



SAN BENITO COUNTY

Affordable Housing Ad Hoc Committee

Jaime De La Cruz
Board of Supervisors

Mark Medina
Chair
Board of Supervisors

Robert Gibson
Planning Commission

Robert Eggers
Planning Commission

San Benito County Board Chambers – 2301 Technology Parkway, Hollister, CA 95023
Upstairs Conference Room

REGULAR MEETING
Thursday, February 20, 2020
6:30 PM

AGENDA

1. **Call to Order**
 - a. Pledge of Allegiance
 - b. Roll Call
 - c. Acknowledge Certificate of Posting
2. **Public Comment:** *This is an opportunity for the public to address the commission on items of interest not appearing on the agenda or not scheduled for public hearing. No action may be taken unless provided for by GC 56954.2. Each speaker is limited to five minutes.*
3. **Discussion**
 - a. Update regarding Feasibility Study
 - b. Review of Accessory Dwelling Changes in Law
 - i. State Law Review
 - ii. Impact Fees Changes
 - c. Confirmation of Resale Restrictions Amendments
 1. Review and discuss current amendments to ordinance
 - a. ADU
 - b. Resale Value
 - c. Terms of Affordability
 - d. Administrative Manual
 - i. Review Draft Ch. V, VI, & VII
 - e. Staff Updates
4. **Additions to Future Agendas**
5. **Schedule of Upcoming Meetings**
 - a. March 19th, 2020
6. **Adjournment**

COUNTY OF SAN BENITO
AFFORDABLE HOUSING AD HOC COMMITTEE
CERTIFICATE OF POSTING

Pursuant to California Government Code Section 59454.2(a), the meeting agenda for the San Benito County Affordable Housing Ad Hoc Committee Meeting Thursday, February 20, 2020 was posted on the 12th February, 2020 at the following location freely accessible to the public:

The bulletin board outside the front entrance of the San Benito County Administration Building, 481 Fourth Street, Hollister, CA.

I, Jamila Saqqa, Housing Programs Coordinator, certify under penalty of perjury, that the foregoing is true and correct.

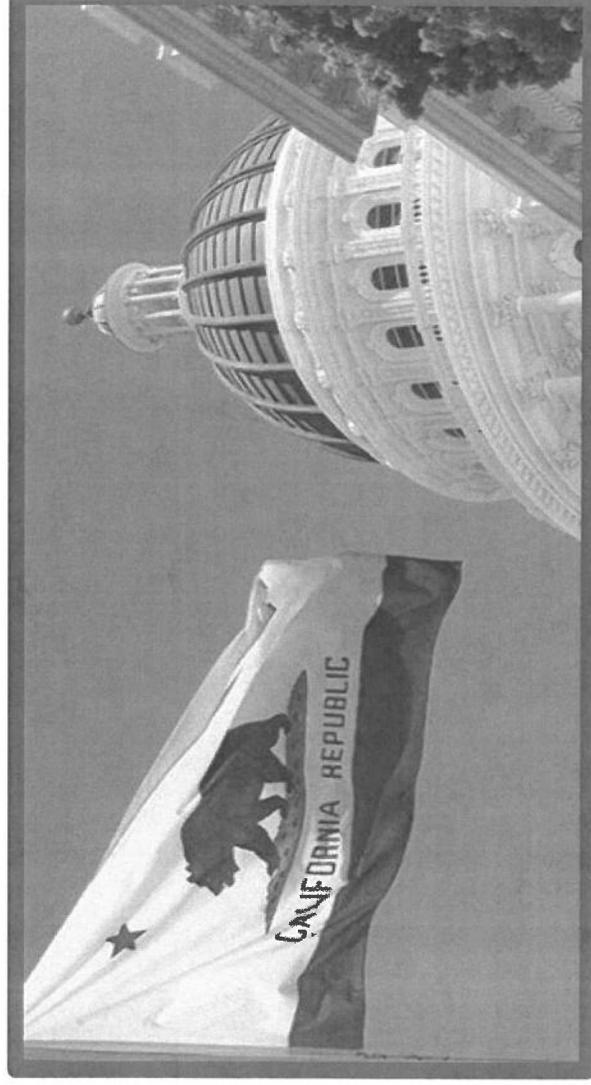
JAMILA SAQQA
HOUSING PROGRAMS COORDINATOR
COUNTY OF SAN BENITO, CA

2019 State Legislation Update

*Assembly & Senate Bills Affecting
San Benito County*

2019 Legislation Update

- The state legislature is currently in recess.
- October 13, 2019 was the last day for the Governor to sign or veto bills.
- Most bills will take effect on January 1, 2020.



SB 330 - Housing Crisis Act

Streamlines the permitting and approval processes, limits fees that can be collected after projects are approved, prohibits net loss in zoning capacity, and prohibits the creation of new rules that inhibit housing production.

- **Application Approvals:** Prohibits a local agency from disapproving a housing development project unless it makes certain, specified written findings pursuant to Section 65589.5. (a)(3)(d).
- **Preliminary Applications:** Limits the ability to change development standards and zoning applicable to a project once a preliminary application is submitted.
- **Application Completeness:** The County has only one opportunity to identify incomplete items in an application. After the initial identification, no additional items or information may be requested from the applicant.

SB 330 - Housing Crisis Act

- **Fees/Exactions:** Prohibits the increase of exactions or fees during a project's application period, unless a resolution or ordinance that established the fee prescribes an automatic increase.
- **Hearings:** Prohibits conducting more than 5 hearings if a project complies with the applicable, objective general plan and zoning standards.
- **Downsizing:** Prohibits enacting development policies, standards, or conditions that would change current zoning and general plan designations of land to "lessen the intensity of housing".
- **Timeline:** Reduces the time period in which the County must approve or disapprove a project from 120 days to 90 days for most projects and from 90 days to 60 days for certain projects that meet affordability requirements.

SB 330 - Housing Crisis Act

- **Preliminary Applications:** Prohibits a County (including through a voter enacted initiative or referendum) from enacting a policy, standard, or condition that would:
 - a) Change the zoning designation of parcel(s) to a less intensive use or reducing the intensity of land use below what was allowed under the General Plan in effect in 2018;
 - b) Impose a moratorium on housing development;
 - c) Impose new subjective design standards established on or after January 1, 2020;
 - d) Establish certain limits on the number of permits issued or number of units approved, unless the limit was approved prior to January 1, 2005 in a predominately agricultural county.
- Many provisions of SB 330 sunset after 2025, but can be renewed.
- Monetary fines if fail to comply with regulations- \$10,000 per housing project unit
- If a project does not start construction within 2 1/2 years of final approval, or if it is modified to include 20% of more units, then the project can be subjected to new standards.

