Housing Incentives To Promote Inter-Regional Jobs/Housing Balance

Richard T. LeGates

January, 2001

A Report to the Inter-regional Partnership Jobs/Housing Balance Pilot Program

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Executive Summary

AB 2864 contemplates both *fiscal* and *non-fiscal* incentives for:

- Housing opportunity sites
- Economic opportunity sites
- This report is on incentives for *housing opportunity sites*
- A companion IRP report focuses on incentives for *economic opportunity sites*

Pre-development Incentives

- Payment of pre-development costs from local or nonlocal funds would be a significant incentive for potential housing developers

Three promising sources of State pre-development funding are:

- The California State Department of Housing and Community Development (HCD)'s new $ 5 million pre-development loan fund
- HCD's new $ 2.375 million Downtown Rebound program planning fund
- The California Housing Finance Agency (CHFA)'s $ 20 million a year HELP program

Other sources of predevelopment funding include:

- The U.S. Department of Housing and Urban Development (HUD)'s Community Development Block Grant (CDBG) program
- HUD's HOME program
- Local Redevelopment Agency funds
- Twenty-seven other predevelopment funding sources HCD has identified

Environmental Assessment Incentives

- It would be a significant incentive if local governments paid for part or all of the cost of
    - "first tier" EIRs
    - entire EIRs
    - Habitation conservation planning
    - Other environmental assessment

State Jobs/Housing Improvement Incentive Grants

- A new $ 100,000,000 State program will award jobs/housing improvement incentive grants to California jurisdictions during 2001 which
    - Have an approved Housing Element in 2001
    - Demonstrate an increase in specified residential building permits during 2001 compared to the average of 3 prior years
- Successful jurisdictions will receive flexible funds infrastructure and amenities

Infrastructure Funding

- Housing consists of a "bundle" of costs in addition to the cost of housing units
- More funding for infrastructure is now available in California than ever before
- Key sources for infrastructure funding are:
  - The California Infrastructure And Economic Development Bank (CIEDB)
    - Which has $ 475 million now available
    - For loans from $ 250,000 - $ 20 million
  - The California Department of Transportation (CALTRANS)
  - Metropolitan Planning Organizations (MPOs) transportation infrastructure funds
  - County Congestion Management Agency (CMA) funds to reduce traffic congestion
- The San Mateo CMA's transit oriented incentive program and MTC's housing incentive program (HIP) are possible models for the IRP

First Time Homebuyer Programs

- More than two dozen first time homebuyer programs are available for IRP sites
- These program provide incentives for:
  - qualifying households who receive lower down payments, reduced interest rates, or other assistance with their housing
  - developers who have a better market for their homes
  - lenders who have reduced risk of defaults
- The programs would promote greater income mix in IRP sites including
  - Children of current area residents
  - Safety professionals like policemen, firemen, and paramedics
  - Other employed low and moderate income households

Master Planning

- Large (50 - 250) acre developments are often master planned
- Planning tools that can simplify approvals and reduce cost and uncertainty include:
  - Specific plans
  - PUDs
  - Development agreements
  - Floating zones
  - Vesting tentative subdivision maps

Low Income Housing Tax Credit Priority

- Federal low income housing tax credits are a major subsidy for affordable housing
- California has a supplemental State low income housing tax credit program
- The California Tax Credit Allocation Committee (TCAC) under State Treasurer Phil Angelides oversees both programs
- The IRP might form partnerships to compete for low income housing tax credits
- Current priorities are aimed at in-fill and adaptive reuse
- Entities eligible for tax credits are well organized and would resist special treatment for IRP sites. The IRP probably cannot get a special set aside or priority

Federal and state housing subsidies for very low, low, and moderate income households

- Many federal and state housing subsidy programs assist very low, low, and moderate income households
  - *Very low income* households have incomes below 50% of area median income
  - *Low income households* have incomes between 50% and 80% of area median income
  - *Moderate income households* have incomes between 80% and 120% of area median income
- Key *federal* programs are
  - Section 8 certificates for very low income households
  - HOME assistance for very low, low, and moderate income housing
  - Community Development Block Grants (CDBG) to assist affordable housing
- California has a new $ 180 million multifamily rental housing program

Housing Trust Funds

- Some cities and counties have established housing trust funds
- Existing housing trust fund resources (such as Santa Clara County's) might be used in IRP sites.
- Others housing trust funds could be augmented or newly created in the IRP region
- Housing trust funds have modest funding relative to other funding sources

Upzoning and density bonuses

- Non-fiscal incentives the IRP could use in housing opportunity sites include
  - Changing zoning from commercial or industrial to residential use
  - Increasing average residential densities in land already zoned residential
  - Density bonuses granting developers the valuable right to build at higher density
- These incentives do not require direct local government funding

Transfer of development rights (TDRs) and land swaps

- Transfer of Development Rights (TDRs) allows landowners whose land value is lowered to develop or sell development rights elsewhere.
- Land swaps are similar. An owner whose land value is lowered is traded valuable land or development rights elsewhere.
- Land zoned commercial or industrial is usually worth more than land zoned residential.
- A jurisdiction with a housing opportunity site in one of the IRP counties could:
  - rezone the site from (valuable) commercial to (less valuable) residential use
  - simultaneously grant the owner would a right to build or sell rights to build elsewhere to compensate for decreased land value

Permit fee reductions and waivers

- Many IRP jurisdictions charge substantial permit fees for residential development
- Reducing or waiving housing-related fees could be an important IRP incentive
- Permit fee reductions or waivers will result in a loss of local revenue
- Regional cooperation in which the IRP channels valuable non-local funding to a jurisdiction which reduces or waives permit fees could promote balanced development

Tax Increment Financing Based on the Redevelopment Model

- California Redevelopment agencies receive the difference between pre- and post development property tax of redevelopment project areas
  - This is a very large revenue source
  - Blighted housing opportunity sites could get tax increment funding now
- Infrastructure financing districts (IFDs)
  - permit tax increment financing for areas which are not blighted
  - have been little used
  - might be useful in housing opportunity sites
- The IRP would have difficulty getting a *new* law granting IRP sites tax increment financing, but is more likely to get changes in existing law for IRP sites

Pooling Redevelopment Funds

- Redevelopment agencies must set aside 20% of their tax increment for affordable housing
- Over $ 80 million a year of 20% set-aside funds are being reserved for affordable housing in the IRP area
- Currently 20% set-aside funds are being spent within individual jurisdictions
- The California Redevelopment law was amended in 2000 to permit pool of 20% set-aside funds.
- Pooling 20% set-aside funds is an attractive strategy for inter-regional housing cooperation

Return of State Property Tax (ERAF tax shift relief)

- ERAF relief specifically for housing opportunity sites is no longer politically viable
- IRP jurisdictions will be competitive with other claimants for use of the (very modest) ERAF funds that will be returned this year.

Thinking Big

In addition to the above incentive strategies the IRP might work to achieve major State-level reform including:

- Flexible IRP "implementation grants" with major funding;
- Legislation to fund housing opportunity site "strike teams"
- A State open space, habitat, and agricultural land acquisition fund
- State Live-Near-Your-Work Program(s);
- State law to reduce the costs of multi-family construction defect litigation;
- Sales tax reform to permit jurisdictions to use additional sales tax revenue in support of IRP projects;
- State preemption of extreme growth management laws;
- Housing linkage fees for large commercial and industrial projects that will cause housing imbalances;
- State housing element law related incentives for jurisdictions which perform well;
- An IRP joint power agreement;
- A State transit oriented housing development incentive program;
- A State interagency infrastructure coordinating committee
- Smart growth priority funding areas based on Maryland's approach.

BACKGROUND

Representatives of local government in the Alameda, Contra Costa, Santa Clara, San Joaquin, and Stanislaus county region have formed an innovative Inter-Regional Partnership (IRP) to address issues which affect them, despite the fact that they are located in five different counties in three different Council of Governments (COG) regions. Improving jobs/housing balance is an IRP priority.

California Assembly bill 2864 (Torlakson) creates a $ 5,000,000 state pilot project to improve the balance of jobs and housing in the IRP area and other metropolitan areas of California. AB 2864 contemplates a one-year research and development phase followed by a one-year implementation phase. The pilot project is intended to increase housing in areas where jobs exceed housing and jobs in areas where housing exceeds jobs.

The IRP will receive $ 625,000 of AB 2864's funds during the next two years. They are expected to designate 5 to 10 *jobs-housing opportunity sites* at the end of that time. Half of these sites will be *housing opportunity sites* in areas where jobs exceed housing units.

AB 2864 envisages that the IRP and other inter-regional partnerships will identify and deploy *incentives* to promote housing development in job-rich areas and economic development in areas with fewer jobs and more affordable housing sites so that the proposed development will occur in the sites selected. The legislation identifies four incentives, which might be used to encourage housing development,[1] and specifies that phase one of the project shall provide a refined description of fiscal and nonfiscal incentives for the jobs-housing opportunity sites.

The legislation specifies that a variety of State departments shall be involved in identifying incentives and mentions five by name: the State Office of Planning and Research, Department of Housing and Community Development, Housing Finance Agency, Department of Transportation, Department of Conservation. Representatives of three of these agencies were contacted during the course of this study.[2]

THE NEED FOR INCENTIVES TO PROMOTE JOBS/HOUSING BALANCE

There is a spatial imbalance of jobs and housing in the IRP region (California Senate Select Committee on Jobs Housing Balance 1999a, 1999b, 1999c, Cervero, 1996, Levine, 1998, ABAG, 1999, HCD, 1999b, 2000b). Many more jobs than housing units are located in Silicon Valley and other job-rich areas (SVMG, 2000); many more housing units than jobs in areas like much of San Joaquin County (SJCOG, 2000a, 200b). There is an extraordinary flow of commuters from San Joaquin and Stanislaus counties over the Altamont Pass to Bay Area job sites (San Joaquin Partnership and San Joaquin COG, 2000). The jobs/housing imbalance within the IRP region is projected to become much worse during the next twenty years unless existing development patterns change (ABAG, 1999).

The jobs/housing imbalance contributes to traffic congestion, air pollution, high infrastructure costs and sprawl. Firms are concerned that high housing costs near job clusters hurt the region's ability to compete with regions with lower housing costs. First time homebuyers find themselves priced out of the market and low and moderate income

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[1] (a) tax credit priority for multi-family housing, (b) a return of property tax for development of affordable housing, (c) pooling redevelopment funds, and (d) tax increment financing on the redevelopment model.

[2] Cathy Creswell, Acting Director of Policy Development and Research and Linda Wheaton of the California State Department of Housing and Community Development, Doug Smoot of the California State Housing Finance Agency, Kome Ajise of the California Department of Transportation.

renter households cannot afford rental units even with two or more wage earners (California Budget Project, 2000).

Thoughtful studies of how to better balance jobs and housing in the Bay Area have been prepared in the past (Greenbelt Alliance, 1983, ABAG, 1989) and are continuing (Bay Area Alliance for Sustainable Development, 2000, SVMG and the Greenbelt Alliance, 1999). Many local governments, nonprofits, and individuals have been working on jobs/housing balance issues in the IRP region.[3]

Jurisdictions generally prefer commercial and industrial to housing development. They ordinarily receive more property tax revenue and pay out less in service costs for areas developed for industrial or commercial use than for residential uses. Incentives to make housing more attractive fiscally or in other ways can help induce jurisdictions to accept housing.

Neighborhoods often oppose residential projects because they feel that new development will hurt their quality of life. Neighborhood amenities like parks, libraries, schools, and offstreet parking can be powerful incentives to get neighborhoods to accept housing. So are mitigating environmental damage and assuring high quality design

Developers may be unwilling to undertake lengthy, complex, and risky large housing development projects because they cannot afford necessary infrastructure, costs of providing open space and protecting habitats, or the risk of construction defects litigation. Incentives may encourage developers to undertake housing developments.

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[3] A partial list would include ABAG, SJCAG, STANCOG, Many counties and cities, the Bay Area Council, the Silicon Valley Manufacturers Group, The Greenbelt Alliance, Homebuilders Association of Northern California, The Bay Area Alliance for Sustainable development, the California Futures Network, and Urban Habitat.

Individual households often need incentives to be able to afford new housing. First time homebuyers and low and moderate income renters are often unable to afford market rate housing.

The IRP is a perfect vehicle to identify housing opportunity sites and to direct incentives at all four groups—jurisdictions, neighborhoods, developers, and households.

