

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Michael J. Johnson, Director of Planning
DATE: July 5, 2007
SUBJECT: Assembly Bill 414 (Jones) re: Local Planning

ACTION REQUESTED:

Authorize the Chairman to sign a letter, on behalf of the Board, in opposition to AB 414 (Jones).

BACKGROUND:

The California Legislature is considering two key land use bills that have the potential to impact Placer County and its obligations to accommodate our housing obligations consistent with state law and affect how and when we update our General Plan (particularly the housing, conservation and open space elements). CEO and Planning Staff have been monitoring these bills as they work their way through the legislature.

Assembly Bill 414, authored by Dave Jones (D-Sacramento), proposes to place limits on the ability of cities and counties to include vacant sites zoned for both commercial and residential uses in their housing element's inventory of land suitable for residential development. The bill has been approved by the Assembly and sent to the Senate where it currently resides in the Senate's Transportation and Housing Committee. According to the Analyst for the Assembly Local Government Committee, the author continues to work with the bill's opponents to resolve differences. Amendment(s) are occurring in the Senate. CSAC has taken an "oppose unless amended position."

Senate Bill 303, authored by Senator Denise Ducheny (D-San Diego), proposes to require local agencies to complete all zoning for their regional housing needs allocation (RHNA) at the beginning of the five-year planning period instead of the current 10-year timeframe. CSAC has taken an "oppose unless amended position." As of Tuesday July 3, 2007, the bill has become a two-year bill and there will additional opportunities to seek amendments to the bill to address Placer County's concerns.

DISCUSSION:

The staff's discussion will focus on AB 414 and how this bill affects Placer County's ability to meet its housing and, in particular, affordable housing requirements under State housing law. This bill is especially problematic for Placer County because the County is initiating the preparation of its Housing Element update at the same time the County is coordinating with SACOG on its Regional Housing Needs Allocation (RHNA). The RHNA process is a challenge in that early negotiations with SACOG are showing an obligation for a considerable amount of affordable housing in the unincorporated area of Placer County. As required by State law, the County must show that it has the sufficient vacant lands, properly zoned, to absorb these units over the next seven years. The outcome of the RHNA process is uncertain and won't be known until February 2008. The combination of this bill (and it's as of yet unpredictable

impact), the RHNA obligations, and the short amount of time the County will have to complete the Housing Element (June 2008 is the State mandate) will make for a real challenge over the next year.

Assembly Bill 414

Sponsored by the California Rural Legal Assistance Foundation and supported primarily by housing advocates, AB 414 would limit the percentage of a jurisdiction's Regional Housing Needs Allocation that could be met by vacant sites zoned for non-residential uses (e.g., General Commercial/C2, Commercial Planned Development/CPD or Highway Service/HS). These limitations would not apply to mixed-use sites where local zoning would specifically require a mix of residential and commercial/professional land uses.

Current state law requires that 50 percent of the very low and low-income allocation that a jurisdiction receives from the RHNA shall be accommodated on sites designated for residential use and for which nonresidential or mixed-uses are not permitted. AB 414 proposes to further limit the use of non-residential zoning in meeting our RHNA obligations by: 1) Allowing only half of the total residential capacity of such land to be counted; and 2) No more than 30 percent of the lower income RHNA to be met by such land provided that the County's previous ability to accommodate affordable units on non-residentially zoned land was met during the previous RHNA term. If we provided less than 30 percent than the actual percentage that was achieved would be the percentage that could be relied upon for the current term of the RHNA (through June 2013). (This percentage has not yet been calculated as part of our Housing Element update.)

On June 11, 2007, Supervisor Rockholm represented Placer County at the Sacramento Area Council of Government's (SACOG) Land Use, Housing & Air Quality Committee meeting. That Committee voted to recommend an oppose position, on Assembly Bill 414, to the SACOG Board. On June 21, 2007, the SACOG Board took testimony on this matter but has not yet taken a formal position.

Placer's Assembly delegates oppose the bill. The bill is also opposed by the League of Cities and the American Planning Association of CA. The California State Association of Counties' (CSAC) position is "oppose unless amended". The CA Building Industry Association supports AB 414.