Accessory Dwelling Units

New set of laws create new incentives and streamlined processes to build ADUs through 4 major Bills:

AB 68, AB 881, SB 13, AB 587, AB 671 & AB 670

- Ministerially approve or deny application within 60 days
- No public meetings or notices
- If no communication within 60 days application approved
- Jurisdiction cannot require a minimum lot size of floor area ratio
- ADUs cannot be required to provide side/rear yard greater than 4 ft
 - Can build a unit up to 800 square ft
- No impact fees if ADU is less than 750 square ft
 - Pay 25% of fees if greater than 750 square ft

Accessory Dwelling Units

- If zone single family residence can 2 units per existing residence
 - ADU
 - Junior ADU
- Must permit up to 1,200 square ft with 16 ft. high
- No replacement parking required for a garage or carport conversion
- No replacement parking required for a new unit 1/2 mile of transit
- Homeowner's Associates cannot limit ADU construction
- Cannot require owner occupancy for any units
 - Units can be rented

Accessory Dwelling Units

AB 68: Processing Timelines & Ordinance Prohibition

- Approve/Deny ADU within 60 days
 - CEQA exempt
 - Ministerial process
- Prohibits: minimum lot size for ADU, certain maximum ADU size, replacement parking
- Triplex-Action If zoned single family can add ADU & attached Junior ADU (JADU)

Accessory Dwelling Units

AB 881: Processing Timelines & Ordinance Prohibitions

Existing Law:

Local agency, special district, or water corporation consider an accessory dwelling unit to be a new residential use for purposes of calculating fees or capacity charges.

New Law:

Establish an exception from existing law prohibition in the case of an accessory dwelling unit that was constructed with a NEW single-family home

Accessory Dwelling Units

SB 13: Owner-Occupancy Prohibitions & Fee Limitations

- Approve/Deny ADU within 60 days
 - CEQA exempt
 - Ministerial process
 - If no response ADU approved
- Prohibits: minimum lot size for ADU, certain maximum ADU size, replacement parking

Accessory Dwelling Units

AB 587: Separate Conveyances

- Provides local agencies to sell or convey ADUs separately from single family home if meet certain conditions

AB 671: Local Government Assistance

- Requires local agencies' housing plans to encourage affordable ADU rentals. Provides for state grants and financial incentives for their construction.

Streamlining

- **AB 1783** – Creates a streamlined, ministerial CEQA-exempt approval process for farmworker housing developments.
- **AB 1483** – Requires local agencies to make information available regarding housing development fees, zoning ordinances and standards, annual fee reports and archived nexus fee studies. Requires local agencies to maintain the following on its website:
 - A current schedule of fees, exactions, and affordability requirements imposed that are applicable to a proposed housing development project.
 - All zoning ordinances and development standards.
 - Annual fee reports or annual financial reports.
 - An archive of impact fee nexus studies, cost of service studies, or equivalent.
- **AB 101** – Requires local agencies to provide CEQA-exempt approvals to qualifying navigation centers that move homeless individuals into permanent housing.

Density Bonuses & Housing

Production

- **AB 1763** – Creates greater density bonuses for projects with 100% affordable housing by adding an 80% increase in base density and unlimited increases for projects within 0.5 miles of a major transit stop.
- **AB 1743** - Expands the properties that are exempt from CFD taxes to include properties that qualify for the property tax welfare exemption and limits the ability of local agencies to reject housing projects because they qualify for the exemption.

Surplus Land

- **AB 1486** – Amends the Surplus Land Act to ensure that local agencies comply with the requirement to first offer surplus land for sale or lease for the purpose of developing affordable housing. Requires agencies to submit information about its disposition process to the state Department of Housing & Community Development (HCD).
 - Local agencies must create an inventory of publicly-owned sites.
- **SB 6** – Requires local agencies who prepare a housing element or amendment after January 1, 2021 to create a list of land suitable for residential development for inclusion in an online state database maintained by the state Department of General Services (DGS) & HCD.
- **AB 1255** - Requires each city and county to report to the HCD an inventory of its surplus lands located in urbanized areas clusters. Requires HCD to provide this information to the state DGS for inclusion in a digitized inventory of state surplus land sites.

Tenant Protections

AB 1482 - Tenant Protection Act of 2019:

- Cap of 5% plus inflation per year on rent increase.
 - Reset rents to market rate at vacancy
- Landlord must first provide a reason before eviction & provide relocation assistance
 - Does not apply to homes built within 15 years or Single Family homes, unless owned by non-profit

SB 329 - Housing Discrimination

- Prohibits landlords from discrimination against tenants who rely on housing assistance paid directly
 - Section 8

Miscellaneous Bills

Voting & Elections

- **SB 72:** Requires voter registration to be available at polling places on election day.
- **AB 49:** Places timeline on when vote by mail ballots must be sent out.
- **AB 571:** Imposes the same campaign contribution limits applicable to state officials on local officials.
- **AB 849:** Outlines new requirements for redistricting.

Emergency Services

- **SB 160 & AB 477:** Requires counties to integrate cultural competence and input from the access and functional needs communities in preparing their emergency plans.

Boards & Commissions

- **SB 225:** Allows residents, whether citizens or not, to serve on boards and commissions

32-73 INCLUSIONARY HOUSING.

32-73.1 Title.

This section shall be entitled the Inclusionary Housing Ordinance.

(Ord. #2014-08, § 2)

32-73.2 Findings.

The Town Council of the Town of Danville finds that Danville is experiencing a housing shortage for affordable housing. A goal of the Town is to achieve a balanced community with housing available for households of a range of income levels. Increasingly, households with very low, low and moderate incomes who work and/or live within the Town are unable to locate housing at prices they can afford and are increasingly excluded from living in the Town. The Town finds that the high cost of newly constructed housing does not, to any appreciable extent, provide affordable housing, and that continued new development which does not include nor contribute toward lower cost housing will serve to further aggravate the current housing problems by reducing the supply of developable land. The Town further finds that the housing shortage for affordable housing is detrimental to the public health, safety and welfare, and further that it is a public purpose of the Town, and a public policy of the State of California as mandated by the requirements for a Housing Element of the Town's General Plan, to make available an adequate supply of housing for persons of all economic segments of the community.

(Ord. #2014-08, § 2)

32-73.3 Purpose.

The purpose of this section is to enhance the public welfare and assure that new residential developments with eight (8) or more dwelling units or lots contribute to the attainment of the Town's housing goals by increasing the production of affordable housing, and additionally stimulating funds for development of affordable housing. The regulations set forth in this chapter shall apply to all areas of the Town of Danville.

(Ord. #2014-08, § 2)

32-73.4 Definitions.

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

Affordable housing cost. The cost to rent or purchase a house as defined in Section 50052.5 of the Health and Safety Code. (Government Code Section 65915(d)(1).) Housing cost means the monthly mortgage (including principal and interest), property taxes, and homeowner association fees, where applicable, for ownership units; and the monthly rent and an appropriate utility allowance for rental units.

Affordable unit, for rent. Affordable rent (including a reasonable utility allowance) shall not exceed the following:

1. For very low-income households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit;
2. For low-income households whose gross incomes exceed the maximum income for very low-income households, the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit;
3. For moderate-income households, the product of thirty percent (30%) times one hundred ten percent (110%) of the area median income adjusted for family size appropriate for the unit. (Health. and Safety Code Section 50053.)