Hundreds of possible incentives could encourage housing development. The variations and permutations of how they can be deployed are endless. The companion IRP report on economic development incentives reports that there are also hundreds of possible economic development incentives (Applied Development Economics 2000a, 2000b).

Which incentives to use where must await further regional planning work by the IRP to specify site selection criteria and identify candidate sites. Nonetheless some incentives stand out. *Very large* housing incentives programs like the federal and State low income housing tax credit programs, the federal section 8 and CDBG programs, and the new State multi-family housing construction program are important to identify because of their large funding levels. New smaller programs like the California State Department of Housing and Community Development (HCD)'s new predevelopment loan fund and downtown rebound planning fund are noteworthy because there is *new money* to compete for. Incentives programs which are explicitly related to jobs/housing balance issues like the State jobs/housing balance incentive program and MTC's new HIP program are important models because they are so closely related to what the IRP is intended to do. So is the California Housing Finance Agency's HELP program that explicitly seeks to fund innovative housing *partnerships.*

INCENTIVES TO PROMOTE JOBS/HOUSING BALANCE

Following is a list of fifteen incentives for housing in the IRP region—four explicitly identified in AB 2864 and eleven additional incentives.

Incentives for Housing in IRP Housing Opportunity Sites

1. Predevelopment funding from HCD's urban predevelopment loan program jobs/housing balance component and downtown rebound funds, the California State Housing Finance Agency (CHFA)'s HELP program, and other sources;
2. Payment of environmental impact report (EIR) preparation costs, costs of developing habitat conservation plans, and related environmental planning and review;
3. Funding from the State jobs-housing balance improvement program;
4. Infrastructure funding to support housing from the California Infrastructure and Economic Development Bank (CIEDB), The California Department of Transportation (CALTRANS), Congestion Management Agencies (CMAs) & Metropolitan Transportation Planning Organizations (MPOs);
5. First time homebuyer programs;
6. Master planning using specific plans, planned unit developments (PUDs), development agreements, floating zones, vesting tentative subdivision maps or other planning tools;
7. Federal and state low income housing tax credits;
8. Federal and state subsidies for very low, low and moderate-income households;
9. Local housing trust fund funding;
10. Transfer of development rights (TDRs) and land swaps ;
11. Rezoning land for residential use and density bonuses;
12. Permit fee reductions and waivers;
13. Tax-increment financing based on the redevelopment model;
14. Pooling redevelopment funds;
15. Return of state property tax – ERAF tax shift relief.

A discussion of how each of these incentives might be used in IRP housing opportunity sites follows.

1. Predevelopment funding

Before development begins developers must spend money on surveying, land inventories, title searches, soil tests, and other pre-development costs. They must pay these costs up front, before the project is well defined. If they do not proceed with the project for whatever reason these are out-of-pocket expenses. Even major developers may shy away from paying predevelopment costs at the formative stage of a project before they are committed to the project and many smaller developers and nonprofits cannot afford to pay for predevelopment costs. Funding of predevelopment costs would be an important incentive for developers in housing opportunity sites.

HCD's information clearinghouse identifies 27 sources or predevelopment financing funded by private banks, secondary mortgage market entities, nonprofits, local housing trust funds and other sources.[4]

Three State-level sources of pre-development funds are from:

(a) $ 4.85 million now available in HCD's *urban predevelopment loan fund jobs/housing balance component;*

(b) $ 2.375 million for downtown-related planning from HCD's *Downtown rebound program*; and

(c) funding from the California Housing Finance Agency (CHFA)'s *Housing Enabled by Local Partnerships (HELP) program.*

[4] http://housing.hcd.ca.gov/clearinghouse/

HCD's urban predevelopment loan fund jobs/housing balance component has $ 4.85 million in new funding. It is of particular interest to the IRP because the funds must be used for pre-development activities *related to jobs/housing balance*. HCD issued a notice of funding availability (NOFA) for these funds on December 12, 2000.

Two other HCD-administered pre-development loan programs are less promising because: (a) they contain very little money for the entire State, and (b) their requirements make them unsuited to potential IRP sites. [5]

HCD's new "Downtown Rebound" program has $ 2.375 million for planning grants and $ 21.375 million for project implementation. For qualifying IRP housing opportunity sites such as redevelopment of blighted urban land or adaptive reuse of old strip malls, downtown rebound funds could be used for site inventories, feasibility studies, updating zoning ordinances and other planning and pre-development activities. HCD issued a NOFA for Downtown Rebound *planning* funds on December 31, 2000. Applications for the funds will be accepted continuously until the funds are exhausted.

Another possible source of pre-development funding is from the California Housing Finance Agency (CHFA) Housing Enabled by Local Partnerships (HELP) program (California Housing Finance Agency 2000).[6] CHFA has committed $ 100 million of its funds to the HELP program. The HELP program provides for loans of up to $ 2,000,000 for 10 years at a 3% simple interest rate. HELP could be used for predevelopment loans in IRP

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[5] $ 1.5 million in HCD's urban predevelopment loan program is directed towards assisting below market interest rate loan programs threatened by expiring federal subsidies. $ 1.0 in HCD's rural predevelopment loan program is not appropriate for projects of the type contemplated in AB 2864.

[6] This description of the HELP program is based on CHFA's HELP program description, HELP website and a phone interview with the program's director, Douglas Smoot on September 22, 2000.

sites. A single loan pool might be reused several times during a ten-year loan period if the IRP establishes a revolving pre-development loan fund with HELP funds.

The HELP program is exceptionally flexible and the application process very simple compared to many other programs. The loans carry minimal restrictions. Funds must address affordable housing needs, but CHFA allows localities discretion to define what affordable means in their local context. Thus HELP funds could be used to pay for pre-development activities related to development of housing with sale or rental limits higher than those permitted in many State and federal programs—limits which are often impossible to meet in very high cost areas within the IRP region. CHFA currently conducts two rounds of funding of $ 10 million each year—an annual total of $ 20 million. That cycle will continue through the IRP two-year period. The only selection criteria for the HELP program are that proposed activities must be:

1 readily implementable;

2 competitive in relative impact;

3 comprehensive, and;

4 innovative/original.

There must be local government involvement by counties or agencies within them such as redevelopment agencies. Until the fall, 2000 round, competition for HELP funds was moderate and almost all proposals have been funded. Competition for HELP funds is expected to increase in the future. Since the HELP program emphasizes *innovative programs by partnerships* the IRP should be well positioned to receive HELP funds.

Local sources of predevelopment funding include funds from the federal HOME and Community Development Block Grant (CDBG) programs, redevelopment tax increment and 20% housing set-aside funds, and other sources.

2. Paying for environmental impact reports (EIRs), habitat conservation plans, and related studies

Housing opportunity sites will trigger the California Environmental Quality Act (CEQA)[7]. Some are likely to require federal or state endangered species act studies.[8] Where rare or endangered species exist habitat conservation planning may be necessary.

Complex, strict, and costly environmental and species protection laws—particularly CEQA and the federal and State endangered species acts—are a significant disincentive to housing development. Paying some or all of EIR preparation or endangered species analysis costs would provide a significant incentive for *developers* to develop housing opportunity sites. The "Thinking Big" section of this report proposes that the IRP go even further and seek State funding to cover costs of environmental mitigation and species conservation for IRP sites.

CEQA requires Environmental Impact Reports (EIRs) before any development requiring a discretionary approval that will significantly affect the environment occurs. There are a number of excellent sources of information on CEQA (Bass et al, 1999; Remy et al., 1999; Kostka and Zische 1993 and 1999). Many environmental planning and law firms are skilled in preparing EIRs and guiding developers through the legal requirements to assure that they comply with the law.

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[7] The California Environmental Quality Act (CEQA) is modeled on the National Environmental Policy Act (NEPA). CEQA is in California Public Resources Code s 21000 et seq. The guidelines are in California Code of Regulations Ch 3. The CEQA statute, guidelines and other material is available from http://ceres.ca.gov/ceqa/.

[8] The federal Endangered Species Act, *42 U.S.C. s. 1531* has been in effect since 1973. The California Endangered Species Act, *California Fish and Game Code* s. 2050, has been in effect since 1984. See Chapter 21 of William Fulton, Guide to California Planning (Solano Press: Point Arena, 1999) "Endangered Species: A Case Study in Natural Resources Protection" for an excellent overview of the endangered species laws.

EIR costs are ordinarily borne by developers early in the development cycle. Depending on the nature of the site, other environmental assessment may be required under federal or State law. If there is a possibility that rare or endangered species are on the site, at a minimum studies will be required to show how the project will comply with federal and State endangered species laws.

EIR preparation, endangered species studies, and habitat conservation planning take substantial time and require an outlay of funds before the project is well defined. Until they are completed developers face uncertainty about what development is possible. Payment for all or part of EIRs and endangered species studies for a proposed IRP housing opportunity site would reduce uncertainty, delay, and cost to developers and provide an incentive to proceed with a housing project.

Environmental organizations would oppose changing CEQA or granting IRP projects special treatment. The agencies that administer the endangered species acts—the U.S. Fish and Wildlife Service and the California Department of Fish and Game—would vigorously oppose any efforts to bend existing endangered species laws. These organizations should not oppose projects that use *existing features* within CEQA law that can speed up and simplify CEQA compliance, reduce costs, and reduce developer uncertainty. Nor should they oppose endangered species studies and habitat conservation planning conducted within the framework of the existing endangered species acts.

The IRP might pay for *initial* EIR work. *Tiering* refers to the preparation of EIRs using a multi-level approach.[9] First tier EIRs cover analyses of general matters contained in a broader EIR which are deemed ripe for determination early in the EIR process. Subsequent EIR tiers typically consist of project or focused EIRs or mitigated negative declarations that evaluate narrower aspects of a plan. These subsequent EIRs can incorporate by reference findings from first tier EIRs.

The IRP might also pay for part or all of the costs of endangered species studies or habitat conservation planning. San Joaquin is completing work on a pioneering *countywide* habitat conservation plan. Extending their approach across county boundaries in the IRP area would be an example of the kind of *inter-regional* collaboration that could facilitate housing (or job-related) development.

Having such analyses of proposed housing opportunity site(s) completed early in the development cycle could greatly increase the willingness of developer(s) to undertake a project. For example a first tier EIR might determine that a site contained no archeological sites, vernal pools, or toxics. It might reach important conclusions regarding the cumulative impacts of the project. It could specify what traffic, parking, and open space improvements would be necessary to mitigate negative impacts of the project. Similarly, an endangered species study might show that there are no rare or endangered species at the site or propose a realistic habitat conservation plan that would protect any that did exist. Completion of such studies would allow developers to decide whether or not they want to undertake the development and on what terms.

[9] California Code of Regulations s. 15152.

First tier EIRs include program EIRs, master EIRs, general plan EIRs, staged EIRs, and redevelopment plan EIRs. Any of these EIR alternatives might prove useful given the specifics of a proposed housing opportunity site. [10]

A *program EIR* is prepared for a series of actions that may be characterized as one large project. The actions are usually geographically close or take place temporally close to each other.

A *master EIR* is appropriate for specific plans, general plans and individual general plan elements (such as the housing element) and amendments. They are examined in detail in a California State Office of Planning Research publication (OPR, 1997).

The IRP might pay for some or all of EIR or endangered species studies from existing or augmented planning funds or local governments might pay for them from local or nonlocal funding sources.

This section proposes incentives for EIR *preparation* and for endangered species *planning*—not for the full cost of mitigating environmental impacts or habitat conservation. The cost of setting aside open space or otherwise mitigating environmental impacts and protecting endangered species can be very great. In some cases these costs make it financially impossible for developers to undertake an otherwise desirable project. The "Thinking Big" section of this report suggests that the IRP consider pursuing State-level legislation to cover costs of environmental mitigation and habitat conservation for IRP sites. Such funds would be a very large incentive to stimulate development of housing opportunity sites.

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[10] Appendix J of the CEQA regulations give examples of EIR tiering.

3. Funding from the State jobs-housing balance improvement program

A new State jobs/housing balance improvement program in AB 2864 provides a one-time $100,000,000 program of incentive grants to local governments that increase the number of residential building permits near jobs during 2001.

To be eligible for these funds local governments must: (a) have an adopted housing element, and (b) increase the issuance of building permits during calendar year 2001 compared to the average number of permits during the most recent measurable 36-month period prior to 2001.

Applicant areas will be weighted for high, medium, or low employment demand (i.e. available jobs). Additional points may be added for projects that meet any of the following criteria: multi-family, infill development, and/or properties with affordability covenants. HCD plans to issue a notice of funding availability (NOFA) with details on the jobs/housing balance improvement program in January, 2001.