For Placer County, approval of AB 414 this could create a considerable hardship in that the majority of the County's vacant low/very low-income residential capacity is actually found on commercially-zoned property (which typically allows up to 21 dwelling units per acre). Because Placer County is now considered to be a "suburban jurisdiction" by State housing law, the County is obligated to demonstrate that it has lands designated at 20 dwelling units per acre or greater in density in order for such sites to qualify as part of the County's low-income housing inventory. A recent query of the County's land use data shows that the County has very few acres of non-residentially zoned land that accommodates 20 dwelling units per acre or greater. (Other than one small parcel, Placer County has no residentially-zoned land that is zoned 20 dwelling units per acre or greater.) Consequently, this bill would significantly reduce the County's primary source of land that could qualify for a portion of the County's low/very low-income land inventory.

FISCAL IMPACT:

Placer County would incur significant costs (both general funds and commitment of staff time) to:

- a. Rezone residentially-zoned property to accommodate affordable housing at 20 dwelling units per acre to account for the loss of non-residentially-zoned holding capacity.
- b. Long-term fiscal impacts may be associated with the development of additional urban infrastructure to accommodate the large number of high-density residential units.

The costs of undertaking the task "a" could be expected to be at least several hundred thousand dollars and even more likely a \$1 million or more because of the anticipated need for an EIR to be prepared. It is not likely that such costs could be recovered. The cost of undertaking task "b" cannot be calculated at this time but would be in the millions of dollars.

RECOMMENDATIONS:

The Planning Department recommends that the Board take the following action:

Authorize the Chairman to sign a letter, on behalf of the Board, in opposition to AB 414.

Respectfully Submitted,



MICHAEL J. JOHNSON, AICP
Director of Planning

EXHIBITS:
Exhibit A – Current Text of AB 414

cc: Tom Miller, CEO
Rich Colwell, Chief Assistant CEO
Mike Boyle, Assistant CEO
John Marin, CDRA Director
Michael Johnson, Planning Director
Loren Clark, Assistant Planning Director
Allison Carlos, Principal Management Analyst
Leslie Hobson, Senior Management Analyst
Anita Reis, Management Analyst

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EXHIBIT A

BILL NUMBER: AB 414 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 26, 2007
AMENDED IN ASSEMBLY APRIL 19, 2007

INTRODUCED BY Assembly Member Jones

FEBRUARY 16, 2007

An act to amend ~~Section 65583.2~~ Sections
65583.2 and 65863 of the Government Code, relating to local
planning.

LEGISLATIVE COUNSEL'S DIGEST

AB 414, as amended, Jones. Local planning: residential
development.

—The

(1) The Planning and Zoning Law
requires each city, county, or city and county to prepare and adopt a
general plan for its jurisdiction that contains certain mandatory
elements, including a housing element. One part of the housing
element is an assessment of housing needs and an inventory of land
suitable for residential development in meeting the jurisdiction's
share of the regional housing need. For purposes of this assessment,
existing law specifies that "land suitable for residential
development" includes, among other things, vacant sites zoned for
nonresidential use that allows residential development.

This bill would limit, as specified, the manner in which a
jurisdiction utilizes, in identifying land suitable for residential
development to meet the jurisdiction's share of the regional housing
need, vacant sites zoned for nonresidential use that allows
residential development and for which the applicable zoning and
development standards allow substantially all of the site to be
developed without residential use.

(2) The Planning and Zoning Law also prohibits a city, county, or
city and county from reducing, or requiring or permitting the
reduction of, the residential density for any parcel to, or allow
development of any parcel at, a lower residential density, as
defined, unless the city, county, or city and county makes certain
written findings.

This bill would redefine "lower residential density" for purposes
of the above prohibition.

This bill would redefine a "lower residential density" below which
the city, county, or city and county would be required to make the
above described written findings.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 65583.2 of the Government Code is amended to
read:

65583.2. (a) A city's or county's inventory of land suitable for

residential development pursuant to paragraph (3) of subdivision (a) of Section 65583 shall be used to identify sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584. As used in this section, "land suitable for residential development" includes all of the following:

(1) Vacant sites zoned for residential use.

