons to the detriment or exclusion of lower income persons, is illegal. An example is large lot zoning which is not rationally related to environmentally sensitive needs such as steep slopes, earthquake fault zones or other significant natural resource values or hazards. Another example would be planning and zoning decisions aimed at increasing community tax revenues (*i.e.*, by facilitating a major new industrial or commercial employment center) at the expense of lower income members of the community (*i.e.*, without providing for adequate housing of the lower or middle income workers serving

---

4. Government Code section 65008 is not inconsistent with the provisions of Article 34 of the California Constitution. Article 34 provides for prior voter approval of government sponsored subsidized housing projects. While Article 34 may operate in practice to hinder development of government sponsored subsidized housing projects, it does not take away from local government authority to develop affirmative low income housing plans and projects. There are a number of cases throughout the country that support the view that provision of low income housing is in the "public interest or is consistent with the public welfare." See, *e.g.*, *Southern Burlington County NAACP et al v. Lawrence, et al. v. Township of Mount Laurel*, 67 N.J. 151, 336 A.2d 713 (1975); *Winkelman v. Tiburon*, 32 Cal. App. 3d 834, 108 Cal. Rptr. 415 (1973); *Cameron v. Zoning Agent of Bellingham*, 357 Mass. 757, 260 N.E.2d 143 (1970); *De Simone v. Greater Englewood Housing Corp. I*, 56 N.J. 428, 267 A.2d 31 (1970); *City of Cleveland v. U.S.*, 323 U.S. 329 (1945); *Golden v. Planning Board of the Town of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 33 N.Y.S.2d 138 (1972); *Southern Alameda Spanish Speaking Organization v. City of Union City*, 424 F.2d 291 (9th Cir. 1970); *but see also Board of Supervisors v. De Groff Enterprises Inc.*, 214 Va. 235, 198 S.E.2d 600 (1973), holding *contra*.

the employment center). Communities, in other words, must use their planning and zoning authority comprehensively to meet the needs and problems of the entire community, and not selectively, to maximize certain economic and social values, while neglecting or casting off other problems and needs.

#### CONTENT AND IMPLEMENTATION OF HOUSING ELEMENTS

Despite the clear mandatory language in the planning and zoning law, California has been lax in adopting and implementing adequate housing elements. Nearly half of California cities and counties have yet to adopt any housing element, even though the law has required their adoption since 1969.<sup>5</sup> Lack of implementation is in part due to the terseness of the housing element statute and the lack of implementing regulations. Additionally, there has not been strong guidance from the state government in this area. The State Department of Housing and Community Development and the Council for Intergovernmental Relations (CIR) are required to provide guidelines and technical assistance to local governments on preparing housing elements, but this assistance has been incomplete or late in coming.<sup>6</sup>

There is also genuine confusion on the question of whether the adopted guidelines on housing elements are purely advisory to local government or whether they are binding regulations governing the content and implementation of Government Code Section 65302(c). Government Code Section 65302 was amended in 1967, making it mandatory for cities and counties, effective July 1, 1969, to prepare "[a] housing element consisting of standards and plans for the improvement of housing and for the provision of adequate sites for housing. This element of the plan shall endeavor to make adequate provision for the housing needs of all economic segments of the community."<sup>7</sup> In 1970, to strengthen the housing element requirement, the Legislature added Health and Safety Code Section 37041, which requires the Housing and Commu-

---

5. Survey by Southern California Association of Governments (SCAG) (1973); California Department of Housing and Community Development, *California Statewide Housing Element*, Phase III (review draft) p. 9 (January, 1975).

6. Local government has had difficulty in ascertaining the legal status of the housing element *Guidelines* (See note 9, *infra*). Furthermore, The Department of Housing and Community Development has been criticized for failing to provide complete housing and census data in *Department of Housing and Community Development v. Housing Needs of the People of the State of California: Preliminary Hearings, A Report by the Senate Select Committee on Housing and Urban Affairs, Senator Nicholas Petris, Chairman*, at 48, 53-56 (May 1974).