Affordable unit, for sale. Affordable housing cost may not exceed the following:

1. For very low-income households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit;
2. For low-income households whose gross incomes exceed the maximum income for very low-income households and do not exceed seventy percent (70%) of the area median income adjusted for family size, the product of thirty percent (30%) times seventy percent (70%) of the area median income adjusted for family size appropriate for the unit;

3. For moderate-income households, not less than twenty-eight percent (28%) of the gross income of the household, not exceeding the product of thirty-five percent (35%) times one hundred ten percent (110%) of area median income adjusted for family size appropriate for the unit. (Health and Safety Code Section 50052.5(b).)

Affordable units. Living units that are required to be rented at affordable rents or available at affordable housing costs to specified households.

Applicant means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town real property development permits and approvals.

Approval means approval by the Town of a discretionary permit such as a tentative map, planned development or use permit for a residential development project.

Area median income. The area median income for Contra Costa County as published at Title 25, California Code of Regulations, Section 6932.

Below Market Rate or *BMR* means residential units sold or rented at rates affordable to very low, low or moderate income households.

Danville employee means any head of household, or in the case of married couples either spouse, who has worked within the Town limits continually for one (1) year in the year immediately preceding the occupancy of an affordable unit.

Danville resident means any person who has lived within the Town limits of Danville for one (1) year in the year immediately preceding the occupancy of an affordable unit.

Developer means the same as "applicant" (see above definition).

Household income levels includes:

1. *Low-income household.* A household whose income does not exceed the low-income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.

2. *Lower income household.* A lower income household as defined in Civil Code Sections 51.3 and 51.12. (Government Code Sections 65915(b)(1) and (c)(1) and Health and Saf. Code Section 50079.5.) It includes low- and very-low income households.

3. *Moderate-income household.* A household with an annual income between the lower income eligibility limit (usually eight percent (8%) of the area median family income) and one hundred twenty percent (120%) of area median income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code. (Government Code Section 65915(c)(2), Health and Safety Code Section 50093.)

4. *Very low-income household.* A household whose income does not exceed the very low-income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to California Health and Safety Code Section 50105. (Government Code Section 65915(b)(2) and (c)(1).)

Incentive means a benefit offered by the Town to facilitate construction of residential developments which include BMR units. Among others, benefits may include fee waivers or reductions for BMR units, and flexibility and/or relaxation of development regulations,

In lieu participation fee means a fee paid to the Town by an applicant for a residential development in the Town in lieu of providing the inclusionary affordable units required by this section. (See subsection 32-78.6.)

Project owner means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which holds fee title to the land on which the project is located.

Residential development means and include developments of eight (8) or more units or lots for, without limitation, detached single family dwellings, multiple dwelling structures, groups of dwellings, condominium conversions, cooperative developments and land subdivisions intended to be sold to the general public.

Secondary unit means a residential unit which provides complete, independent living facilities for one (1) or more persons. It includes permanent provisions for living, sleeping, cooking, eating and sanitation on the same parcel as the primary unit.

Town means the Town of Danville or its designee, or any entity with which the Town contracts with to administer this section.

Unit type means dwelling units with similar floor area and number of bedrooms.

(Ord. #2014-08, § 2)

32-73.5 Applicability.

Each residential development of eight (8) or more lots is subject to this Section 32-73. A project developed consistent with the regulations of the Density Bonus Ordinance at Section 32-74 shall be considered to have satisfied all requirements contained in this section.

(Ord. #2014-08, § 2)

32-73.6 Scope.

Every approval for residential development shall assure provision of one (1) or more BMR units according to the following regulations:

a. Residential development with resultant densities less than or equal to seven (7) units an acre shall provide a number of BMR units equal to ten percent (10%) of the number of market rate units in the project.

b. Residential developments with resultant densities of greater than seven (7) units an acre:

1. Residential developments up to twenty (20) units in size shall provide a number of BMR units equal to ten percent (10%) of the number of market rate units in the project.

2. Residential developments containing twenty-one (21) or more units shall provide a number of BMR units equal to fifteen percent (15%) of the number of market rate units in the project.

3. All residential developments with densities of thirteen (13) units or more per acre shall construct the affordable units as a part of the residential development.

c. At the discretion of the Town Council, affordable units required pursuant to this section may be provided at a location within the Town other than the residential development which creates the requirement for the affordable units.

d. If the BMR units produced in a project with a resultant density of greater than seven (7) units an acre are of a physical design (i.e., the overall project density, the BMR unit type and/or the BMR unit size) such that they will remain affordable to qualifying moderate income households even if sold or rented at market rate levels, the number of BMR units required to be supplied in the project may be reduced to ten percent (10%) of the overall project count. The determination to reduce the number of affordable units required to be supplied in the project shall be made by the Town Council.

(Ord. #2014-08, § 2)

32-73.7 Incentives.

An applicant may request a modification of the following standards where such waiver or modification is necessary to make the provision of BMR units economically feasible. The request shall be accompanied by information sufficient to demonstrate that the incentive is necessary to make the affordable units economically feasible:

a. A reduction in site development standards and modification of Zoning Code requirements or architectural design standards exceeding state building standards including, but not limited to, a reduction in setback, square footage, minimum lot size, minimum lot dimensions, street section, sidewalks, open space, landscaping or number of required parking spaces.

b. Relaxation of development standards for new subdivisions incorporating BMR secondary units into a single family development, including, but not limited to modifications in unit setback requirements, number of bedrooms, parking requirements or other regulations contained in the Town's second unit ordinance, as may be amended from time to time.

c. Other regulatory incentives or concessions proposed by the applicant or the Town which result in identifiable cost reductions applicable to the BMR units within a residential development. Where the applicant requests one or more of the above listed incentives, a preliminary project financial report shall be submitted (pro forma) along with the application for the project in order to evaluate the financial need for the requested incentive(s). At the cost of applicant, the Town may retain a consultant to review the financial report. If the applicant is a nonprofit organization, the Town may elect to pay the cost of the consultant upon approval by the Town Council.

(Ord. #2014-08, § 2)

32-73.8 In Lieu Participation Fees.

In lieu participation fees may be appropriate for particular projects not suitable for inclusionary affordable units due to factors including, but not limited to, location, availability of services, extreme topography, development density, and environmental constraints. In such cases the applicant, upon approval of the Town Council, may contribute fees in lieu of providing inclusionary affordable units. Such fees shall be known as "in lieu participation fees." Applicants may make payment of in lieu participation fees in residential developments except that in lieu participation fees may not be authorized for residential developments with densities of thirteen (13) units or more per acre.

a. The in lieu fee shall be calculated based on the subsidy differential between what a moderate income household (earning one hundred ten percent (110%) of current area median income), adjusted for expected household size and appropriate unit size, can afford to pay for housing and the estimated total cost of a new, non-BMR unit of appropriate size, as determined to the satisfaction of the Town. The in lieu fee shall be calculated on a project-by-project basis with the per unit fee paid subject to review and approval by the Chief of Planning.

b. The in lieu fee for the entire residential development shall be due prior to occupancy of the first unit.

(Ord. #2014-08, § 2)

32-73.9 Application Process.

The decision-making body for a formal application meeting the requirements of this section shall be the Planning Commission and/or Town Council, whichever is authorized to approve the associated discretionary permit.