(2) Vacant sites zoned for nonresidential use that allows residential development, subject to the limitations set forth in subdivision (j).

(3) Residentially zoned sites that are capable of being developed at a higher density.

(4) Sites zoned for nonresidential use that can be redeveloped for, and as necessary, rezoned for, residential use.

(b) The inventory of land shall include all of the following:

(1) A listing of properties by parcel number or other unique reference.

(2) The size of each property listed pursuant to paragraph (1), and the general plan designation and zoning of each property.

(3) For nonvacant sites, a description of the existing use of each property.

(4) A general description of any environmental constraints to the development of housing within the jurisdiction, the documentation for which has been made available to the jurisdiction. This information need not be identified on a site-specific basis.

(5) A general description of existing or planned water, sewer, and other dry utilities supply, including the availability and access to distribution facilities. This information need not be identified on a site-specific basis.

(6) Sites identified as available for housing for above-moderate income households in areas not served by public sewer systems. This information need not be identified on a site-specific basis.

(7) A map that shows the location of the sites included in the inventory, such as the land use map from the jurisdiction's general plan for reference purposes only.

(c) Based on the information provided in subdivision (b), a city or county shall determine whether each site in the inventory can accommodate some portion of its share of the regional housing need by income level during the planning period, as determined pursuant to Section 65584. The analysis shall determine whether the inventory can provide for a variety of types of housing, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing. The city or county shall determine the number of housing units that can be accommodated on each site as follows:

(1) If local law or regulations require the development of a site at a minimum density, the department shall accept the planning agency's calculation of the total housing unit capacity on that site based on the established minimum density. If the city or county does not adopt a law or regulations requiring the development of a site at a minimum density, then it shall demonstrate how the number of units determined for that site pursuant to this subdivision will be accommodated.

(2) The number of units calculated pursuant to paragraph (1) shall be adjusted as necessary, based on the land use controls and site improvements requirement identified in paragraph (4) of subdivision (a) of Section 65583.

(3) For the number of units calculated to accommodate its share of the regional housing need for lower income households pursuant to

paragraph (2), a city or county shall do either of the following:

(A) Provide an analysis demonstrating how the adopted densities accommodate this need. The analysis shall include, but is not limited to, factors such as market demand, financial feasibility, or information based on development project experience within a zone or zones that provide housing for lower income households.

(B) The following densities shall be deemed appropriate to accommodate housing for lower income households:

(i) For incorporated cities within nonmetropolitan counties and for nonmetropolitan counties that have micropolitan areas: sites allowing at least 15 units per acre.

(ii) For unincorporated areas in all nonmetropolitan counties not included in clause (i): sites allowing at least 10 units per acre.

(iii) For suburban jurisdictions: sites allowing at least 20 units per acre.

(iv) For jurisdictions in metropolitan counties: sites allowing at least 30 units per acre.

(d) For purposes of this section, metropolitan counties, nonmetropolitan counties, and nonmetropolitan counties with micropolitan areas are as determined by the United States Census Bureau. Nonmetropolitan counties with micropolitan areas include the following counties: Del Norte, Humboldt, Lake Mendocino, Nevada, Tehama, and Tuolumne and such other counties as may be determined by the United States Census Bureau to be nonmetropolitan counties with micropolitan areas in the future.

(e) A jurisdiction is considered suburban if the jurisdiction does not meet the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (3) of subdivision (c) and is located in a Metropolitan Statistical Area (MSA) of less than 2,000,000 in population, unless that jurisdiction's population is greater than 100,000, in which case it is considered metropolitan. Counties, not including the City and County of San Francisco, will be considered suburban unless they are in a MSA of 2,000,000 or greater in population in which case they are considered metropolitan.

(f) A jurisdiction is considered metropolitan if the jurisdiction does not meet the requirements for "suburban area" above and is located in a MSA of 2,000,000 or greater in population, unless that jurisdiction's population is less than 25,000 in which case it is considered suburban.