7. A.B. 1952, 1967 Stats. c. 1658 at 4033 (Emphasis added.)

nity Development Commission "in cooperation" with the Council on Intergovernmental Relations and the State Office of Planning "before July 1, 1971 [to] develop *guidelines* for the preparation of housing elements required by Government Code Section 65302 . . . ." (Emphasis added.)<sup>8</sup>

In response to Health and Safety Code Section 37041, the Housing and Community Development Commission adopted its Housing Element Guidelines on June 17, 1971.<sup>9</sup>

In 1971, again to strengthen the housing element requirement, the Legislature amended Government Code Section 65302(c) to make two significant changes. First, the word "guidelines" was changed to read "regulations" ("A housing element to be developed pursuant to *regulations* established under Section 37041 of the Health and Safety Code . . .") (Emphasis added.) Secondly, the Legislature eliminated the words "endeavor to", so that the mandate to local governments became: "This element of the plan *shall make* adequate provision for the housing needs of all economic segments of the community."<sup>10</sup>

At this point, from the Legislature's use of the word "regulations" in the 1971 Amendment, it could be reasonably inferred that the Legislature intended that the Housing and Community Development Commission promulgate *regulations* pursuant to the Administrative Procedure Act for implementation of the housing element requirement in California Government Code Section 65302

8. A.B. 1436, 1970 Stats. c. 1553 at 3176. See also CAL. GOV'T CODE §§ 34207.5 and 65013.2(h) also added by A.B. 1436 which refer to the "adoption" of guidelines as opposed to "develop" such guidelines.

9. In May 1970, the Department of Housing and Community Development prepared a predecessor document entitled *Guideline For Preparation of a Housing Element of a General Plan*, but this document was apparently never officially adopted by the Commission. The *Housing Element Guidelines* adopted by the Commission in June, 1971, were not adopted pursuant to the Administrative Procedure Act (Government Code Section 11370 *et seq.*), although hearings were held to receive input from local government and the private sector.

The Commission's *Housing Element Guidelines* were later incorporated, as provided by California Government Code Section 34211.1, by the Council on Intergovernmental Relations, with some editing, into the CIR's *General Plan Guidelines* published on September 20, 1973. See note 12 *infra*.

10. S.B. 1489, 1971 Stats. c. 1803 at 3901 (Emphasis added.)

(c).<sup>11</sup> However, the Legislature added California Government Code Section 34211.1 in 1972 which adds to the confusion. Section 34211.1 requires the Council on Intergovernmental Relations to "develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans." Section 34211.1 expressly singles out the housing element guidelines for special treatment, however:

For purposes of this section the *guidelines* prepared pursuant to Section 37041 of the Health and Safety Code shall be the *guidelines* for the housing element required by Section 65302. (Emphasis added.)

It is unclear whether the Legislature was using the term "guidelines" in Section 34211.1 synonymously with "regulations" in Section 65302.

Section 34211.1 goes on to say that "such guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective plans." Again, it is unclear whether "such guidelines" includes the housing element guidelines originally prepared by the Housing and Community Development Commission, or whether it refers only to those guidelines originated by the Council of Intergovernmental Relations pursuant to Section 34211.1.<sup>12</sup> The matter is further confused by a 1973 law<sup>13</sup> specifying that any state mandated programs imposing implementation costs on local government must be accompanied with necessary appropriations of funds for compensating such implementation costs. Recent legislative efforts to clarify this prob-

---

11. This was the conclusion of 55 OPS. CAL. ATT'Y GEN. 380 (1972).

12. One observer in the State Office of Planning and Research has suggested that the Legislature intended that the Housing and Community Development Commission *Guidelines* for housing elements have the same force and effect as regulations even though not promulgated pursuant to the Administrative Procedure Act. He further suggests that the housing element guidelines have retained their legal force even though the other mandatory element guidelines adopted by the Council on Intergovernmental Relations in September, 1973, may be purely "advisory" as expressed in Government Code Section 34211.1. Telephone interview with Fred Silva, State Officer of Planning and Research, May, 1975.