(Ord. #2014-08, § 2)

32-73.10 General Requirements.

a. All BMR units shall be sold or rented as affordable units for occupancy only by very low, low or moderate income households.

b. The goal is to have all BMR units remain affordable. The term of affordability is twenty (20) years, except that the Town Council may determine that the physical design of the BMR units is such to ensure that the unit will remain affordable in the long term to qualifying moderate income households, and reduce the term of affordability to a minimum term of not less than ten (10) years.

c. All fractions of units or lots equal to or greater than .75 of a unit shall be rounded up to the nearest whole unit.

d. The maximum sales price of all for-sale BMR units shall be no more than that which would be affordable to a moderate income household earning one hundred ten percent (110%) of the current area median income, adjusted for expected household size and appropriate unit size. A maximum of thirty-five percent (35%) of household income shall be assigned to the housing costs for the for-sale BMR unit.

e. The maximum rental price of all for-rent BMR units shall be no more than that which would be affordable to a moderate income household earning one hundred ten percent (110%) of the current area median income, adjusted for expected household size and appropriate unit size. A maximum of thirty percent (30%) of household income shall be assigned to the housing costs for the for-rent BMR unit.

f. Households with eligible Danville residents shall be given first preference for BMR units; second preference shall be given to households with eligible Danville employees; third preference shall be given to all other eligible households.

g. Requirements for BMR units shall be established as conditions of approval for the residential development. Compliance with the regulations of this section shall be evidenced by an affordable housing agreement between the applicant and the Town Manager completed and recorded on the deed to each affected and shall run with the land.

1. The affordable housing agreement shall indicate the intended household type (i.e., for-sale or rental occupancies), number of BMR units and their corresponding number of bedrooms; standards for maximum qualifying household incomes; standards for maximum sales prices or rental rates; party/process responsible for certifying tenant incomes; construction scheduling, how vacancies will be marketed and filled; restrictions and enforcement mechanisms binding on property upon sale or transfer; maintenance provisions; and any other information as required by the Town to comply with the conditions of approval for the residential development.

2. The affordable housing agreement shall include a provision which allows the Town to assign its authority to regulate and enforce the agreement to the Contra Costa County Housing Authority, a nonprofit housing agency or other similar entity.

3. Proof of recordation of the affordable housing agreement on the deed of each BMR unit in a residential development shall be deemed a condition precedent to occupancy.

4. The provisions of this section shall not apply to transfers by gift, device or inheritance to the property owner's spouse or children; transfers of title to a spouse as part of a divorce or dissolution proceeding; acquisition of title interest therein in conjunction with marriage provided, however, that the deed restrictions shall continue to run with the title to said property following such transfers.

h. BMR units in a residential development and phases of a residential development shall be constructed concurrently with or prior to the construction of non-BMR units.

i. BMR units shall be provided as follows:

1. If the BMR units are built within the project, they are not required to be evenly dispersed throughout the development.

2. BMR units are not required to represent the predominant unit type in the project (e.g., locating affordable attached duet units on corner lots in a primarily single family development or including affordable secondary units into a primarily single family development).

3. The exterior design and character of the BMR units shall be substantially consistent with that of the non-BMR units in the residential development.

4. There may be a reduction of interior amenities provided within the BMR units as may be necessary to retain project affordability.

j. For-sale BMR units shall not be rented unless specifically authorized by the Town. Said authorization shall be formalized by way of execution of an amended affordable housing agreement,

k. The Town may contract with the Contra Costa County Housing Authority, or other similar entity, to administer the sale, rental and/or in lieu participation fee provisions of this section.

l. The Town Manager may establish administrative guidelines for administration of the provisions of this section.

(Ord. #2014-08, § 2)

32-73.11 Fee Waivers and Priority Processing.

a. To increase the feasibility of providing affordable units, the Town Council, by resolution, may waive or reduce certain Town fees applicable to the affordable units or the residential development for which they are a part.

b. A project which provides inclusionary units shall be entitled to priority processing by the Town.

(Ord. #2014-08, § 2)

32-73.12 Violation - Penalty.

It is unlawful for any person, firm, corporation, partnership or other entity to violate any provision or to fail to comply with any of the requirements of this section. A violation of any of the provisions or failing to comply with any of the requirements of this section shall constitute a misdemeanor; except that, notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this section may, at the discretion of the enforcing authority, be charged and prosecuted as an infraction.

(Ord. #2014-08, § 2)

32-73.13 Enforcement.

a. The Town Manager is hereby designated the enforcing authority of this section.

b. The provisions of this section shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this section. No building permit or occupancy permit shall be issued, nor any development approval be granted, which does not meet the requirements of this section.

c. In the event that it is determined that a BMR unit is being occupied as a rental unit and that rents in excess of those allowed by operation of this section have been charged, the Town may take the appropriate legal actions or proceedings to recover, and the project owner shall be obligated to pay to the tenant (or to the Town in the event the tenant cannot be located), any excess rental charges.

d. The Town may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval.

(Ord. #2014-08, § 2)

32-73.14 Appeals.

Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by subsections 1-8.1 through 1-8.5 of the Danville Municipal Code. The developer may appeal for a reduction, adjustment, or waiver of obligations if he or she establishes the absence of a reasonable relationship or nexus between the impact of the development and the inclusionary housing requirement.

(Ord. #2014-08, § 2)

32-73.15 For-Rent Below Market Rate Accessory Dwelling Units.

Notwithstanding the provisions of any other section contained within this chapter, and if it is determined to be appropriate by the Danville Town Council, the applicant may fulfill a development's inclusionary housing requirements with the development of second units, as set forth in this section.

a. *Applicability.* The provisions of this section shall apply to all new residential developments with eight (8) or more lots throughout the Town, with the exception of developments established within the Downtown Redevelopment Area.

b. *Scope.* If the Town Council determines that development of for-rent Below Market Rate (BMR) accessory dwelling units would be appropriate for a project, the minimum number of for-rent BMR second units supplied in a project shall be equivalent to twenty-five percent (25%) of the number of market rate units established in the project.

c. *Affordable Housing Agreement.* An affordable housing agreement, as generally provided for in subsection 32-73.10g, shall be recorded as a deed restriction on the property which incorporates a for-rent BMR second unit.

d. *Qualifying Households: Maximum Income of Renters.* The for-rent BMR second unit shall not be rented to a household with an income which exceeds the high end of the "low" income range (Note: The Town shall advise the owners of any annual changes in the area median incomes).

e. *Restriction on Rental Rate.* The rental rate shall not exceed what is affordable to a household earning the high end of the "low" income range, adjusted for household size and providing for appropriate allowance for utilities. A maximum of thirty percent (30%) of the household income shall be assigned to the housing costs for the for-rent BMR second unit (this shall cover both the unit's rental rate and an appropriate allowance for utility costs). The Town shall advise the owner of annual changes in the allowable rental rate (and shall provide a schedule for utility allowance adjusted for household size).

f. *Self-Reporting.* The owner shall self-report the status of the for-rent BMR second unit (using a Town-supplied reporting form) in conjunction with receipt of the Town's annual rental rate update report. Owners of the for-rent BMR second units are not required to continuously market and rent the second units. If the Town determines that all the for-rent BMR units within a particular development have met the occupancy goal and intent of this section, then the Town may eliminate the requirement to self-report the status of the for-rent second unit(s) in that development.

g. *Design Parameters.* The for-rent BMR second units shall be designed such that the physical layout of the unit and its interrelationship with the primary unit ensures its availability as a self-contained viable second unit.