(g) For sites described in paragraph (3) of subdivision (b), the city or county shall specify the additional development potential for each site within the planning period and shall provide an explanation of the methodology used to determine the development potential. The methodology shall consider factors including the extent to which existing uses may constitute an impediment to additional residential development, development trends, market conditions, and regulatory or other incentives or standards to encourage additional residential development on these sites.

(h) The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c) and at least 20 units per acre in jurisdictions described in clauses

(iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed-uses are not permitted.

(i) For purposes of this section and Section 65583, the phrase "use by right" shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act. A local ordinance may provide that "use by right" does not exempt the use from design review. However, that design review shall not constitute a "project" for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(j) In making the determination required by subdivision (c), the following limitations apply to sites described in paragraph (2) of subdivision (a) for which the applicable zoning or development standards allow substantially all of the site to be developed without residential uses:

(1) In determining the total housing unit capacity pursuant to this section on these sites, only one-half of the total residential development capacity shall be counted.

(2) Any determination that a portion of a jurisdiction's share of the regional housing need for lower income households pursuant to Section 65584 can be accommodated on these sites shall be based upon the proportion of the jurisdiction's share of the regional housing need for lower income households that was met on these sites in the prior planning period, except that no more than 30 percent of the jurisdiction's share of the regional housing need for lower income households may be allocated to these sites.

(3) For sites designated as mixed-use, these limitations do not apply. For the purposes of this paragraph "mixed-use" means a site on which both residential and nonresidential uses are permitted, and on which an exclusively nonresidential use is not permitted.

SEC. 2. Section 65863 of the Government Code is amended to read:

65863. (a) Each city, county, or city and county shall ensure that its housing element inventory described in paragraph (3) of subdivision (a) of Section 65583 or its housing element program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583 can accommodate its share of the regional housing need pursuant to Section 65584, throughout the planning period.

(b) No city, county, or city and county shall, by administrative, quasi-judicial, legislative, or other action, reduce, or require or permit the reduction of, the residential density for any parcel to, or allow development of any parcel at, a lower residential density, as defined in paragraphs (1), and (2) of subdivision (h), unless the city, county, or city and county makes written findings supported by substantial evidence of both of the following:

(1) The reduction is consistent with the adopted general plan, including the housing element.

(2) The remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would

result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff or petitioner who proposed the housing development, reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

(h) (1) If the local jurisdiction has adopted a housing element for the current planning period that is in substantial compliance with Article 10.6 (commencing with Section 65580) of Chapter 3, for purposes of this section, "lower residential density" means the following:

(A) For sites ~~zoned for~~ on which the zoning designation permits residential use and that are identified in the local ~~jurisdiction's~~ jurisdiction's housing element inventory described in paragraph (3) of subdivision (a) of Section 65583, ~~a density below the density used in the inventory to determine the total housing unit capacity.~~ approval of fewer units on the site than were projected by the jurisdiction to be accommodated on the site pursuant to subdivision (c) of Section 65583.2.

(B) For sites that have been or will be rezoned pursuant to the local jurisdiction's housing element program described in paragraph (1) of subdivision (c) of Section 65583, ~~a density below the density used to determine the housing unit capacity of the rezoned site.~~ approval of fewer units for the site than were projected to be developed on the site in the housing element program.

(2) (A) If the local jurisdiction has not adopted a housing element for the current planning period within 90 days of the deadline established by Section 65588 for purposes of this section, or the adopted housing element is not in substantial

compliance with Article 10.6 (commencing with Section 65580) of Chapter 3 within 180 days of the deadline established by Section 65588, "lower residential density" means ~~→~~ either of the following:

(i) For residentially-zoned sites, a density that is lower than 80 percent of the maximum allowable residential density for that parcel. ~~→~~

(ii) For sites on which residential and nonresidential uses are permitted, approval of a use that would result in the development of fewer than 80 percent of the maximum residential units permitted on the site.

(B) For the purposes of this paragraph, if the council of governments fails to complete a final housing need allocation pursuant to the deadlines established by Section 65584.05, the deadline for adoption of the housing element and determining substantial compliance shall be extended by a time period equal to the delay incurred by the council of governments in completing the final housing need allocation.