The question of whether the language "shall be advisory" (emphasis added) is purely advisory or a mandate that the advice be taken where applicable is discussed in *The Housing Element: How Can Its Adequacy be Measured*, *infra* this issue at S173 (hereinafter *The Housing Element*).

In any event, it would appear that, at a minimum, CIR's *General Plan Guidelines* can be utilized by a reviewing court in interpreting the statutory "content" requirements for housing elements. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68, 74 n.2, 529 P.2d 66, 69 n.2, 118 Cal. Rptr. 34, 37, n.2 (1975).

13. CAL. REV. & TAX CODE § 2231 (West Supp. 1974).

lem have bogged down over the question of whether local compliance with mandatory regulations for implementing the housing element requirement, would involve financial outlays necessitating state reimbursement.<sup>14</sup> There is an obvious need to clarify this legislative confusion.

The mandatory housing element requirement, terse as it is, is still present and must be met by local government. In addition to the explicit requirements for standards and plans for improving housing, providing sites for housing and providing for low and moderate income housing (as well as higher priced housing), there are additional implicit requirements, which are articulated to some extent in the CIR's guidelines. Among these appear to be the requirements that the local government:

- (1) undertake a thorough survey of the community's housing stock and relevant census data;
- (2) analyze housing, census and land availability data and project housing needs for the community;
- (3) identify and articulate specific goals and policies consistent with the Legislative mandate of comprehensiveness;<sup>15</sup> and
- (4) prepare an action program for implementing goals, policies and plans.

Of critical importance in preparing housing elements is a workable definition of "community." At the very least "community" means the territory within the local government's planning jurisdiction. Government Code Section 65300 permits local governmental general plans to cover ". . . land outside its physical boundaries which in the planning agency's judgment bears relation to its planning." In preparing the housing element, it is arguably an abuse of governmental discretion to disregard any identifiable "housing market" extending beyond the local government's boundaries, especially if the local government may have considered such extra-territorial area for other purposes such as its "sphere of influence" for future expansion.<sup>16</sup> The term "community" would also appear to include

14. See, e.g., A.B. 2213, Appendix B, *The Housing Element, infra*, at S173.

15. See CAL. GOV'T CODE § 65300 (West Supp. 1974); CAL. PUB. RESOURCES CODE § 21001(d), (e) and (g) (West Supp. 1974); *Selby Realty Co. v. City of San Buenaventura*, 10 Cal. 3d 110, 514 P.2d 111, 109 Cal. Rptr. 799 (1973) regarding comprehensiveness.

16. See CAL. GOV'T CODE § 54774 (West Supp. 1974) setting forth the purpose of Local Agency Formation Commissions and the criteria for determining the "sphere of influence" of a city, county or special district.

the area and people affected by the deliberated land use and other planning decisions of the local government. For example, a city that approves a major new industrial or commercial employment center within its boundaries or "sphere of influence" must make provision for the housing needs of the people that it has attracted to the area. Thus, "community" is a flexible concept that depends in part for its definition on the decisions affecting land use and housing needs which the city itself is making. There is also a growing body of opinion that cities and counties must make provision for their "fair share" of the regional housing needs, including low and moderate income households as well as general growth and immigration.<sup>17</sup> In this latter sense, "community" may well become the equivalent of "region" for purposes of complying with the housing element requirement.

In considering the implementation aspects of the housing element requirement, of critical importance are recent legislative requirements that land use controls such as zoning and subdivision development maps be "consistent" or "compatible" with the general plan.<sup>18</sup> The "consistency" or "compatibility" requirements are designed to unify general plans with zoning and other land use regulatory mechanisms—to put "teeth" into the general plan requirements. "Consistency" means both *external* consistency with the statutory requirements in the housing element provision<sup>19</sup> and *internal* consistency with the goals, policies and housing needs identified in the community's housing element. Internal consistency also means that the housing element must be internally consistent with the other eight mandatory elements of the general plan.<sup>20</sup> Given the explicit requirement that housing elements must