1. *Architectural and Physical Design.* For-rent BMR second units shall be architecturally compatible with main residential unit in roof pitch, scale, colors, materials, trim, windows, as well as other exterior physical features. The maximum floor area of a for-rent BMR second unit shall be as defined in subsection 32-73.15g,5.

2. Relationship to Main Residence.

(a) The second unit may be detached or attached to the main residence;

(b) If detached second units are proposed, each second unit shall be designed to provide privacy for the main residential unit (i.e., minimum number of windows facing the main unit, relative location of entry areas, and the like) and shall meet all setback requirements applicable to the main residence;

(c) The second unit shall have a separate entrance from the main unit;

- (d) There shall be no direct access from main residence to the second unit;
- (e) There shall be a wall separating the garage of the primary residence and the garage/ parking area of the secondary unit;
- (f) The second unit shall have a separate mailing address to allow independent contact with the unit's occupants; and
- (g) Any proposed modifications to the second unit must secure prior review and approval by the Chief of Planning.

3. *Adequate Facilities.* At the time the tentative map associated with the project is reviewed, a finding must be made that the following adequate facilities are provided:

- (a) The second unit shall have complete independent living facilities, adequate to meet the needs of at least a one-person household;
- (b) Permanent provisions for food preparation, sleeping, and bathing needs shall be provided;
- (c) Disposal of sanitary waste shall be provided by the public sanitary sewer district;
- (d) Provision of potable water shall be provided by the municipal utility district;
- (e) To function as an independent living unit, the accessory dwelling shall be required to have its own water heater, washer/dryer hookups, air-conditioning/heating unit (with independent cooling /heating controls).

4. *Parking Requirements.* The second unit shall have its own on-site covered parking space (nine by nineteen (9' x 19') feet, minimum clear), which shall be walled off and accessed separately. The on-site parking space for the second unit may be provided as a garage or as a carport.

5. *Minimum Lot Size/Maximum Second Unit Size/Floor Area Ratio.*

- (a) The second unit shall be a minimum of six hundred fifty (650) square feet in size for developments with lots averaging eight thousand (8,000) square feet or more (i.e., projects with a density 4.15 dwelling units per acre);
- (b) The second unit shall be a minimum of five hundred (500) square feet in size for developments with lots averaging less than eight thousand (8,000) square feet (i.e., projects with a density greater than 4.15 dwelling units per acre);
- (c) Projects with a typical minimum lot size of six thousand five hundred (6,500) square feet (i.e., equivalent to a density of five (5) dwelling units per acre) shall not be allowed to utilize this approach for meeting their affordable housing requirements;
- (d) The resulting floor area ratio (FAR) for the primary and secondary units on an individual lot shall not exceed sixty percent (60%);
- (e) Deviation from the above-cited dimensional criteria may be considered by the Town Council on a project-by-project basis.

6. Setback requirements will be determined on a project-by-project basis.

(Ord. #2014-08, § 2)

32-74 DENSITY BONUS.

32-74.1 Purpose.

This Section 32-74 is adopted to comply with state law requirements for providing a density bonus to a housing developer who provides affordable housing units.

(Ord. #2014-07, § 2)

32-74.2 Definitions.

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

Affordable housing cost shall be the cost to rent or purchase a house as defined in Section 50052.5 of the Health and Safety Code. (Government Code Section 65915(d)(1).) Housing cost means the monthly mortgage (including principal and interest), property taxes, and homeowner association fees, where applicable, for ownership units; and the monthly rent and an appropriate utility allowance for rental units.

Affordable unit, for rent. Affordable rent (including a reasonable utility allowance) shall not exceed the following:

1. For very low-income households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit;
2. For low-income households whose gross incomes exceed the maximum income for very low-income households, the product of thirty percent (30%) times sixty percent (60%) of the area median income adjusted for family size appropriate for the unit;
3. For moderate-income households, the product of thirty percent (30%) times one hundred (110%) of the area median income adjusted for family size appropriate for the unit. (Health and Safety Code Section 50053.)

Affordable unit, for sale. Affordable housing cost may not exceed the following:

1. For very low-income households, the product of thirty percent (30%) times fifty percent (50%) of the area median income adjusted for family size appropriate for the unit;
2. For low-income households whose gross incomes exceed the maximum income for very low-income households and do not exceed seventy percent (70%) of the area median income adjusted for family size, the product of thirty percent (30%) times seventy percent (70%) of the area median income adjusted for family size appropriate for the unit;
3. For moderate-income households, not less than twenty-eight percent (28%) of the gross income of the household, not exceeding the product of thirty-five percent (35%) times one hundred ten percent (110%) of area median income adjusted for family size appropriate for the unit. (Health and Safety Code Section 50052.5(b).)

Affordable units. Living units that are required to be rented at affordable rents or available at affordable housing costs to specified households.

Applicant means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities which seeks Town real property development permits and approvals.

Approval means approval by the Town of a discretionary permit such as a tentative map, planned development or land use permit for a project.

Area median income. The area median income for Contra Costa County as published at Title 25, California Code of Regulations, Section 6932.

Density bonus. An increase over the otherwise maximum allowable residential density. (Government Code Section 65915(f). See also Government Code Section 65917.5(a)(2).)

Developer means the same as applicant. (See above definition.)

Disabled person means a person with a physical or mental disability as defined at Government Code Section 12926.

Household income levels includes:

1. *Low-income household.* A household whose income does not exceed the low-income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Health and Safety Code Section 50079.5.

2. *Lower income household.* A lower income household as defined in Civil Code Sections 51.3 and 51.12. (Government Code Sections 65915(b)(1) and (c)(1) and Health and Safety Code Section 50079.5.) It includes both low-income and very-low income households.

3. *Moderate-income household.* A household with an annual income between the lower income eligibility limit and one hundred twenty (120%) of area median income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code. (Government Code Section 65915(c)(2), Health and Safety Code Section 50093.)

4. *Very low-income household.* A household whose income does not exceed the very low-income limits applicable to Contra Costa County, as published and periodically updated by the State Department of Housing and Community Development pursuant to California Health and Safety Code Section 50105. (Government Code Section 65915(b)(2) and (c)(1).)

Incentive or concession means a regulatory modification that results in identifiable, financially sufficient, actual cost reductions, such as a reduction in site development standards, modification of zoning requirements (including approval of mixed-use zoning),

modification of architectural design requirements, reduction in setback or square footage requirements, and reduction in vehicular parking spaces. (Government Code Section 65915(d) and (k).)

Permit means an approved application by the Town of Danville for a development plan, land use entitlement, subdivision, Planned Unit Development or building permit.