Timing of the State jobs-housing balance improvement program is premature for the IRP, given the two-year IRP planning cycle. While the IRP cannot get building permits for housing on IRP housing opportunity sites issued within this narrow time frame member jurisdictions may be able to use funds which they receive under the program to benefit IRP housing opportunity sites. The incentive grants are flexible and can be used for capital outlay projects that result in fixed assets with useful lives of 10 or more years and values of $ 100,000 or more. These may include traffic improvements, neighborhood parks, bike paths, libraries, school facilities, play areas, community centers, police and fire stations and other capital improvements with a ten-year capital life.

4. Infrastructure funding

Housing development costs consist not only of the costs of constructing individual housing units, but also of transportation, water, sewer, and other infrastructure costs. Obtaining transportation and/or other infrastructure support for IRP housing opportunity sites could provide a major incentive for housing development. California's strong economy has made much more funding available for transit and other infrastructure improvements than ever before. Many infrastructure-funding agencies are becoming more sensitive to jobs/housing balance and are favorably disposed towards proposed projects that would increase jobs/housing balance.

Funding for transportation infrastructure is critical to most large development projects. There are many sources of transportation funding—well summarized in a recent MTC publication (MTC, 2000b) any of which might be appropriate in a given context. MPO planning documents such as MTC's Regional Transportation Plan (MTC, 2000a) and Bay Area Blueprint for the 21st century (MTC, 2000c) describe plans for deployment of this funding.

The California State Department of Transportation (CALTRANs) is the most important potential source of transportation infrastructure funding because of its huge size. Costs of transportation infrastructure that would support a housing opportunity site could come from existing CALTRANs *project* or *program* funding. CALTRANS has recently created a Transportation Planning Program (TPP) specifically charged with bringing together land use and transportation planning.[11] This office is a good entry point for the IRP to initiate discussions for use of CALTRANS funds. The Office administers a small Community Based Transportation Planning (CBTP) grant program that would be an appropriate source for funding IRP housing opportunity sites.[12] The program's objectives specifically include projects which provides regional/interregional benefits, support livable community concepts and incorporate a collaborative planning process. The program favors infill, brownfield conversion, and adaptive reuse projects. The IRP might seek a CBTP planning grant and use it to develop a proposal for major transportation infrastructure funding in support of a housing opportunity site.

The California Infrastructure and Economic Development Bank (CIEDB) within the California Trade and Commerce Agency is a major new source of infrastructure funding. The CIEDB was created in 1994 to promote economic revitalization, enable future development, and encourage a healthy climate for jobs in California.[13] The bank has broad authority to issue tax-exempt and taxable revenue bonds, provide financing to public agencies, provide credit enhancements, acquire or lease facilities, and leverage State and Federal funds. The legislature appropriated $ 475 million for the CIEDB in 2000. The bank has allocated $ 350 million of this amount to fund a two-tiered reserve fund leveraged loan program—the infrastructure State revolving fund program (CIEDB, 2000). This $ 350 million is in turn divided between $ 275 million in tier 1 funds for applicants which meet CIEDB's

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[11] The CALTRANS Transportation Planning Program is headed by Kome Ajise (916) 651-6008. Their website is http://www.ca.gov/hq/tpp/offices/ocp/ocp.htm.

[12] The program had $ 1.3 million in community-based transportation planning grant funds for use in 2000-2001. The application period for these first round funds has closed. They anticipate as much or more funding in the future. An application for CBTP funds is available from the TPP website.

[13] The legislation creating the CIEDB is the Bergeson-Peace Infrastructure and Economic Development Bank Act of 1994, Government Code s 6300 et seq.

underwriting criteria and satisfy specified threshold eligibility requirements and tier 2 funds for projects in economically distressed communities. Once a significant portion of the total of the initial funding for Tier 1 and Tier 2 allocations have been committed, the CIEDB plans to issue revenue bonds to leverage the program in order to provide additional loan funds.

The CIEDB is now issuing loans in amounts ranging from $ 250,000 to $ 20 million at favorable lending rates. CIEDB loan repayment may come from voter-approved general fund debt, redevelopment project tax increment revenue, enterprise and special funds and other sources.

Eligible infrastructure projects can include county highways, city streets, drainage and flood control, libraries, child care facilities, day care facilities, employment training facilities, other educational facilities, environmental mitigation measures, parks, recreational property and equipment, port facilities, power and communications facilities, sewage collection and treatment infrastructure, solid waste and disposal infrastructure, water treatment and distribution facilities, police stations, fire stations, court buildings, jails, juvenile halls, juvenile detention facilities, defense conversion infrastructure, and state highways (CIEDB, 2000).

Depending upon the nature of the project many of these infrastructure improvements could support housing opportunity sites. The CIEDB loans are aimed at economic development projects and it may be essential to craft housing opportunity site projects that demonstrably support economic development. Scoring criteria for the CIEDB loans include a number of features which could favor IRP housing opportunity sites including job creation/retention and quality of life/community amenities.

The CIEDB has developed criteria, priorities, and guidelines for the infrastructure State revolving fund (CIEDB, 2000). An application to apply for this funding is available online.[14] The process for applying for CIEDB loans is a two-step one. Applicants submit a preliminary application and, after approval, a loan application. The CIEDB is developing a technical assistance program for projects in the development stage.

Funding programs administered through Metropolitan Planning Organizations (MPOs) and county Congestion Management Agencies (CMAs) are other potential sources of housing infrastructure finance. Metropolitan Planning Organizations (MPOs) are metropolitan agencies that distribute federal and state transportation funding. In the IRP region MTC is the MPO for the three counties within the ABAG region--Alameda, Contra Costa, and Santa Clara counties—as well as other ABAG counties. Their transportation infrastructure funding plans are well developed (MTC 2000a, 2000c). STANCOG and SJCOG are the MPOs for Stanislaus and San Joaquin counties—they serve the function both of Councils of Governments (COGs) and MPOs.

County-level Congestion Management Agencies (CMAs) came into existence as a result of Propostion 111 in 1990.[15] CMA's prepare an annual Congestion Management Program (CMP) requiring jurisdictions to maintain specified levels of service on identified roadways of regional significance. CMP's must be developed and biannually updated for every county that contains an urbanized area—over 50,000 population--and must include

[14] The application is available from http://commerce.ca.gov/ciedb/revolvingfund/index.html.

[15] Government Code s. 65088 et seq.

every city and the county. All of the five IRP counties are urban counties and all have CMAs. In addition to their planning function, CMAs distribute a portion of state gas tax revenues, federal T-21, and other funds to reduce traffic congestion.

The San Mateo county CMA has pioneered a flexible and popular Transit Oriented Development Incentive Program (San Mateo CMA, 2000). The San Mateo CMA is using $ 2,253,000 in State Transportation Improvement (STIP) funds to provide grants of up to $ 2,000 per bedroom to public agencies that approve/build housing at 40 units to the acre within 1/3 of a mile of a Caltrain or BART station. Projects do not have to compete for these funds. Every eligible project gets their proportionate share up to $ 2,000/bedroom. There are no restrictions on use of the funds except that the project must be eligible for the source of money. The San Mateo County Transit Oriented Development Incentive Program funded 5 projects sponsored by 4 agencies in Millbrae, Redwood City, San Carlos, and San Mateo with 1,282 bedrooms during the first incentive cycle that was completed in October, 2000.

The Metropolitan Transportation Commission (MTC) adopted a similar housing incentive program (HIP) in November, 2000.[16] The HIP program has $ 9 million in capital grant funds from MTC's Transportation for Liveable Communities (TLC) program funded by Federal T-21 funds. A call for projects under this program will be issued in early 2001. The program will award funds for transportation projects to local jurisdictions that are locating compact housing near transit. Eligible projects may include transportation-related improvements such as streetscapes, transit villages, bicycle facilities, and pedestrian plazas. Eligible projects must be within 1/3 of a mile walk (1,800') from the center of the development site to a trunk line bus, ferry, or rail transit with not more than a 15-minute

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[16] MTC's HIP Program is described at http://www.mtc.dst.ca.us/projects/livable_communities/lchip.htm

headway during the peak period commute. Award amounts are dependent upon density. Projects with 25 units per acre are eligible for $ 1,000 per bedroom, 40 units $ 2,000, and 60 units $ 2,000. An additional $ 500 per bedroom is awarded for affordable units.

Both the San Mateo County Transit Oriented Development Incentive Program and MTC's HIP program are based on incentives—carrots; not sticks. Their funding sources are different and the programs have slightly different standards, but the intent of both programs is to encourage high quality moderate to high-density transit-oriented residential development near transportation nodes. Unlike the State one-time, one-year jobs/housing balance incentive program both programs contemplate successive rounds of funding which give cities realistic opportunities to respond to the incentives.

The IRP should make sure that San Joaquin and Stanislaus COGs are aware of the San Mateo County CMA and HIP housing incentive programs. They may choose to replicate them. The IRP might also advocate for expanded State support for a program closely modeled on these innovative experiments. Such a program might explicitly earmark funding for IRP housing opportunity sites.

There are many additional possible source for funding infrastructure. The California Trade and Commerce agency has a searchable web-based database of infrastructure financing from California finance programs, California grant programs, federal financing programs, federal grant programs, and private funding programs.[17] MTC has developed an excellent publication describing transportation financing sources (MTC, 2000b).

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[17] http://comerce.ca.gov/ciedb/othersources/index.html.

5. First time homebuyer programs

There are many federal, state, and local first time homebuyers programs for households purchasing a home for the first time. The California Department of Housing and Community Development provides information on first time homebuyer programs, including a first time Homebuyer Directory (HCD, 1997). Their web based information clearinghouse identifies 27 first time homebuyer programs.

These programs provide incentives for *households*. They also encourage *housing developers* who will have greater confidence that their completed units will sell quickly and *lenders* because the homebuyers are better able to make loan payments and less likely to default. First time homebuyer programs in IRP sites would increase housing affordability so housing opportunity sites could include more first time homebuyers—typically moderate-income young homebuyers including the sons and daughters of long time residents, firemen, policemen, paramedics, and teachers.

First time homebuyer programs may provide lower down payments, lower interest rates, tax deductions or credits, or other favorable treatment to first time homebuyers whose incomes do not exceed a specified amount and who are purchasing a moderate-income home for the first time.

While no first time homebuyer funds are currently earmarked or set aside for IRP housing opportunity sites, qualifying first time homebuyers of units in IRP sites could compete for these funds. IRP jurisdictions might redesign existing *local* first time homebuyer programs to support IRP housing opportunity sites. The IRP might seek new legislation directing some first time homebuyer funds specifically to IRP sites.

6. Master planning

Large comprehensive projects on sites as large as the 50 to 250 acre sites contemplated in AB 2864 are often *master planned*. Frequently local governments use regulatory devices that either (a) simplify the approval process or (b) assure developers that their entitlements will not be changed—something developers refer to as “bullet proofing” their entitlements and which they highly value. Specific plans, PUDs, development agreements, floating zones, vesting tentative subdivision maps, and other planning tools can be used for these purposes. These are examples of *nonfiscal inventives* which local governments can provide *developers* through the regulatory process. These devices are well described in existing material (Curtin, 2000; Longtin, 1987 and 1999). Many local planning departments, consultants, and lawyers are familiar with their use.

There is a long history of theory and practice regarding master planned developments. Clarence Perry envisaged large-scale residential neighborhood units in the 1920’s designed to accommodate the then new automobile and bring neighbors together around neighborhood schools. Catherine Bauer advocated for large-scale modern housing developments incorporating the best of European modernist design and amenities. Today new urbanist planners like Peter Calthorpe and Peter Katz (Calthorpe, 1993; Katz, 1994) have developed neo-traditional design schemes which draw upon the best of these traditions and 21st century needs. Attractive new urbanist designs are on the World Wide Web.[18] Housing opportunity sites could be exciting comprehensive housing developments including community-serving retail, schools, parks, libraries, and other amenities drawing on the best of traditional, neo-

[18] Peter Katz designs are illustrated at http: //www.urban-advantage.com. Calthorpe Associates website is http://www.calthorpe.com/

traditional and postmodern design principles. Carol Whiteside, Director of the Great Valley Center has suggested that the IRP provide for world class design competitions for IRP sites.[19]

California law permits jurisdictions to prepare *specific plans* that govern development of an area.[20] They are described in a recent publication by the California State Office of Planning Research (McKenzie, 1998).