---

17. See California Council on Intergovernmental Relations, *General Plan Guidelines*, IV-11 and IV-12 (September 20, 1973); CAL. HEALTH & SAFETY CODE § 37041 specifies that the housing element guidelines "... shall conform as nearly as possible to those promulgated by the federal Department of Housing and Urban Development." HUD Guidelines promulgated in 1968 provided for an Initial Housing Element requirement pending preparation of more detailed documents. 24 C.F.R. Appendix A(2) at 25 (1968). HUD has also promulgated guidelines for implementing the federal Housing and Community Development Act of 1974 (42 U.S.C. § 5301 *et seq.*) in 24 C.F.R. § 570.303(c)(2). Both sets of HUD Guidelines require relating the city or county's housing element to the regional housing market. See also, *Southern Burlington County NAACP et al. v. Lawrence, et al. v. Township of Mount Laurel*, 67 N.J. 151, 336 A.2d 713 (1975).

18. CAL. GOV'T CODE § 65860 (West Supp. 1975); CAL. GOV'T CODE §§ 66473.5, 66474(a) (West Supp. 1975).

19. CAL. GOV'T CODE § 65302(c) (West Supp. 1974).

20. California Council on Intergovernmental Relations, *General Plan Guidelines* II-12, II-13, II-14, IV-12 (September, 1973).

make adequate provision for *all* economic segments of the community and provide for housing sites, it becomes apparent that sufficient areas of the community must be zoned or regulated to permit low and moderate income housing. This can be done either in the form of higher authorized densities (to permit lower building costs) or through more innovative techniques such as inclusionary zoning which conditions housing development approval on the provision of a specified percent of low-moderate priced units (and is partially premised on the use of available governmental housing subsidies or financial assistance). In the case of proposed subdivision developments, the consistency requirement is even clearer. Government Code Section 66473.5 provides:

No local agency shall approve a map unless the legislative body shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan.

A proposed subdivision shall be consistent with a general plan or a specific plan *only if the local agency has officially adopted such a plan and the proposed subdivision or land use is compatible with the objectives, policies, general land uses and programs specified in such a plan.* (Emphasis added.)

Since housing elements to general plans are mandatory, local governments must make specific findings that the proposed subdivision development is consistent or compatible with the housing element requirements. This does not necessarily mean that every proposed subdivision development must make some provision for low and moderate income households. But it clearly does mean that a sufficient number of subdivision development proposals must make adequate provision for the housing needs of low and moderate income households in the community in order to be approvable, *i.e.*, "consistent" with the housing element requirements.

Genuine implementation of the housing element requirements and the related consistency between the general plan and land use controls ultimately depends on enforcement and court interpretation. So far there are no California appellate decisions which have dealt with these more recent statutory provisions. The Court of Appeal for the First Appellate District in San Francisco, however, has under submission the case of *Leonard v. City of El Cerrito*<sup>21</sup>

---

21. 1 Civil No. 34,762 (Court of Appeal, 1st Dist., Div. 1, filed March 26, 1974).

dealing with the legal adequacy of the City of El Cerrito's housing element. There will inevitably be other appellate cases which examine the consistency of proposed subdivision developments with various mandatory elements of the general plan as well as cases examining the consistency of a particular land use control with the adopted general plan and its elements. This case law will have obvious bearing on what housing elements must contain and how they are to be implemented.<sup>22</sup>

For the present it is at least clear that citizens in a county or city (as well as law enforcement agencies) have standing to sue, through a writ of mandate, to enforce the "consistency" between zoning and general plans, and to contest the legal adequacy of housing elements.<sup>23</sup> There is no express provision for sanctions in cases where local government has failed to adopt a housing element or has adopted an inadequate housing element. But there is at least some support for court relief in the form of an injunction or stay order against local governmental approval of any new development until a legally adequate housing element is prepared and adopted and until zoning is "consistent" with the housing element.<sup>24</sup> The

---

22. For an example of judicial interpretation of statutes so as to prevent subversion of legislative intent by subterfuge:

We recognize that the reach of the statutory phrase, "significant effect on the environment," is not immediately clear. To some extent this is inevitable in a statute which deals, as the EQA must, with questions of degree. Further legislative or administrative guidance may be forthcoming on this point among others. But the courts, for their part, are limited to discharging their constitutional function of deciding the cases that are brought before them. As with other questions of statutory interpretation, the "significant effect" language of the act will thus be flushed out by the normal process of case-by-case adjudication.