Project means a housing development at one (1) location, including all dwelling units for which permits have been applied for or approved within a twelve (12) month period.

Project owner means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that holds fee title to the land on which the project is located.

Restricted occupancy unit means a unit restricted in such a manner that it is sold or rented at a rate affordable to very low or low income households; a unit restricted in such a manner that it is sold or rented at a rate affordable to moderate income households containing a handicapped household member; or a unit restricted in such a manner that it is occupied by a senior household.

Target unit. A dwelling unit within a housing development which will be reserved for sale or rent to, and is made available at an affordable rent or affordable ownership cost to, very low-, low-, or moderate-income households, or is a unit in a senior citizen housing development.

Town means the Town of Danville or its designee, or any entity with which the Town contracts with to administer this section.

Unit type means dwelling units with similar floor area and number of bedrooms.

(Ord. #2014-07, § 2)

32-74.3 Density Bonus.

The Town shall grant a density bonus and other incentives to a qualifying applicant for a housing development of five (5) or more units. A Developer may qualify for a density bonus if:

a. The proposed housing development provides the minimum number of affordable housing units, under subsection 32-74.4 below. Additional density bonus and/or incentives may be available if a child care facility is also provided (Government Code Section 65915(h));

b. The applicant donates land for affordable housing, under Government Code Section 65915(g);

c. The housing development is a condominium conversion that will provide affordable housing, under Government Code Section 65915.5 and Danville Municipal Code Section 31-7; or

d. A child care facility is proposed in a commercial or industrial project, under Government Code Section 65917.5.

Neither the granting of a density bonus nor the granting of an incentive, in and of itself, requires a general plan amendment, zoning change, or other discretionary approval. (Government Code Section 65915 (g)(1) (2) and (k).) All density calculations resulting in fractional units shall be rounded up to the next whole number. (Government Code Section 65915 (f)(5), (g)(2).)

(Ord. #2014-07, § 2)

32-74.4 Minimum Requirements; Calculation; Continued Affordability.

a. *Density bonus - minimum requirement (target units).* The city shall grant a density bonus to an applicant for a housing development of five (5) or more units who seeks a density bonus and agrees to construct at least one (1) of the following (Government Code Section 65915(b)):

1. Ten percent (10%) of the total units of the housing development as target units affordable to low-income households;

2. Five percent (5%) of the total units of the housing development as target units affordable to very low-income households;

3. A senior citizen housing development of thirty-five (35) units or more. (Defined in California Civil Code Section 51.3(b)(4)); or

4. Ten percent (10%) of the total units of a newly constructed condominium project or planned development as target units affordable to moderate-income households. (Government Code Section 65915(b).)

An inclusionary unit or second unit under Danville Municipal Code Section 32-73 counts toward the total of target units.

b. *Density bonus - calculation of bonus units.* The maximum amount of density bonus to which an applicant is entitled varies according to (1) the type of qualifying housing under subsection a above and (2) the amount the percentage of affordable housing exceeds the minimum percentages set forth in subsection a above. The specific calculations are set forth in Government Code Section 65915(f).

Unit calculations do not need to be based on individual subdivisions or parcels. If the density bonus units are located separate from the restricted occupancy units, such project groups shall, unless otherwise authorized by the Town, be contiguous and shall be developed simultaneously with the development of the restricted occupancy units.

c. *Continued affordability.* An applicant shall agree to and the Town shall ensure:

1. The continued affordability of a low-and very-low income units for a period of thirty (30) years or longer (Government Code Section 65915(c));
2. Owner-occupied units are available at an affordable housing cost;
3. The initial occupant of a moderate income unit in a common interest development is a person or family of moderate income and that the units are offered at an affordable housing cost;

Whenever applicable or appropriate, the applicant shall enter into an agreement acceptable to the Town Attorney to assure the continued affordability, under Danville Municipal Code subsection 32-74.9.

(Ord. #2014-07, § 2)

32-74.5 Incentives.

a. *Number of incentives.* An applicant for a density bonus may submit a proposal for specific incentives or concessions. In addition to the types of incentives defined in subsection 32-74.4, the Town Council may reduce or waive Town-established fees.

The applicant may receive the following number of incentives or concessions (Government Code Section 65915(d)(2)):

<i>Number of incentives</i>	<i>Type of project</i>
1	At least 10% of total units for lower income households; 5% for very low income households, or 10% for persons and families of moderate income in a common interest development.
2	At least 20% of total units for lower income households; 10% for very low income households, or 20% for persons and families of moderate income in a common interest development.
3	At least 30% of total units for lower income households; 15%.

When a developer requests one (1) or more incentives, he or she shall submit a project financial report (pro forma) along with the application for the project in order to evaluate the financial need for the incentive(s). At the developer's cost, the Town may retain a consultant to review the financial report. (If the developer is a nonprofit organization, the Town Council may elect to pay the cost of the consultant.)

b. *Findings required for denial.* The Town shall grant the requested incentive or concession unless the Town makes a written finding based upon substantial evidence that the incentive or concession:

1. Is not required to provide for affordable housing costs or for rents to be set at the specified levels; or
2. Would have a specific adverse impact upon public health and safety or the physical environment, or on any property listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the impact without rendering the development unaffordable to low and moderate income households. "Specific adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions. (Government Code Section 65589.5.)

3. Would be contrary to state or federal law. (Government Code Section 65915(d).)

(Ord. #2014-07, § 2)

32-74.6 General Requirements.

a. Continued affordability.

1. Restricted occupancy units in projects receiving a density bonus shall remain affordable for a minimum of thirty (30) years, or a longer period if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. (Government Code Section 65915(c).)

2. Requirements for restricted occupancy units shall be established as conditions of project approval. Compliance with the conditions of this section shall be evidenced by an affordable housing agreement between the developer and the Town Manager, completed and recorded on the property to each affected unit before issuance of a building permit. It shall run with the land.

(a) The affordable housing agreement shall indicate the qualification criteria for the target households for the restricted occupancy units (e.g., very low income household, senior household, and the like), the intended household type (i.e., sale or rental restricted occupancy units), the number of restricted occupancy units and their corresponding number of bedrooms; standards for maximum qualifying household incomes for restricted occupancy units with affordability restrictions; standards for maximum rents or sales prices for restricted occupancy units with affordability restrictions; standards for qualifying for occupancy of senior or handicapped restricted occupancy units; party/process responsible for certifying qualifications of households which occupy restricted occupancy units; construction scheduling, how vacancies will be marketed and filled; restrictions and enforcement mechanisms binding on property upon sale or transfer; maintenance provisions; and any other information as required by the Town to comply with the conditions of approval for the project. If the agreement is an equity sharing agreement, it shall conform to the requirements of Government Code Section 65915(c)(2). (See also Government Code Sections 65916, 65917.)

(b) The affordable housing agreement shall include a provision which allows the Town of Danville to assign its authority to regulate and enforce the agreement to the Contra Costa County Housing Authority, a nonprofit housing agency or other similar entity.