Specific plans include text and diagrams showing

- the distribution, location and extent of land uses;
- the proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy and other essential facilities;
- Standards and criteria by which development will proceed;
- A program of implementation measures.

Specific plans must be consistent with the jurisdiction's general plan and zoning ordinances. Subdivisions, development agreements, and other local land use regulations must be consistent with the specific plan.

Once a specific plan is developed, development consistent with it need not seek separate general plan, zoning, subdivision, or other discretionary approvals.

Planned Unit Development (PUD) zones provide for flexible performance-based development that gives developers greater control over design than more conventional zoning. Land use lawyer Daniel Curtin notes that the word PUD refers both to a *type or method of zoning classification* and to a *method of development* (Curtin, 2000). As a *method*

[19] Interview with the author.

[20] California Government Code s. 65450 et seq.

of development, individually owned lots ordinarily have common open space, recreation, and sometimes street improvements. As a *zoning classification* PUDs often permit residential, commercial, and other uses that ordinarily would not be allowed in the same zone. PUDs are sometimes referred to "planned community", "planned-unit development", and "cluster developments".

Creating a PUD for a housing opportunity site might permit an attractive mix of community-serving retail and other uses. It might permit development of a site with varying intensities of development appropriate to the site that would produce an aesthetically and economically superior development to more conventional zoning.

Floating zones permit a particular type of development--such as a mixed income housing development--in specified areas of a jurisdiction if performance standards are met. The IRP or individual jurisdictions within the IRP might develop floating zones that could be used on an IRP site.

Development agreements bind local governments to an agreed-upon plan even if the composition of the governing body changes. They give developers assurance that their plans cannot be changed and are a major incentive to development.

Vesting tentative subdivision maps guarantee developers that they can develop in accordance with the map.[21] They have been part of California law for residential developments since 1986. If a local government approves a vesting tentative map the developer obtains a vested right to proceed with a development in substantial compliance with the ordinances, policies, and standards in effect at the time the application for approval of the vesting tentative map is complete.

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21 California Subdivision Map Act Chapter 4.5. California Government Code, section 66498 et. seq.

If local jurisdictions adopt one or more of these devices for proposed housing opportunity sites that could simplify the development approval process and increase developer interest. These are non-fiscal incentives that do not require any financial outlay.

7. Low Income Housing Tax Credit Priority

AB 2864 identifies "tax credit priority for development of multifamily residential construction in areas with job surpluses" as a possible incentive.

Federal tax credits are currently the largest source of affordable housing subsidies in the United States and California supplements the federal program with a State tax credit program (California TCAC, 2000a).

A State-level Tax Credit Allocation Committee (TCAC) chaired by the State Treasurer (currently Phillip Angelides) oversees the tax credit programs.[22] TCAC staff are located within the Treasurer's office.

[22] TCAC has seven members—three voting members and four non-voting members. The voting members are the State treasurer, who serves as chair, the State Controller, and the Governor, who may choose to have the Director of the Department of Finance represent him or her on the Committee. The non-voting members are the Executive Director of the California Housing Finance Agency, the Director of the Department of Housing and Community Development, and two representatives from local government, one of whom must be associated with a city and is appointed by the Speaker of the Assembly; the other a county representative appointed by the Senate Rules Committee.

The federal low income housing tax credit program was created in 1986 to enable low income housing sponsors and developers to raise project equity through the sale of tax benefits to investors. The program was made permanent in 1993. The program is contained in the federal tax code (U.S. IRS, 2000)[23] and is administered by the Internal Revenue Service, which is part of the U.S. Treasury.

Since 1987 California has had a supplemental state low income housing credit program to augment the federal tax credit program.[24] The state credit is only available to projects that also have federal tax credits. Investors take the federal tax credit over a ten-year period; the state credit over a four-year period.

Tax credits can only be used for rental housing projects and have both rent and income restrictions.[25] When a project developer or sponsor applies for tax credits he or she irrevocably elects to set aside either: (a) a minimum of 40% of the units for households whose incomes are 60% or less of the area median gross income adjusted for family size, or (b) 20% of the units for households whose incomes are 50% or less of the area median gross income adjusted for family size. Sponsors often exceed these minima in order to be competitive.

Federal tax credit projects must remain affordable for at least 15 years. California law generally requires a 55-year compliance period. They may be used for either new construction or rehabilitation. They may be combined with market rate and/or other subsidies such as section 8 certificates to produce mixed-income projects.

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[23] *U.S. Internal Revenue Code*, Section 42—Low Income Housing Credit.

[24] Chapter 1138, Statutes of 1987.

[25] Currently rents on tax credit units cannot exceed 30% of an imputed income based on 1.5 persons per bedroom.

Developers utilizing tax credits must own the project for which the credits are awarded. Since nonprofit housing development corporations and local government cannot take full advantage of tax credits, most credits are sold to corporate or individual investors through public or private syndication. The investors have an ownership interest in the project—almost always as a limited partner with no day-to-day responsibility for the project—and take a dollar-for-dollar credit against their tax liability. Partnership equity contributed to projects in exchange for the credit typically finances 30 – 60% of the capital costs of project construction.

Credit amounts awarded are based upon assessments of eligible project costs. The housing sponsor uses or sells ten times the allocation amount, since investors can take the annual credit each year for a ten-year period.

Currently two application cycles for low income housing tax credits occur each year—one at the beginning of the year; the second in late spring. TCAC application materials are available on the www[26] and from TCAC. Housing and planning staff and many nonprofit housing organizations within IRP jurisdictions have used tax credits and are knowledgeable about completing applications and sophisticated about competing for their use. These include nonprofit and for profit packagers like the Low Income Housing Fund (LIHF) and the John Stuart Company, specialized accounting firms like Novogradak Co., nonprofit housing development corporations like Eden Housing and BRIDGE Housing (BRIDGE, 2000a, BRIDGE 2000b), and investors within the IRP area who purchase credits.

Credits are allocated on a competitive basis so that those meeting the highest housing priorities get the credits. The Internal Revenue Code (IRC) requires that state housing credit

[26] http://treasurer.ca.gov/ctcac/Contacts.htm.

agencies such as TCAC design and implement a *Qualified Allocation Plan* (QAP) which gives preference to projects serving the lowest income tenants and projects obligated to serve qualified tenants for the longest period of time.[27] The IRC grants states latitude in determining other selection criteria, but requires that selection criteria they adopt include criteria regarding seven specified items, including the project location and characteristics and housing needs characteristics of the area where the project is located.[28] Provisions in California State law add additional selection criteria.[29] TCAC's *Qualified Allocation Plan* incorporates these requirements and establishes additional priorities for allocating credits.[30]

The current QAP apportions credits *geographically* and by *housing type*.[31] In the current QAP 11.9% of credits are geographically allocated for use in Alameda, Contra Costa, and Santa Clara counties. Joaquin and Stanislaus counties must compete for 13.2% of total funds Statewide after these and other set asides for large counties (including 39.7% for Los Angeles County) are subtracted. Forty percent of the credits are to be used for large family units: 10% each for single room occupancy units, seniors, and "at risk" units, and 5% for special need units. Forty-two percent of credits are set aside for: (a) rural projects (20%), (b) nonprofits (10%), (c) at risk projects (10%), and (d) small developments (2%).

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[27] *United State Internal Revenue Code* s. 42(m) (B).

[28] *ibid* s. 42(m) (C) provides that the QAP must include criteria regarding: (i) project location, (ii) housing needs characteristics, (iii) project characteristics, (iv) sponsor characteristics, (v) participation of local tax-exempt organizations, (vi) tenant populations with special housing needs, and (vii) public housing waiting lists.

[29] *Health and Safety Code* s. 50199.14; *Revenue and Taxation Code* ss 12206, 17058, and 23610.5.

[30] TCAC, *Low Income Housing Tax Credit Programs Qualified Allocation Plan* (Sacramento: TCAC, 2000).

[31] TCAC QAP Section 10315 Set-asides and apportionments.

TCAC utilizes a point system to score and rank applications within each application cycle. The point system includes up to 184 possible points based on each of 12 categories.[32] Projects may also be assigned negative points based on characteristics TCAC deems to be undesirable. The tax credit application requires applicants to provide detailed documentation in support of points in each category (California TCAC, 2000b). The QAP and point system does not award points related to jobs/housing balance. Most of categories are driven by considerations other than those relevant to the IRP.[33]

California's current QAP and regulations award up to 5 points (of the 184 total possible) for projects which qualify as being part of a transit-oriented development strategy (California TCAC, 2000d; TCAC, 2000f).

If IRP sites received tax credits by competing successfully *under the current rules* described above this would provide equity financing which would allow nonprofit and other developers to produce some very affordable units with IRP housing opportunity sites. The IRP should work with the existing network of nonprofit and for profit developers and related institutions working within the IRP area to make the most effective use of low income housing tax credits possible. Because this is a complex and technical area it would be more cost effective for the IRP to partner with entities who have the background to work with tax credits than to assign this function to staff.

AB 2864 proposes tax credit *priority* as a possible IRP housing opportunity site incentive. Since there is currently nothing in federal or state law or TCAC's QAP that gives

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[32] QAP Section 10325(c).

[33] The categories and maximum number of points are: leveraging (25), general partner/management company characteristics (12), housing needs 60, site amenities (10), service amenities (10), neighborhood revitalization (10), mixed income (15), energy efficiency (5), lowest income (50 – 60), readiness to proceed (25), readiness to proceed re land (10).

IRP sites priority, establishing such a priority would require legislative or administrative change. Changing federal law for a narrow, California-specific purpose is not realistic. Phillip Angelides, the current State Treasurer and chair of TCAC is supportive of smart growth measures and might personally favor some form of tax credit priority for IRP sites. TCAC has the legal authority to modify its QAP administratively so long as it complies with federal and state law. However, there are two important constraints on TCAC's changing the QAP to favor IRP sites. Because tax credits are such an important source of affordable housing financing there is a well-developed constituency of local governments and affordable housing advocates who watch QAP selection standards carefully and are jealous of any change which they perceive as either disadvantaging them or granting special treatment that is not justified. They would likely—and fairly—oppose special treatment for IRP sites given all of the States's other pressing affordable housing needs. Beyond this TCAC has recently amended its QAP and selection standards and currently there is a mood in favor of leaving things as they are.

Based on the above, the IRP should see receipt of IRC funding as a opportunity to work with nonprofit housing corporations and government housing organizations in the region to identify, package, and advocate for housing developments within IRP sites which will succeed on the merits within the existing tax credit framework. They should not expend much time, money, and political capital on trying to change State tax credit law or regulations unless a clear opportunity arises.

8. Federal and State housing subsidies for very low, low, and moderate-income households

There are many federal and state housing subsidy programs for very low, low, and moderate-income households.[34] Information on federal housing subsidy programs is available on the U.S. Department of Housing and Urban Development website[35] and on State housing subsidy programs on the California State Department of Housing and Community Development website[36] and in HCD's *Loan and Grant Program Directory* (HCD, 2000a).

Since AB 2864 is aimed at bringing jobs and housing together it is intended primarily to serve people who are in the workforce. Housing costs are very high in the IRP region, there is very low unemployment in the job-rich parts of the region, and there are many employed people earning wages too low to pay for adequate housing. This means that federal and state programs aimed even at very low-income households are appropriate for people who are in the workforce—including many families with two or more wage earners. Low and even very low income households in the IRP region are headed by people working as teachers, police and firemen, librarians, social workers, and paramedics as well as gas station attendants, store clerks, and receptionists. Students and other young people—including the children of longtime residents of many IRP communities—now qualify for federal and state housing subsidies. So do some elderly households and people with physical and mental disabilities who may be marginally employed or not in the workforce.

[34] Very low income households have incomes below 50% of a Primary Metropolitan Statistical Area (PMSA) median income adjusted for family size, low between 50% and 80%, and moderate between 80% and 120%.

[35] http://www.hud.gov/

[36] http://housing.hcd.ca.gov/

City and county housing authorities and community development agencies and nonprofit housing corporations within the IRP region are familiar with these federal housing subsidy programs. Currently the most important federal housing subsidy programs are: the HOME program, section 8 certificates, and Community Development Block Grant (CDBG) funds.

Federal *HOME funds* are allocated in the form a flexible block grant and can be used for many—but not all—costs associated with affordable housing. HOME funds are intended for projects assisting very low and low-income housing. They could provide an important part of the funding for a mixed-income housing opportunity site project.