Two general observations, nevertheless, may be made at this time. On the one hand, in view of the clearly expressed legislative intent to preserve and enhance the quality of the environment (§§ 21000, 21001), the courts will not countenance abuse of the "significant effect" qualification as a subterfuge to excuse the making of impact reports otherwise required by the act. *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 271, 502 P. 2d 1049, 1065, 104 Cal. Rptr. 761, 777 (1972).

See also *Environmental Defense Fund v. Coastside County Water District*, 27 Cal. App. 3d 695, 104 Cal. Rptr. 197 (1972).

23. CAL. GOV'T CODE § 65860 (West Supp. 1974).

24. *Moss v. Los Angeles County Bd. of Supervisors*, (Los Angeles Superior Court No. C-39027 memorandum decision October 27, 1972. Held: building permits could not issue on certain portions covered by the County's legally inadequate interim open space element); *Coalition For Los Angeles County Planning in the Public Interest v. Bd. of Supervisors* (Los Angeles Superior Court No. C-63218, memorandum decision March 12, 1975. Held: building permits could not issue on certain portions covered by the County's legally inadequate open space element); C.E.B. CALIFORNIA ZONING PRACTICE § 3.1-3.80 (1969); See also, *Marblehead Land Co. v. City of Los Angeles*, 47 F.2d 528 (1931).

argument is essentially that if there is no element or an inadequate element, then the general plan is legally incomplete and there is nothing for zoning or a proposed subdivision development to be "consistent" with.

#### FEDERAL COMMUNITY DEVELOPMENT PROGRAMS AND THE CALIFORNIA HOUSING ELEMENT

From a more practical standpoint, the new federal Housing and Community Development Act of 1974<sup>25</sup> will have an obvious impact on the content and preparation of housing elements in California. Without going into any details of the new federal law, it is sufficient to point out here that local governments seeking federal funds for community development, including housing assistance for low and moderate income households, as well as general development infrastructure, must prepare comprehensive plans which are in accord with area-wide community development needs. Specifically, the local government's application for federal funds must be accompanied with a detailed "housing assistance plan" which:

- (1) accurately surveys the condition of the community's housing stock and assesses the housing needs of lower income persons living or expected to live in the community;
- (2) specifies a realistic annual goal for the number of housing units or persons to receive financial assistance; and
- (3) indicates the general locations of proposed lower income housing consistent with federal policy to avoid undue concentration of low income households.<sup>26</sup>

The federal "housing assistance plan" requirements are more detailed and perhaps even more demanding than California's housing element requirement, but the two requirements are not inconsistent. If the new federal law is properly implemented and enforced it certainly can have the effect of expediting preparation of good housing elements.

#### REGIONAL PLANNING AND LOW-MODERATE INCOME HOUSING

A few remaining comments may be made outlining some developments in regional planning law in connection with encouraging provision of low and moderate income housing.

25. P.L. No. 93-383 (93d Cong., 2d Sess., Aug. 22, 1974). 42 U.S.C. §§ 5301 *et seq.* (1974).

26. 42 U.S.C. § 5304(a) (4); 24 C.F.R. § 570.303(c) (1974).

Regional planning agencies have been created or authorized in California primarily along special purpose lines. Examples are the regional coastal zone commissions,<sup>27</sup> regional water quality control boards,<sup>28</sup> the Tahoe Regional Planning Agency,<sup>29</sup> and regional transportation planning requirements.<sup>30</sup> There is also enabling authority for the creation of Regional Planning Districts empowered to prepare comprehensive regional plans, including plans for regional housing needs.<sup>31</sup> This enabling authority has not been used and in any event, any such comprehensive regional plans would only be advisory and non-binding on local government.

The only specific legislative authority for regional housing agencies is the Area Housing Council law.<sup>32</sup> This law authorizes the voluntary creation by cities and counties of an area or regional council which has revenue raising and planning authority to adopt and implement an area housing plan for the member cities and counties. Since participation on an area housing plan is voluntary, this law has little promise for insuring that all communities accept their fair share of regional low and moderate income housing needs. To my knowledge, no area housing councils have even been created.