3. For-sale restricted occupancy units shall not be rented unless specifically authorized by the Town and a new affordable housing agreement executed and recorded against the property.

b. Priority for Danville residents or employees. Households with Danville residents who meet the qualifications for occupancy of restricted units will have first preference for restricted occupancy units; second preference will be given to households with Danville employees who meet the qualifications for occupancy of restricted units; third preference shall be given to all other eligible households. A Danville resident or employee (or spouse) is one who has lived or worked in Danville for the year immediately preceding the occupancy of the affordable unit.

c. Timing and location of units.

1. Units in a project and phases of a project shall be constructed concurrently with, or prior to, the construction of units without occupancy restrictions.

2. Units shall be provided as follows:

(a) Restricted occupancy units shall be dispersed throughout the project.

(b) Restricted occupancy units are not required to represent the predominant unit type in the project. Such as, but not limited to, locating affordable attached duet units on corner lots in a primarily single family development.

(c) The exterior design and character of the restricted occupancy units shall be substantially consistent with the units without occupancy restrictions in the project. There may be a reduction of interior amenities as may be necessary to attain affordability of the restricted occupancy units.

d. Limitations on Town. The Town may not:

1. Apply a development standard that will have the effect of physically precluding the construction at the desired density (Government Code Section 65915(e)(l).);

2. Require parking (other than handicapped and guest parking) to exceed one (1) space for one (1) bedroom, two (2) spaces for two-three (2-3) bedrooms, or two and one-half (2.5) spaces for four (4) or more bedrooms. (Government Code Section 65915(p).)

(Ord. #2014-07, § 2)

32-74.7 Violation - Penalty.

It is unlawful for any person, firm, corporation, partnership or other entity to violate any provision or fail to comply with any of the requirements of this section. A violation of any of the provisions or failing to comply with any of the requirements of this section shall constitute a misdemeanor; except that, notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this section may, at the discretion of the enforcing authority, be charged and prosecuted as an infraction.

(Ord. #2014-07, § 2)

32-74.8 Enforcement.

a. The Town Manager is hereby designated the enforcing authority of this section.

b. The provisions of this section shall apply to all agents, successors and assigns of developer. No building permit or occupancy permit shall be issued, nor any development approval be granted, which does not meet the requirements of this section. The Chief Building Official may suspend or revoke any building permit or approval upon finding a violation of any provision of this section.

c. In the event it is determined that rents in excess of those allowed by operation of this section have been charged to a tenant residing in a restricted occupancy rental unit, the Town may take the appropriate legal action to recover, and the rental unit owner shall be obligated to pay to the tenant (or to the Town in the event the tenant cannot be located), any excess rent charges.

(Ord. #2014-07, § 2)

32-74.9 Appeals.

Any person aggrieved by any action or determination of the Town Manager under this section may appeal such action or determination to the Town Council as provided for in the Municipal Code.

(Ord. #2014-07, § 2)

32-76 ACCESSORY DWELLING UNITS.

32-76.1 Purpose.

The purpose of this section is to increase opportunities for the development of smaller dwelling units for individuals and families developed on certain lots which are zoned for residential use; to provide affordable rental housing units for families and individuals with limited income; to provide rental units for the elderly and disabled; and to protect property values and the integrity of the neighborhood by ensuring design and development standards are compatible with the existing neighborhood.

(Ord. #2017-5, § 2)

32-76.2 Definitions.

Accessory dwelling unit is an attached or detached conditioned residential unit, which provides complete, independent living facilities for one or more persons. It includes permanent provisions for living, sleeping, cooking, eating and sanitation on the same parcel as the primary unit. The term "accessory dwelling unit" includes a second dwelling unit, guesthouse, in-law unit, efficiency unit (as defined in Health and Safety Code section 17958.1), manufactured home (as defined in Health and Safety Code section 18007), and similar accessory dwelling units, which provide complete independent living facilities. (Gov't. Code § 65852.2 (i)(4).)

Administrative Accessory Dwelling Unit Review Process shall be defined as the review process conducted under a separate application filed with the Town either prior to or concurrent with the submittal of a building permit application for an accessory dwelling unit where an advisement of the action to be taken by the Town on the application shall be sent by mail to surrounding property owners within a three hundred fifty (350) foot radius of the subject parcel. In the case of an appeal, the application shifts to a Planning Commission review process.

Attached shall be defined as a building or a structure that is structurally a part of or has a common wall or continuous roof with the main building or structure.

Conditioned space shall be defined as an area or room that is being heated or cooled for human habitation.

Conversions. A garage or accessory structure repaired or rebuilt in excess of fifty percent (50%) of its reasonable market value, square footage, or a combination thereof. *Conversion* does not include the increase in height of the structure.

Detached shall be defined as a building or structure not structurally part of and not sharing a common wall or continuous roof with

the main building or structure.

Ministerial Accessory Dwelling Unit Review Process shall be defined as the review process conducted concurrently with the submittal of a building permit application for an accessory dwelling unit. The Town shall review the building permit submittal to ensure it meets the standards outlined in this section.

Non-conditioned space shall be defined to include, but not limited to, open decks, patios, breezeways, non-conditioned shops, garages, and storage areas.

Planning Commission Accessory Dwelling Unit Review Process shall be defined as the review process conducted under a separate application filed with the Town where a proposed accessory dwelling unit includes an exception or variance request. The review process shall include a public hearing held by the Planning Commission where notification is mailed to surrounding property owners within a seven hundred and fifty (750) foot radius of the subject parcel.

(Ord. #2017-5, § 2)

32-76.3 General Design and Development Standards.

An accessory dwelling unit, which meets the requirements of this section shall be allowed on a parcel which is zoned for residential use. An accessory dwelling unit which meets the requirements of this section shall be considered in compliance with the allowable residential density for the lot upon which the accessory dwelling unit is located and shall be considered a residential use that is consistent with the existing General Plan and zoning designation for the lot.

a. *Architectural features.* Architectural projecting features (i.e., cornice, roof overhangs, eaves, chimney, fireplaces, media niche, bay windows or similar projecting features) on a detached accessory unit may extend a maximum of 24 inches into the required side yard and rear yard setbacks for structures that maintain a minimum five (5) foot setback.

b. *Balcony, Decks, Platforms.* Elevated balconies, decks, or platforms shall not be allowed for any accessory dwelling unit that does not maintain the required minimum structure setbacks applicable to the primary residence. Ground level decks and platforms shall maintain a minimum five (5) foot side and rear yard setback.

c. *Bedrooms.* An accessory dwelling unit shall not contain more than two bedrooms with the exception of units over 1,000 square feet. Units over 1,000 square feet may have a maximum of three bedrooms.

d. *Conversions.* Conversion of an existing detached garage or the conversion of an existing structure above an existing detached garage to an accessory dwelling unit shall be subject to the following:

1. *Setbacks (side and rear)* Setbacks are not required for the existing garage or the existing accessory structure above the existing garage that is converted to an accessory dwelling unit. A new accessory dwelling unit above an existing garage shall maintain a minimum setback of five feet from the side and rear property line, the five foot setback shall only apply to the new accessory dwelling unit.