Section 8 certificates are awarded to *households* to pay the difference between 30% of household income and a federally-determined fair market rent (FMR) for an area adjusted for family size. Having some section 8 certificates within an IRP housing development would increase the resident income mix.

Federal CDBG funds are annual block grants distributed to *cities and urban counties* (who often pass them on to nonprofit sub-recipients) for a variety of physical improvements that can support affordable housing development, including site acquisition and site preparation costs. CDBG funds cannot be used to subsidize rents. CDBG funds are flexible and any jurisdiction that chooses to use a portion of their CDBG funds to support an IRP housing opportunity site could do so.

A new $ 180 million State multifamily rental housing program was funded in 2000. HCD will award points for transit-oriented/smart growth projects in competition for these funds, so IRP projects should be competitive for funding from the State multifamily rental housing program.

There are many other State housing programs that might be used for housing opportunity sites. HCD has a directory of their programs (California HCD, 2000b) and maintains a website listing funding availability.[37]

Sensitive developers have learned to combine subsidized units with market rate housing and organizations like the Silicon Valley Manufacturers group are skilled in working with communities to achieve consensus on a mix of housing types. Units subsidized with deep subsidies are often combined with tax credits and market rate units to produce mixed-income projects. Housing opportunity sites should include a regional fair share of housing for very low, low, and moderate-income households as well as market-rate housing for moderate and above moderate-income households. Careful work with communities and developers to achieve a good mix of housing types acceptable to communities is essential to housing opportunity sites.

9. Housing Trust Fund funding

Several cities and counties within the IRP region have established housing *trust funds.* The Santa Clara County Housing Trust Fund (HTF) is a notable example in the IRP region and might offer a model for other jurisdictions to follow (Santa Clara County Housing Trust Fund Initiative, 2000).

The Santa Clara County HTF is a collaborative effort among public, private and nonprofit sectors to create a $20 million fund to assist housing for first time homebuyers, low income renters, and homeless people. The HTF is attempting to raise $20 million. They hope to house more than 1,000 homeless individuals and families, assist in building up to 3,000 affordable apartments, and help nearly 800 first-time home buyers. Each of the three groups will receive

[37] http://www.housing.hcd.ca.gov/ca/fac.html.

30% of the fund. The remaining 10% may be used in any of the categories at the discretion of the administrative body established to govern the fund.

The Santa Clara County Housing Trust Fund is backed by a consortium of individuals, businesses and government leaders including Community Foundation Silicon Valley, Housing Leadership Council, Santa Clara County Board of Supervisors, the Santa Clara County Collaborative on Housing and Homelessness, Silicon Valley Manufacturing Group, and the Housing Action Coalition.

The Housing Trust Fund Project directed by Mary Brooks of the Washington, D.C.-based Center for Community Change provides excellent information about housing trust funds in their publications (HTFP, 1997, 1999a, 1999b, 1999c, 2000) and on their website.[38]

According to the results of a 1996 Housing Trust Fund Project survey of all state, county, and city housing trust funds there were 106 housing trust funds in the United States. The study identified thirty-four city, thirty-nine county, and thirty-three State housing trust funds including California's.

In the 5-county IRP region Alameda and Santa Clara counties and the cities of Berkeley, Cupertino, and Morgan Hill were identified in the Housing Trust Fund project's 1996 directory as having established housing trust funds.

[38] http://www.Communitychange.org/htf.html.

10. Rezoning land for residential use and density bonuses

Rezoning land residential, rather than commercial, industrial or other uses can make more land available for development near jobs. Increasing the average density of development in zones already zoned for residential use can increase the number of housing units that can be produced on a give amount of land. Granting developers density bonuses for building housing close to jobs or transit or for building multi-family or affordable housing can provide incentives to increase denser housing development near jobs and transit.

The value of land depends to a large extent on permitted uses—which depend in turn on zoning. Some IRP jurisdictions have substantial amounts of undeveloped land zoned for commercial or industrial use. These are attractive potential uses to the jurisdiction because industrial and commercial development often returns more in property tax revenue than it takes to service the new development. Conversely some communities have less land zoned for residential use and may zone much of that for single family residential development or multifamily development at low densities.

Rezoning land from commercial to residential use or downzoning it usually *decreases* land value; upzoning it or increasing permitted density usually *increases* land value. Local governments can rezone land from other uses to residential use and can rezone land to increase permitted residential densities. Depending upon the nature of a site, simultaneously rezoning land from industrial or commercial to residential use and increasing the permissible density may retain the original land value or even increase it. Combining other of the incentives discussed in this report which benefit a developer with a rezoning which reduces land value may produce a package which works financially.

A related approach is to award *density bonuses* to developers who build projects near job sites or transit or that conform to other IRP goals. California State law requires all cities and counties to adopt a density bonus ordinance.[39] The law requires that local governments grant density bonuses of at least 25%, plus provide additional incentives to housing developers who agree to construct at least 20% of units affordable to lower-income household, or 10% of units affordable to very low-income households or senior citizens (California Government Code, 2000). HCD has developed a model ordinance which cities *may* tailor to the particular needs of the community (HCD, 1998).[40] While the State law requires local governments to comply with some uniform development standards, jurisdictions have considerable discretion about how to proceed and may choose another approach to implementing the density bonus law.

The IRP should encourage local governments to zone an appropriate amount of land near major job centers and around transportation nodes such as BART and light rail stations and freeway interchanges for moderate and high density housing. They should encourage all jurisdictions within the IRP region to have and use density bonus ordinances with IRP housing opportunity sites. These density bonus laws should at least comply with the State housing density bonus law and perhaps exceed it where appropriate.

[39] *California Government code* ss 65915 et seq.

[40] The model ordinance is available on HCD's website at http://housing.hcd.ca.gov/clearinghouse/.

11. Transfer of development rights and land swaps

Transfer of development rights (TDR's) permit local governments to regulate land for a use such as provision of housing near jobs and offer property owners whose land value is lowered by the regulation to use the lost development value in a different location (Pruetz, 1993). Landowners develop other land they own at a higher intensity or sell their right to develop as permitted by the TDR scheme.

TDRs might involve re-zoning a site currently zoned for commercial development to a residential classification (which, as indicated above, will ordinarily lower its value) and giving the property owner the right to develop land somewhere else at a more intense level which will compensate him for the lost value. Most or all of the value taken from the site reclassified for housing can be made up by the increase in value at the other site.

Bay Area communities have worked out TDRs and land swaps to compensate landowners whose land is kept as open space. The same approach could be applied to IRP housing opportunity sites.

The "thinking big" section of this report proposes a system of land banking for housing modeled on land trusts now in use for preserving open space land. That would help California avoid the kind of housing imbalance problems it now faces as a result of the absence of visionary long term planning in the past. TDRs could be used creatively to minimize direct costs of such a program to the State.

Maryland uses TDRs in their smart growth planning and regulation. A publication of the Maryland Office of Planning summarizes uses of TDRs both in Maryland and in other States (Maryland Office of Planning, 1995).

12. Permit fee reductions and waivers

IRP jurisdictions charge a variety of development fees to cover costs of sewer and water hookup, parks, open space, school sites, and other costs related to the project. The U.S. Supreme court has held that so long as the fees are reasonable and there is a nexus between the fee and a negative impact the development will have the fee is constitutional.[41] Developers and Building Industry Association representatives interviewed for this study reported that development fees in some IRP jurisdictions now exceed $ 40,000 per unit.

Since Proposition 13 greatly reduced local government's ability to raise revenue from the local property tax these development fees are an important source of local revenue. In a hot housing market such as the Bay Area has experienced for the last six years, developers pass on the cost of the fees to people who occupy the units. This makes already expensive units even less affordable.

Some jurisdictions reduce or waive fees for affordable housing development. This is an incentive for developers who can build the project at a reduced cost and may, accordingly, charge lower rents and still make the project work economically.

Permit fee reductions or waivers for some or all housing in housing opportunity sites would encourage affordable housing in housing opportunity sites.

The big disadvantage to permit reductions and waivers is that they reduce local government revenue. Local governments are reluctant to lose income and understandably no jurisdiction wants to be much more generous with fee reductions than any other.

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[41] *Nollan v. California Coastal Commission* 483 U.S. 825 (1987).

The IRP may create an opportunity for jurisdictions to cooperate by simultaneously directing valuable resources that will advantage a community in exchange for the jurisdiction agreeing to reduce or waive housing permit fees.

13. Tax-increment financing based on the redevelopment model

AB 2864 suggests "tax-increment financing for jobs-housing opportunity zones based on the redevelopment model" as a possible incentive for housing opportunity sites. Under California Redevelopment law, Redevelopment Agencies receive the *increment* in property taxes—the amount above the revenue collected when the project began— from a designated redevelopment zone (CRA, 1998, Beatty et al., 1995). The future revenue stream can support bonds and fund infrastructure and amenities for the project. For example, a redevelopment agency within the IRP area might determine that an area near a new office park which contains deteriorated housing, pawn shops, and vacant land can be redeveloped with 1,000 units of new housing as an IRP housing opportunity site. If the redevelopment agency succeeds in having the area designated a redevelopment area under California redevelopment law the property tax revenue that existed at the time of the designation will continue to go to the city, school district, and other government entities which received the funding before the designation. The increment—the increased property tax revenue generated by more valuable development—will go to the redevelopment agency. The city and school district where the project is located will not receive any portion of the increment for as long as thirty years. Tax increment funding must be used to benefit the project. If the project succeeds and the housing is built there can be a very large increment for many years. This form of financing has generated huge amounts of funding for redevelopment projects.

Any IRP housing opportunity site that meets existing State blight criteria might be designated a redevelopment area and receive the benefit of tax increment financing *under existing law*. The IRP should examine existing redevelopment housing production plans of redevelopment agencies within the IRP as part of the site identification process to see if any of them could be used as is or expanded to become housing opportunity sites.

Any other IRP site that might qualify as blighted could be studied for possible designation as a redevelopment project area. Infill and adaptive reuse projects such as redevelopment of obsolete shopping centers and strip malls might fall into this category. Sites on raw land would not qualify as blighted.

A rarely used existing law created in the mid-1980's might provide tax increment support of IRP developments. Section 53395.10 of the California Government Code permits jurisdictions to establish Infrastructure financing districts (IFDs) *without establishing blight* to support new developments. The non-school share of the tax increment in an IFD may be used to support the development. Carlsbad, California has used an IFD to support a hotel development near Legoland.

New legislation *based on* the redevelopment model might theoretically give housing opportunity sites the same financing advantages that have greatly helped many redevelopment projects. However, it is unlikely that such legislation would pass. Counties, cities, and school districts and their statewide lobbying arms are increasingly concerned about the amount of revenue they are losing to tax increment financed redevelopment projects and would oppose losing more to housing opportunity sites. A more promising approach might be to seek changes in existing state redevelopment and IFD legislation to support IRP housing opportunity sites.

14. Pooling Redevelopment Funds

One of the suggested housing incentives in AB 2864 is "pooling redevelopment funds." At the time that the legislation was passed this was not possible. During the 1999-2000 legislative session AB 2041 (Dutra) passed, amending the State redevelopment law to permit pooling of redevelopment 20% housing set aside funds.[42] Redevelopment agencies within the IRP region may now pool redevelopment 20% housing set aside funds so long as they comply with the terms and conditions of the redevelopment law as it now exists. Following is background on this issue and a discussion of the new law.

Since 1976 California law has required that not less than twenty percent (20%) of the redevelopment tax increment from redevelopment areas must be set aside for "increasing, improving, and preserving the community's supply of low- and moderate-income housing".[43] These Tax Increment Set-Aside (TISA) funds are held by each agency in a separate Low and Moderate Income Housing Fund until used.

IRP region redevelopment agencies use TISA funds in a variety of ways–most frequently in partnership with nonprofit housing development corporations in projects that combine TISA and other funding streams.

There has been a great deal of controversy concerning whether these funds have been used appropriately and effectively and about whether jurisdictions should be permitted to pool funds and use them outside of the jurisdiction (Senate Committee on Housing and Land Use, 1996).

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[42] The new provisions are in the California Redevelopment Law, *California Health and Safety Code*, s. 33334.25 et seq.