Apart from the "special purpose" regional planning agencies, comprehensive regional planning in California has developed primarily in response to federal requirements for regional review of the impact which federal funding or construction programs may have. This is the so called A-95 review process required by federal law. Regional agencies empowered to exercise the A-95 review have been created under California's Joint Powers Agreement enabling authority,<sup>33</sup> which allows cities and counties within a region to contract to exercise "joint powers." The significance of the A-95 review process and powers exercised by regional and metropolitan "clearinghouses" (local governments working together under joint powers agreements) cannot be over-emphasized in its potential for insuring adequate provision of low and moderate income housing and for minimizing "exclusionary practices" by parochial interests. Under the recent federal Housing and Community Development Act of 1974,<sup>34</sup> for example, all local governmental applications for federal community development and hous-

---

27. CAL. PUB. RESOURCES CODE §§ 27000-27650 (West Supp. 1974).

28. CAL. WATER CODE §§ 13200-13361 (West 1971 and West Supp. 1974).

29. CAL. GOV'T CODE §§ 67000-67130 (West Supp. 1974).

30. *See, e.g.*, CAL. GOV'T CODE §§ 67410-67423 (West Supp. 1974).

31. CAL. GOV'T CODE §§ 65600-65604 (West 1966 and West Supp. 1974).

32. CAL. HEALTH & SAFETY CODE §§ 27850 *et seq.* (West 1973).

33. CAL. GOV'T CODE §§ 6500 *et seq.* (West 1966).

34. P.L. No. 93-383 (93d Cong., 2d Sess., Aug. 22, 1974). 42 U.S.C. §§ 5301 *et seq.* (1974).

ing assistance funds, must be received and cleared by the metropolitan clearinghouse agencies (such as CPO in San Diego, SCAG in Southern California and ABAG in the San Francisco Bay Area).<sup>35</sup> Communities applying for federal funds which have inadequate housing elements or plans or which are not making provision for their "fair share" of regional low and moderate income housing needs, are seriously vulnerable to having their applications denied. This is because federal law creating and implementing the A-95 review process<sup>36</sup> requires that such federal programs take into account regional needs, including regional low and moderate income housing needs. The effect of the A-95 review process, I think, will be to force local communities to join or participate in regional housing allocation plans in order to insure that their applications for federal funds will be approved. There will be a "peer pressure" effect which will stimulate acceptance of a regional share of low and moderate income housing needs by communities applying for federal community development funds. Metropolitan clearinghouses will thus play an increasing role in promoting more (and even distribution of) low and moderate income housing.

Legislative reforms in planning law are needed to insure that low and moderate income housing needs, both locally and regionally, are met. Some proposals have already been proposed such as mandating local governmental participation in regional housing planning agencies. Other proposals would consolidate all land use authority into comprehensive regional planning agencies, thus effectively creating regional government. I personally feel that increasing recognition that environmental, economic and social needs cannot be met at the local level, coupled with the continuing dependence by local government on federal community develop-

---

35. Comprehensive Planning Organization; Southern California Association of Governments; Association of Bay Area Governments.

36. Intergovernmental Cooperation Act of 1968, Title IV, 42 U.S.C. §§ 4201, *et seq.*; Demonstration Cities and Metropolitan Development Program, 42 U.S.C. § 3334; Housing and Community Development Act of 1974. 42 U.S.C. §§ 5304 (1974).

Section 5304(e) provides:

No grant may be made under this chapter unless the application therefor has been submitted for review and comment to an area-wide agency under procedures established by the President pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 and title IV of the Intergovernmental Cooperation Act of 1968.

ment funds and the federal preference for regional solutions, will eventually result in the formation of regional comprehensive planning authorities exercising extensive control over all land use decisions. This alone will not solve low and moderate income housing needs but it will significantly minimize local exclusionary practices and help promote an even, regional distribution of economic, social and environmental benefits and burdens.