[43] *California Redevelopment Law* s. 33334.2 *et seq.*

Because of the booming Bay Area economy many Bay Area redevelopment projects have succeeded. Tax increment financing has been in place since 1976, so many Bay Area projects have moved through their initial money-losing start up phases and are now generating large and growing tax increments. Table 1 below presents information on the gross tax increment, tax increment deposited to housing fund, additional income deposited to the housing fund, total housing fund deposits, and unencumbered/undesignated balances for the 20% housing set-aside money for IRP region redevelopment agencies in 1997-98 (HCD, 1999a) [44]

Table 1
Gross Tax Increment, Tax Increment Deposit to Housing Fund, Additional Income, Total Housing Fund Deposit, and Unencumbered/Undesignated Balance in IRP Region Redevelopment Agency Housing Funds 1997-1998

County	Gross Tax Increment in 1997-98	Tax Increment Deposited to Housing Fund 1997-98	Total Additional Income 1997-1998	Total Housing Fund Deposit 1997- 1998	Unencumbered/ Undesignated balance 1997-1998
Alameda	$ 11,952,761	$ 11,952,761	$ 8,803,602	$ 20,756,363	$ 9,005,005
Contra Costa	$ 8,771,775	$ 8,771,775	$ 2,578,604	$11,350,379	$ 7,090,474
Santa Clara	$ 30,55,3492	$ 30,101,191	$ 20,114,241	$50,215,432	$ 6,728,291
San Joaquin	$ 1,470,566	$ 1,325,445	$ 1,686,674	$ 3,012,119	$ 3,166,706
Stanislaus	$ 1,021,859	$1,021,859	$ 63,551	$ 1,085,410	$ 1,567,941
5 County Total	$ 53,770,453	$ 53,273,032	$ 33,246,672	$ 86,419,703	$ 27,558,417

Source: ***California State Department of Housing and Community Development, Redevelopment Housing Activities, Fiscal Year 1996-97 (Sacramento: HCD, April, 1998), Exhibits A-1 and C1.***

[44] California State Department of Housing and Community Development, *Redevelopment Housing Activities in California, Fiscal Year 1997-1998 (Sacramento: HCD, May, 1999).*

Table 1 shows that Redevelopment Agencies in the IRP region deposited $ 86 million into their 20% set-aside housing funds in 1997-98: a little over $ 50 million from tax increment funds and the balance from addition income. They had a combined unencumbered/undesignated balance of over $ 27 million in housing set-aside funds.

California law requires tax increment funds to be used to "further the interests of the redevelopment plan."[45] Until the passage of AB 2041, they ordinarily had to be spent *within the boundaries of the redevelopment area itself* unless the governing body of the jurisdiction made special findings that the funds were clearly related to the interests of the project or the expenditure was related to a transit village. Agencies were permitted to use TISA funds outside the project area itself, but within the jurisdiction, if they adopted a finding before the redevelopment plan was approved, that the provision of low and moderate-income housing outside the area would be of benefit to the project.[46]

Before AB 2041, the law contains very cumbersome provisions permitting redevelopment agencies to transfer TISA funds to other communities.[47] According to the Senate Interim Committee on Housing and Land Use report these provisions reflected the conflict between *affordable housing advocates* who believe affordable housing, wherever built, is of paramount importance and *fair housing advocates* who feel that having affordable housing distributed through many jurisdictions is of paramount importance.

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[45] *California Constitution, Article 16, Section 18.*

[46] *California Redevelopment Law,* s. 33334.2(g).

[47] Ibid. s. 33334.17. Transfers can take place only if the legislative bodies of the donor community and the receiving community enter into a mutually acceptable, binding contract and each of 24 conditions are met. For example, the receiving community must spend the money within three years, the transfer must result in the development of a greater number of dwelling units than would otherwise occur, and the donor agency must have met 50% or more of its share of regional housing needs. Moreover, there are limits as to where the transfers can take place. If the redevelopment agency is a county agency, the transfers must occur within the same county. If it is a city, the transfer must occur within the same

Fair housing advocates vigorously opposed permitting jurisdictions to use their 20% set aside funds outside the jurisdiction, because they felt they should not be permitted to escape the obligation of having 20% set aside units built within their own borders.

AB 2041 authorizes *contiguous redevelopment agencies* located within *adjoining cities in a Metropolitan Statistical Area* to create and participate in joint powers authorities in order to pool their redevelopment housing funds. Pooled funds may be used to pay for the direct costs of constructing, substantially rehabilitating, or preserving the affordability of very-low and low- income housing. The JPA may loan, grant, or advance transferred housing funds from participating agencies to a receiving entity.

In order to pool 20% set aside housing funds a redevelopment agency must enter into a mutually binding contract with a *receiving entity* (such as a nonprofit housing development corporation) regarding transfer and use of the funds.

The law specifies ten conditions that must be met for pooling to occur.[48] The most important of these are that each participating agency must have an approved housing element of their general plan and must have met 50% or more of its very low and lower income housing needs in its current or previous housing element cycle.

Whether or not the IRP will want to take advantage of these provisions depends upon the nature of housing opportunity site(s) identified. Pooling will require extensive negotiations with multiple redevelopment agencies and local governments. Opposition from affordable housing developers within jurisdictions from which 20% set aside funds are being transferred and from fair housing advocates is likely to occur.

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county in a contiguous community or a community within five miles of the donor community.

[48] S. 33334.25(c).

The Senate Local Government committee found in 1996 that provisions in the law which allowed use of 20% set aside funds outside jurisdictions had never been used through that time. While the Dutra bill directly authorizes pooling and the conditions it contains are less onerous than those that previously existed pooling redevelopment housing funds will still be a complex process that will require a good deal of political and legal work and may only work in limited cases.

If specific legal barriers to use of pooled redevelopment funds emerge around actual efforts to make pooling work the IRP may seek legislative changes. This would add an additional layer of complexity. Depending upon what exactly is needed this may or may not be difficult politically. Minor technical amendments to the law may be straightforward. Substantive changes to the law are likely to raise emotional issues and require substantial political debate.

15. Return of State Property Tax for Housing Opportunity Sites

A possible incentive identified in AB 2864 is a return of State property tax for development of affordable housing in areas with job surpluses. This option is no longer viable at this time.

In California property tax is collected by counties and then divided among local government (cities and counties), school districts, and other special districts. In 1992-93 and 1993-94 the (then Republican) California Legislature and Governor Wilson's administration created the Educational Revenue Augmentation Fund (ERAF) and redirected over $ 3 billion of property tax revenue from cities, counties, and special districts into ERAF to fund schools and community college districts. These redirected funds reduced the State's funding obligation for K-14 school districts at a time when the State was fiscally strapped. The amount local governments pay into ERAF has continued to grow. Currently about $ 3 billion a year goes to ERAF.

Recently budget surpluses and the election of a democratic governor created interest in property tax shift relief to decrease, cap, freeze, or eliminate altogether local governments' ERAF payments. However the only ERAF proposal that would have targeted ERAF funds specifically to housing opportunity sites did not pass, the governor vetoed the major ERAF proposal of this year and trimmed $ 12 million from a very modest ERAF relief bill.

The Job-Center, Community In-fill Housing Incentive Act of 2000 (AB 2048 Torlakson) unsuccessfully proposed property tax shift relief that would have shifted some ERAF funds specifically to housing opportunity districts.

The governor vetoed SB 1637 (Burton)—a major ERAF tax shift bill which would have phased in a permanent cap on ERAF over three years. SB 1637 would have effectively capped ERAF shifts from cities, counties, and special districts at their 2002-2003 level.

The only ERAF legislation to pass in the 2000 session was AB 1396 (Aroner) which provides $ 200 million in ERAF relief: $ 100 million to cities, counties, and special districts proportionally to their population and another $ 100 million based on their ERAF losses. The governor blue-pencilled an additional $ 12 million for counties based on countywide population and to, independent library districts and park districts based on their ERAF losses from AB 1396.

Given the legislature and governor's demonstrated unwillingness to support major ERAF reform and particularly to earmarked return of ERAF funds, getting ERAF funds earmarked for housing opportunity sites does not seem viable. The IRP can compete for the modest $ 200 million in total ERAF relief approved in the Aroner bill.

Other alternatives

The above 15 alternatives were selected from among literally thousands of possible housing incentives. The IRP has identified many other possible incentives and has surveyed member jurisdictions to understand which of the incentives they are already using and which they might be receptive to (IRP, 2000). Table 2 on the next page contains a list of additional incentives suggested by the IRP (IRP, 2000), ABAG (ABAG, 2000), the Assembly Select Committee on Jobs/Housing Balance (ASCJ/HB 1999a, 1999b, 1999c), and by knowledgeable people interviewed for this study.

Table 2 Other Housing Opportunity Site Incentives	
Closing bonuses for people who buy homes in established neighborhoods close to their jobs	Maryland offers a $ 3,000 "closing bonus" to people who buy homes in established neighborhoods close to their jobs
Location efficient mortgages (LEMs) available on more favorable terms to households locating close to public transit	The Federal National Mortgage Association (FNMA) and the National Resources Defense Council (NRDC) have a pilot LEM program in the Bay Area. FNMA price limits are too low to work in most IRP location. The incentive is not strong enough to alter consumer behavior.
Urban growth boundaries to create more compact communities	Many IRP communities have or are considering urban growth boundaries
Grassroots and **grasstops education and advocacy** to promote housing development	The Silicon Valley Manufacturers Group (SVMG) has developed an effective peer-based program to educate and advocate for housing. Local elected officials and corporate representatives meet with their peers to help get housing built.
Increased gas tax to pass on the true cost of commuting by car and encourage people to live near work	Economist Claude Gruen suggested this in testimony to the Assembly Select Committee on Jobs/Housing balance

Table 2 Other Housing Opportunity Site Incentives (continued)	
Inventory vacant, underutilized, or developable land to identify housing opportunity sites	Inventories of vacant, underutilized, or developable land are helpful in identifying potential housing opportunity sites. Recent GIS-based inventories of such land exist for Contra Costa and Santa Clara counties.
Streamline housing permitting and hire more staff to process housing permits[49]	A disincentive to development is the length of time it takes to get permits. Many IRP jurisdictions have one-stop or other expedited permitting processes. Some jurisdictions need more permitting staff.
State sales tax reform to reduce competition for retail development	Jurisdictions compete for retail development in order to get sales tax. Distributing sales tax revenue more equitably would reduce competition for retail—rather than housing—development.
Impose minimum density requirements for new housing near transit stations	This is a popular alternative. Eleven respondents to the IRP checklist survey reported that they already do this and 17 others said they are willing to consider it.
Employer Assisted Housing (EAH) in which employers would subsidize housing for their workers	There has been a good deal of discussion of Employers providing mortgage or other assistance to their employees. A few institutions within the IRP area have done this.
Implement housing impact fees on new commercial and industrial projects to generate funds for affordable housing.	Seven IRP jurisdictions reported now having such fees and 13 more said they were willing to consider them.
Limit new commercial development in areas where commercial development is outpacing housing availability.	This idea extends the concept of concurrency from just matching development to availability of infrastructure.
Counsel neighborhoods to understand the need for housing in relation to jobs	There are a number of organizations in the IRP area which already provide this kind of outreach and IRP jurisdictions surveyed support the concept.
Reduce the parcel size for new single family residential developments	Smaller parcel sizes for single family homes will increase the amount of amount of land available for moderate- and high- density housing.
Require concurrency of infrastructure – particularly transportation infrastructure	Florida has eleven Regional Development Impact Agencies which negotiate w/ localities to get them to mitigate regional impacts of growth

[49] A good summary of housing permitting current and best practices has recently been prepared by the Silicon Valley Manufacturers Group (SVMG, 1999).

Thinking Big

The primary focus of this report has been on how the IRP might compete for *existing* housing incentives. The report concludes that there are many existing housing incentives and that the IRP should be well positioned to compete for many kinds of existing incentives for IRP housing opportunity sites. IRP planning could provide the background for funding applications. Formal endorsement of the IRP should carry weight with funding agencies. Specific actions the IRP could take with respect to existing housing incentives are identified throughout this report and highlighted in the summary and conclusions.

A secondary focus of this report has been on ways in which existing housing incentives might be *modified* so that they are better suited to IRP housing opportunity sites. Specific actions the IRP might take to get changes in existing programs so that they are more appropriate to IRP sites are discussed throughout this report and highlighted in the summary and conclusions.

This section steps back from *existing* programs and *program modifications* to take the longer view. It suggests some major new directions the IRP might pursue. These would require new State legislation. The sponsor of AB 2864, Tom Torlaksen, has been elected to the State Senate. It is probable that he will remain an advocate for further legislation related to jobs/housing balance and IRP sites. Early consultation with Senator Torlaksen and other State legislators interested in smart growth and jobs/housing balance is in order. Following are some ideas for new legislative initiatives that could help the IRP.

IRP Implementation Grants AB 2864 provides "*planning grants*" to IRPs statewide. Many federal and state programs award funding in two phases: first a planning grant and then an *implementation* grant. Both this report and the companion report on economic development incentives conclude that flexible region-wide funding is necessary to achieve IRP objectives. The IRP could seek legislation to fund IRP implementation grants. Since the IRP program is statewide they should have allies among state and local elected officials and their state legislative representatives from other metropolitan regions which receive IRP planning grants. Ordinarily implementation funding is much greater than planning funding.[*] The fiscal climate in California right now is very good. With multi-billion dollar surpluses, a proposal for IRP implementation grants in the $ 50 - $ 100 million range (10 to 20 times the size of planning grants) is worth pursuing. Last year's $ 100 million jobs/housing incentive program is a model of a recent, large, and flexible grant for jobs/housing balance. The more flexible IRP implementation grants could be the better from the IRPs perspective. The IRP might seek block grants and negotiate in favor of flexibility if and to the extent that opposition arises.

Housing opportunity site strike force teams. Recognizing that jurisdictions need staff and expertise to put together *economic development* deals, AB 2864 authorized local agencies that have completed an economic development strategic plan to apply for grants to create "economic development strike teams" to assist the local agency to target and coordinate outreach to employers who may choose to locate jobs within the community.

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[*] For example the "Downtown Rebound" program administered by HCD has $ 2.375 million for planning grants and $ 23.75 million in implementation grants.

Getting major *housing developments* built also requires local agency staff time and expertise. Whereas local agencies need staff work to *attract* firms for economic development local agencies promoting housing development generally need staff work to overcome community resistance to housing development and broker deals which will satisfy neighbors, environmentalists, fiscal conservatives, and other project critics. Within the IRP region a number of organizations have capacity to help overcome neighborhood opposition to housing developments. The Silicon Valley Manufacturers Group in Santa Clara county brings together developers, local elected officials, and other stakeholders to build consensus to get housing projects built. The Northern California Association of Nonprofit Housing Agencies (NPH) has established a Community Acceptance Strategies Consortium (CASC) which helps build community acceptance for very low-income housing projects. Staff of city and county housing and community development departments, and staff of nonprofit housing developers in the IRP region like BRIDGE Housing, The Mid-Peninsula Housing Development Corporation, and Eden Housing also have experience in overcoming community resistance to housing projects and getting housing built. Authorization to support "housing development strike teams" for jurisdictions which develop housing opportunity site plans modeled on the already approved "economic development strike teams" could provide funding to for these essential consensus-building activities.

Open space, habitat, and agricultural land acquisition fund. Large developments often impact open space, rare and endangered species habitats, and agricultural land. They are almost always subject to political and legal attack by environmentalists and open space advocates and sometimes by farming interests. This invariably delays projects and adds to their cost. Developers respond by increasing the amount of land they dedicate or in lieu fees they pay in order to appease critics and/or by reducing the number of residential or commercial units they build and increasing their cost. This produces projects that provide fewer and more expensive housing units or less commercial space. Where anti-development forces are most successful, projects fail altogether because developers cannot pay legal expenses and costs of carrying the land or approvable projects are simply not economically feasible. Providing subsidies *directly to developers* to pay for open space, parks, agricultural land, and habitat conservation is politically difficult because critics would see this as subsidizing private for profit development. Creating a program to provide State funds to park departments, land trusts, and other public and nonprofit stewards of public land would be more politically feasible. Proposition 1A regarding school funding (1998) is a possible model. For years there was conflict and litigation between school districts, local governments, and developers about who should pay to mitigate development impacts on schools. In 1998 State building and educational interests joined forces to gain approval for a $ 9.1 billion Statewide educational bond issue (State Proposition 1A, 1998) which adds enough new State funds for school construction into the mix that school districts get more adequate funding for new school construction, local government and school districts costs are not too high, and the fees developers pay to mitigate educational impacts are uniform, predictable, and reasonable. A program modeled on Proposition 1A to provide State funding to acquire open space, habitats, and farmland in or near IRP sites would promote high quality, financially viable development without excessive political and legal conflict.

Live-Near-Your-Work Program for Workforce Housing Proposals to financially reward people who live near their work are operative in other states and have been proposed for California. Major federal and California legislative packages to do this were nearly passed this year. The U.S. Department of Housing and Urban Development has modest programs to provide financial incentives to teachers who purchase homes near the schools where they teach and policemen who purchase homes in high crime areas they patrol. Maryland provides mortgage incentives to people who live near their work. A new State "workforce housing" program to subsidize housing for employed low/moderate income people who live near their work in housing opportunity sites could make is possible for clerical staff, building maintenance workers, grounds crew, as well as teachers, policemen, firemen, and paramedics to live near high costs job centers. State legislation providing for reduced purchase prices, lower down payments, interest subsidies, mortgage insurance, or other incentives for low and moderate income households or people holding specified kinds of community-serving jobs would be a major incentive for IRP housing sites.

Reducing the costs of multi-family construction defect litigation. If IRP sites are to fulfill the goal of providing significant new housing for the IRP-area workforce there must be multi-family housing—apartments, condominiums, townhouses—as part of developments. Low-density single family detached homes are simply too expensive to meet the needs of low and moderate-income workers. Currently one of the largest disincentives to building such much-needed multi-family housing projects is the risk of lawsuits for construction defects. The Building Industry Association of California is leading efforts to simplify resolution of construction defects conflicts. Under current law owners may sue the original developer for up to 10 years after a project is completed. Aggressive trial lawyers encourage condominium associations and individual owners to pursue claims for construction defects. Construction defects litigation is often complex and very costly because of the large number of parties involved. This increased risk requires costly liability insurance and makes developers charge a premium for multi-family housing or not build it at all. Efforts to get legislation to overcome the construction defects problem Statewide in California have been unsuccessful. It is probable that large and reputable builders will be involved in IRP housing development. Legislation mandating arbitration, pooling construction defects litigation risk, providing special insurance, or adopting some other measure to help protect developers from this uncertainty and potentially large cost while meeting legitimate concerns about construction defects would greatly facilitate needed multi-family housing development at lower costs than would otherwise be possible. The IRP should support efforts of the California Building Industry Association to resolve this problem or work with legislators to devise a more limited solution for IRP sites.

Sales tax reform Currently sales tax is collected at the point of sale and transferred to the State. Most of the Sales tax is retained by the State. A portion is returned to the point of sale. There have been attempts at legislative reform to reduce the amount of sales tax returned to the point of sale in order to reduce competition between jurisdictions for auto malls and other types of development which generate substantial sales taxes. The IRP could advocate for sales tax reform that would promote jobs/housing balance. This could take different forms. Reducing the amount of sales tax returned to the point of sale would weaken the "fiscalization of land use" and make jurisdictions less competitive and more receptive to housing. Alternatively some sales tax revenue might be shared among jurisdictions which are impacted by neighboring sales tax-generating developments, but currently do not receive increased sales tax. Returning some addition sales tax revenue to jurisdictions that build housing in IRP sites would be an even stronger incentive.

State preemption of extreme local growth management laws. Local growth management laws—often passed by initiative—are a major impediment to housing development. In fall, 2000 initiatives in Tracy and Livermore radically limited major proposed housing developments. While there are many variations on growth management ordinances most are residential tempo controls, i.e. they limit the number of units which can be built in a given period of time, ostensibly to maintain concurrency between residential growth and infrastructure. If IRP sites are planned and financed so that sufficient infrastructure is available concurrent with completion of the units the justification for residential tempo controls is much weaker. In New Jersey, Oregon, Florida, and other states state-level limits on local governments' ability to stop or slow growth are in effect. Since local government is the creature of State law, the State of California has the *legal* power to pre-empt local growth management ordinances. Responsible growth management is desirable and heavy-handed intervention by the State to pre-empt local decision making about growth is not desirable. However some State limits on extreme anti-growth measures are in order. Now that the State has funded a systematic statewide process to identify major sites where development *should* occur legislation to assure that the development will occur would be desirable.

Housing Linkage Fees. The crux of the jobs/housing imbalance problem is that many jurisdictions permit corporations to build *office space* for their workforce without assuring that *housing* is built to accommodate the increased workforce. Local elected officials in the Central Valley feel that corporations in Silicon Valley are creating the housing imbalance problem and local governments should require them to help mitigate the housing impacts their developments create. They feel that job growth is not occurring within their counties in part because the job-rich counties are externalizing housing costs onto them. Recognizing that new office development generates housing demand and negatively impacts the availability and affordability of housing, some cities have developed housing "linkage" fees requiring office developers to build housing units or pay in lieu fees to mitigate the impacts their new developments have on housing availability and affordability. Seven IRP jurisdictions reported that they have completed or are underway with housing impact fees on new commercial and industrial projects to be used for the provision of affordable housing units and 13 others said they were willing to consider such fees. Other cities are reluctant to do this for fear of deterring economic development and killing the goose that laid the golden egg. Existing linkage programs have been created by local—not State—law. They are modest, generally requiring impact fees on the order of $ 5 a square foot. Funds generated are spent to mitigate housing impacts *within the jurisdiction.* Uniform State-imposed rules requiring office developments to pay housing impact fees in areas where there are jobs/housing imbalances would address the fundamental problem head on. In the sprit of inter-regional partnership it would be desirable to have funds generated by linkage fees pooled across jurisdictions. Some funds might be used to incentivize housing development near jobs (but perhaps not within the same jurisdiction). Some might be used to promote job development in areas with less jobs and more affordable housing stock.

Housing Element Based Incentives California State planning law requires every city and county to have a general plan. A mandatory element of every California general plan is a "housing element". The state requires housing elements to be updated every five years. COGs prepare housing needs determination studies to quantify the need for housing for households of different income levels in each jurisdiction. Many jurisdictions dispute the housing needs estimates COGs generate. There are protracted disputes between some jurisdictions and HCD, which has the power to certify or refuse to certify the housing elements. While well intentioned, using housing needs determinations and housing elements as "sticks" to compel jurisdictions to build more housing—particularly low and moderate income housing—has not been very effective. The new $ 100 million State jobs/housing balance improvement program represents a different approach—providing financial "carrots" to jurisdictions which have approved housing elements and demonstrate an increase in specified residential building permits. Flexible local funding is always popular with local jurisdictions. As discussed above the current State jobs/housing incentive program has limitations. It is a one-time incentive. Residential production in CY 2001 is compared to production in the preceding 3 years. Adapting this approach to a five year program so that there are *annual incentives* and refining the criteria so that jurisdictions are rewarded for building housing that improves jobs/housing balance, is located near transit, and addresses work force and low/moderate income household needs would turn around the housing element approach from one of "sticks" to one of "carrots".

If jurisdictions know they can compete for funding several years in the future this will affect their planning much more than the current one shot program. The IRP should advocate for a continuing, targeted, multi-year State jobs/housing balance program.

An IRP JPA Currently the IRP is a loose partnership of local governments and COGs that have banded together to work on jobs/housing balance and other inter-regional issues. Under California law local governments can enter into joint powers agreements (JPAs), creating a new legal entity empowered to undertake activities specified in the agreement. As the IRP moves forward it might be desirable to create a formal IRP JPA.

Land Banking for Housing European countries have long experience with very long-range public acquisition of land for development in the future. Compact, city-centered urban forms and superior transportation in Germany, Scandinavian countries and the Netherlands have occurred in part because of land banking. In California environmentalists have successfully pursued visionary long-range planning to acquire open space and parkland for conservation purposes. Organizations like the Trust for Public land have skilled staff who can handle the financial and legal work of acquiring land and setting up land trusts. The Packard Foundation is investing heavily in acquiring environmentally sensitive land in California. The IRP area's current problems with lack of housing near job sites would have been greatly reduced had there been visionary, long-range planning to acquire land or development rights for housing in the 1970's and 1980's. Undeveloped land near areas which were already identified as probable locations for development could have been acquired at a small fraction of their present cost. Today the three IRP COGs have long range projections which show where growth in jobs and housing are likely occur over the next 20 years (ABAG, 2000, SJCOG, 2000). The IRP region MPOs have long-range plans for highway and mass transit construction (MTC 2000a, 2000c). The State has a budget surplus and is in a better position now to make large outlays for land acquisition than ever before. The IRP might advocate for a State program to acquire and "bank" land near planned transportation nodes for high-density housing development in the future. That would make the task of successors much easier.

A State Transit Oriented Housing Development Incentive Program As discussed above the San Mateo County CMA has had a very successful transit oriented development incentive program in place since 1998 and MTC has just instituted a similar housing incentive program modeled on it. Both programs award incentives to public agencies which produce moderate- to high- density transit-oriented housing close to transportation nodes. These programs have been modestly funded from federal TEA-21 and State STIP funds. The IRP could advocate for a new State transit oriented housing development incentive program modeled on these programs which would provide flexible housing development incentives for transit-oriented development. They might advocate for some funds to be earmarked specifically for qualifying IRP housing sites.

State Interagency Infrastructure Coordinating Committee The IRP could advocate for creation of a State committee to coordinate infrastructure and to target infrastructure to IRP sites in a coordinated way modeled on federal empowerment zone/enterprise community funding. The federal government's current empowerment zone/enterprise community program targets federal assistance to designated areas. In addition to subsidies and favorable regulatory and tax treatment the federal government has implemented a process to direct a disproportionate share of funding under a wide variety of existing programs administered by many different agencies to these zones.

They have designated lead agencies (HUD in the case of urban zones; the Department of Agriculture in the case of rural ones) and specified representatives from other agencies to work with the lead agency. This interagency coordinating committee meets regularly to implement policies to direct funding to empowerment zones and enterprise communities. As a result there are numerous set-asides for these zones and they receive special favorable review. This produces a more coordinated system for distributing federal economic development, housing, infrastructure, and other aid and directly benefits zones designated for priority treatment. California might establish a similar interagency committee to coordinate distribution of infrastructure in the State. The California Trade and Commerce Agency, which administers the California Infrastructure and Economic Development Bank, would be a logical lead agency. In addition to rationalizing State infrastructure policy such a committee could be an excellent vehicle to direct infrastructure funding to IRP housing and economic development sites.

Smart Growth Priority Funding Areas Based on Maryland's Approach. Some states have gone further than the coordinating approach the federal government has adopted. New Jersey, Florida, Oregon, Hawaii, Vermont, and particularly Maryland have adopted comprehensive systems for guiding growth in their States. Specific areas where growth will occur are identified. These areas receive priority for all State development-related funding including infrastructure, economic development, and housing funding. During the 1990's Maryland has implemented statewide smart growth planning. Their 1997 Smart Growth legislation (Maryland Senate, 1997) goes much further than California or other States. It is well described in publications of the Maryland Office of Planning (Maryland Office of Planning 1995, 1997, 1998, 1999, 2000a, 2000b).

Maryland has a comprehensive State system for designating priority funding areas—urban and rural; for redevelopment and new development. Infrastructure funding, housing subsidies, and economic development incentives are allocated according to a systematic state planning process. This approach contrasts dramatically with California's decentralized system in which there is little coordination between infrastructure, housing, economic development and other plans, policies, and programs and in which funding decisions are driven by a variety of programmatic considerations based on single objectives and individual projects or jurisdictions. The IRP might advocate for a State program to designate smart growth priority funding areas modeled on Maryland's approach.

Summary and Conclusion

Possible housing incentives include both *fiscal* and *non-fiscal incentives*. Regulatory relief and other non-fiscal incentives may be more important than monetary subsidies.

Incentives can be directed at different stakeholders—to encourage *households* who might not be able to afford housing in an IRP housing opportunity site to purchase or rent housing there, encouraging *developers* who would otherwise not build housing to do so, to encourage *jurisdictions* to plan for and approve housing developments, and to encourage *neighborhoods* to accept housing that they would otherwise oppose.

Incentives can come from *local, State,* and *federal* sources. The purposes the incentives serve are varied.

Table 3 on the next page summarizes the 15 incentives discussed above in terms of their type, who they are directed at, the source, and their purpose.

Table 3: Summary of Incentives for Housing Opportunity Sites				
Incentive	**Type of Incentive**	**Directed at**	**Source**	**Purpose**
Pre-development funding	Fiscal	Developers	HCD CHFA	Pay up-front costs to encourage developers to become involved
EIR and habitat conservation plan funding	Fiscal	Developers	Local & nonlocal sources	Pay costs of environmental and habitat studies to reduce uncertainty for developers
Jobs/Housing Improvement program	Fiscal	Jurisdictions Neighborhoods	HCD	Reward local governments which increase housing with flexible infrastructure and amenity funds
Infrastructure funding	Fiscal	Jurisdictions Developers Neighborhoods	CEIDB CALTRANs MPOs CMAs	Provide streets, roads, water, sewer, and other infrastructure. Encourage developers. Make development more attractive to neighbors
First Time Homebuyer Programs	Fiscal	Moderate income households	Federal govt State govt Local Lenders	Permit first time homebuyers—typically young, moderate income households— to buy entry-level housing
Master Planning	Nonfiscal	Developers Neighborhoods	Local govt	To provide superior, integrated development; reduce development cost, reduce approval burden
Low Income Tax Credits	Fiscal	Low income renters	State TCAC	To subsidize very low and low income renters
Fed and state subsidies	Fiscal	Very low income renters	Fed govt State govt	To subsidize very low and low income renters
Local Housing Trust funds	Fiscal	Low income renters / First Time Home-buyers / Others	Local govt Private Philanthropy	To subsidize households that cannot afford rental or ownership housing
TDRs	Nonfiscal	Developers	Local Govt	To pay landowner for loss of land value due to regulation in fairness, to meet legal requirements, and to permit good projects to occur.
Rezoning Density bonuses	Nonfiscal	Developers	Local govt	To increase the amount of land available for residential development and/or average residential densities.
Permit fee reductions and waivers	Fiscal	Developers	Local govt	To reduce the cost of building housing and accordingly the sale or rental price of completed units
Tax increment financing	Fiscal	Local govt Developers	Local govt	To subsidize low income rental housing
Pooling redevelopment funds	Fiscal	Low income households	Redevelopment agencies	To allow redevelopment agencies to develop affordable housing outside of their own jurisdictions
Return of State property tax funds for use in IRP sites	Fiscal	Jurisdictions School Districts Special Districts	State of California	To give back revenue from the State to local government, school districts, and special districts for use in IRP sites

How best to use housing incentives will depend upon the context of the sites selected. Tax increment funding from an existing redevelopment project area will only work within a designated redevelopment project area. If the site is located in a jurisdiction with a housing trust fund, trust fund money may be used. If the site were not located in a jurisdiction with a housing trust fund that funding source would not be available. TDRs may make sense in some contexts not in others. *This report is a background report that will serve as a reference work as IRP planning proceeds.*

This report is an action document intended to help the IRP use the housing incentives discussed above to make IRP housing opportunity sites succeed. Over the next few years IRP staff, local elected officials, and IRP partners may find it useful to regularly refer to this report and the accompanying appendices as the planning process moves forward.

Competing for grants to support specific sites will take staff expertise and aggressive work writing grant proposals and advocating for them. The GIS system contemplated by the IRP pilot program should provide data and maps which will provide impressive support for IRP-related grant proposals. The process of defining site selection criteria and the consensus building process that must occur as sites are selected should provide political support for IRP projects. Some IRP pilot project funds should be reserved to support staff to develop incentive packages and seek grants *after sites are identified.* Staff should be in a position to repackage much of the information generated during the planning process for grants. Local government match in the form of planning, housing, community development, and redevelopment agency staff to help structure incentive packages and compete for grants will be very useful to the IRP as the project moves towards the implementation phase.

If the legislature can be convinced to fund housing opportunity site strike force teams or create a jobs/housing balance implementation program a good use for a portion of such funds would be to pay for additional staff to structure incentive packages and seek grants.

Some additional work on incentives for housing opportunity sites could continue even before sites are selected. This immediate work could consist of three different kinds of activities: (a) pursuing State legislation based on the "thinking big" section of this report, (b) working to achieve changes in existing State incentive programs to make them better suit IRP needs, and (c) pursuing immediate incentive opportunities.

One activity the IRP could pursue immediately is to move forward with a State legislative agenda based on suggestions in the "thinking big" section of this report or other ideas that IRP staff or members of the IRP suggest. Two of the suggestions—flexible IRP "implementation grants" and legislation to fund housing opportunity site "strike teams" merit special attention. The IRP could make a decision now to pursue these or other of the "thinking big" suggestions. Alternatively they could charge staff to proceed with meetings to with state legislators to refine a legislative agenda.

A second activity the IRP could pursue immediately is to advocate for changes in existing incentive programs. This could involve getting agencies to change program rules so that the programs will work better for housing opportunity sites, obtaining more favorable treatment for IRP sites in program funding scoring, or getting some funds earmarked for IRP sites. Most of the fiscal incentives identified in this report award points to competitive proposals that meet specified criteria. Sometimes *scoring syst*ems are mandated by law, but usually they are created by the agencies themselves. Some existing programs award points for characteristics IRP housing opportunity sites would have. For example the State jobs/housing balance improvement program award funding to jurisdictions with high employment. The HELP program awards points for programs proposed by partnerships. Some agencies are sympathetic to jobs/housing balance and might voluntarily amend their scoring systems to award points to applications that address jobs/housing balance. Others agencies place housing very low income people, reducing congestion, or other priorities ahead of achieving jobs/housing balance. Some programs *earmark* a portion of funds for specific areas or activities. For example California's current low income housing tax credit Qualified Allocation Program (QAP) allocates 11.9% of State funds for use in Alameda, Contra Costa, and Santa Clara counties and 10% for rural projects. The IRP might allocate staff time to meet with lawmakers and agency personnel to seek changes in housing incentive program scoring systems and/or earmarking funds for IRP housing opportunity sites. Such changes would not come without careful staff work and serious negotiation.

A third activity the IRP could pursue immediately is to seek housing incentive funding for member jurisdictions or for itself as a conduit to IRP housing opportunity sites. Staff could educate all counties and cities in the IRP region about the existence of the State $ 100 million jobs/housing incentive program and encourage them to take advantage of it. They could encourage member jurisdictions to seek pre-development funding from HCD's pre-development loan fund, downtown rebound planning fund, and

CHFA's HELP Program. The IRP itself might seek a HELP pre-development loan. If they were successful the IRP would have funds to establish a revolving loan fund where they could loan money at 3% simple interest for up to 10 years to member jurisdictions and/or private developers. As indicated above flexible transit oriented development funding is newly available for counties within MTC's jurisdiction. San Mateo County's transit oriented development program might serve as a useful model to IRP CMAs. The IRP could work immediately to assure jurisdictions within the MTC region use the HIP program for sites which might eventually be designated as housing opportunity sites and that all IRP jurisdictions are aware of San Mateo County's transit oriented housing incentive program and replicate it if they see fit to do so.

In summary prospects for the IRP are good. There is a pressing need for improved jobs/housing balance and broad political support for their agenda. The IRP pilot program grant provides support for regional planning. There is much work to be done. When housing opportunity sites have been selected staff work to structure incentive packages and obtain grant funds will be in order. In the meantime the IRP can move forward to pursue State-level legislative changes, advocate for changes to existing programs, and seek some funding.

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* This report is the sole responsibility of the author and does not necessarily represent the views of any of the people who were interviewed during its preparation.

Background Material in the Appendix to this Report*

Appendix A: ***AB 2864*** (Torlakson, 2000).

Appendix B: Robert Cervero 1996 *Jobs-Housing Balance Revisited: Trends and Impacts in the San Francisco Bay Area*, 62 *American Planning Association Journal* 4, p 492 et seq.

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Appendix D: California Department of Housing and Community Development, 2000b *Raising the Roof: California Housing Development Projections and Constraints 1997 - 2020* (Sacramento: HCD).

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* Copies of the Appendix to this report are available at the ABAG, SJCOG, and STANCOG offices. Contact Christie Riviere of the IRP staff at (510) 464-7923 for further information. Some of the material cited is reproduced in its entirety. In the case of longer materials excerpts are included.

Appendix E: San Jose Eastern Section (Showing Housing Opportunity Sites) from Association of Bay Area Governments 2000 *Theory in Action: Smart Growth Case Studies in the San Francisco Bay Area and Around the Nation* (Oakland, Ca: ABAG).

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Appendix U: United States Internal Revenue Code, 2000 Section 42—*Low Income Housing Credit* (Washington, D.C.: Internal Revenue Service).

Appendix V: **California Tax Credit Allocation Committee, 2000 *Regulations Implementing the Federal and State Low Income Housing Tax Credit Laws*** *(Sacramento: CTCAC).*

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