2. *Height:* A new second story accessory dwelling unit above an existing garage shall have a maximum height of 22 feet, with no part of the unit more than 19 feet in height within 10 feet of the property line.

e. *Density.* There may be only one accessory dwelling unit per lot, which shall comply with all applicable building, fire, and health and safety codes.

f. *Design.* The exterior appearance of an accessory dwelling unit shall be architecturally compatible with the primary residence and with the surrounding neighborhood. Architectural compatibility will be determined to exist where there is coordination of building colors and materials (e.g., stucco, siding, masonry material, etc.), coordination of roof material, fenestration, other defined architectural features (e.g., wood details, corbels, stucco coins, masonry material, etc.) and coordination of landscaping ancillary to structures visible by the public or surrounding property owners. The Development Services Department shall review accessory dwelling units for compliance with the design standards.

g. *Detached Garage and Accessory Dwelling Units.* A detached accessory dwelling unit may be constructed in conjunction with a detached garage provided the garage/accessory dwelling unit's location observes the applicable setbacks and height. A detached garage which is developed in conjunction with a detached accessory dwelling unit shall be limited to the size necessary to accommodate a maximum of two standard-size parking spaces which shall be a maximum garage dimension of 20 feet wide and 22 feet deep, measured from the face of the interior walls.

h. *Height.* The maximum height of an accessory dwelling unit shall be two and one half stories or 35 feet in height, whichever is less, provided that the accessory dwelling unit observes the required minimum setbacks for the primary residence. Detached accessory

dwelling units with a setback that is less than required for the primary residence shall be limited to a maximum height of 15 feet. Accessory dwelling units within Town-identified Scenic Hillside or Major Ridgeline areas shall comply with additional height restrictions as outlined in Section 32-69 of the Municipal Code.

i. *Heritage Trees.* All accessory dwelling units shall adhere to the provisions of Section 32-79 of the Danville Municipal Code - Tree Preservation if the proposed placement of the accessory dwelling unit is located within the dripline of a protected tree as identified in Subsection 32-79.3 of the Tree Preservation regulations.

j. *Occupancy.* The property owner shall occupy either the primary residential unit or the accessory dwelling unit. If neither unit is owner-occupied, then the use of the property shall revert to a single family occupancy. Nothing in this section shall be construed to prohibit one or both of the units remaining vacant. This owner-occupancy requirement may be temporarily waived for a period of not more than three (3) years if the Planning Commission finds that the owner has an unavoidable reason for absence and if the owner appoints in writing another person to occupy and take responsibility for maintaining the property. All properties approved for accessory dwelling units must be maintained at a level consistent with the neighborhood in which it is located.

k. *Parking.* Additional on-site parking for an accessory dwelling unit is not required.

l. *Setbacks (front minimum).* Except for garage conversions, all accessory dwelling units shall maintain the minimum front yard and secondary front yard setbacks applicable to the primary structure.

m. *Setbacks (side and rear minimum).* Attached accessory dwelling units shall observe the same setback requirements applicable to the primary structure. Except for conversions (as found in Section 32-76.3d), detached accessory dwelling units shall observe a minimum side and rear yard setback of 10 feet from the property line, subject to the applicable height and window placement requirements. Accessory dwelling units may be constructed with side and rear yard setbacks less than 10 feet from the property line only upon the approval of an exception or variance by the Planning Commission.

n. *Subdivision.* The primary and accessory dwelling units may not be sold separately and no subdivision of land or air rights shall be allowed. The construction, financing or leasing of accessory dwelling units shall be exempt from the requirements of the Planning and Zoning Law pursuant to Section 65852.2. of the California Code.

o. *Window Placement.* Any detached accessory dwelling unit with a setback of 10 feet or less to a side or rear property line shall be designed so that any window facing that property line shall be located no less than 6 feet above the finished floor, to minimize direct views to adjacent neighboring properties to preserve privacy. This 6 foot window placement shall also apply to any detached two-story accessory dwelling unit that does not meet the required minimum side or rear yard setback requirements for the primary residence.

p. *Utilities.* All new utilities for detached accessory dwelling units shall be installed underground.

(Ord. #2017-5, § 2)

32-76.4 Procedure for Accessory Dwelling Unit Approval.

a. *Application.* Applications shall be submitted to the Town accompanied by all required fees, project plans (drawn to scale) depicting all onsite improvements, the location of the primary residence and the proposed accessory dwelling unit and existing trees, floor plans and architectural elevations showing the proposed accessory dwelling unit and its relation to the primary residence, a description of building materials, landscaping, exterior finishes to be used, parking to be provided, and any other information required by the Town to determine whether the proposed accessory dwelling unit conforms with the requirements of this section. All applicants shall adhere to procedures for the implementation of this section, including the design and development standards subsection and the Design Review Board submittal checklist for plans and drawings.

b. *Application and Review Process for Accessory Dwelling Units.*

<i>Unit Size (square feet)</i>	<i>Process Type</i>
150 - 1,000	Ministerial
> 1,001 - 2,000	Administrative
Variance, Exceptions, and Appeals	Public Hearing - Planning Commission

1. *Ministerial Accessory Dwelling Unit Review Process.* A ministerial review process shall be conducted concurrently with the submittal of a building permit application for the accessory dwelling unit.

(a) *Unit Size.* The unit size may be a minimum of 150 square feet and a maximum of 1,000 square feet of conditioned space.

(b) All accessory dwelling unit application proposals under the ministerial review process shall comply with the design and development standards as specified in section 32-76.3. If the proposal is determined to conform, the request shall be approved at a ministerial level by the Town.

2. *Administrative Accessory Dwelling Unit Review Process.* For accessory dwelling units that do not qualify for ministerial review, an administrative review process shall be conducted prior to or concurrently with the submittal of a building permit application. The applicant must file a Development Plan application with the Town. The Town shall notify all owners of property within 350 feet of the subject property not less than 10 days prior to the Town's action on the application.

(a). *Unit Size.* The unit size may be at a minimum of 1,001 square feet with the maximum size of 2,000 square feet of conditioned space.

(b) All accessory dwelling unit application proposals under the Administrative review process shall comply with the design and development standards as specified in section 32-76.3.

(c) Minimum lot size for any accessory dwelling unit over 1,000 square feet in size shall be 40,000 square feet. For any accessory dwelling unit proposed to be over 1,000 square feet in size, a finding must be made that the increased size of the accessory dwelling unit results in an accessory dwelling unit that is in scale with the receiving property, is not larger than the primary structure on the property, and that the accessory dwelling unit is architecturally designed to mitigate the potential appearance of excessive building massing.

(d) Accessory dwelling units developed under this section shall be subject to review by the Danville Design Review Board, if such review is deemed necessary by the Town.

3. *Planning Commission Accessory Dwelling Unit Review Process.* If an application does not conform to Subsection 32-76.3 of this section and the Town determines that the application requires a variance or an exception, the accessory dwelling unit shall be scheduled for review by the Planning Commission for consideration and action during a noticed public hearing. The Town shall notify all owners of property within 750 feet of the subject property that the application has been filed and the date, time, and location of the Planning Commission public hearing.

(a) An exception to the otherwise applicable setback regulations for detached accessory dwelling units may be granted as part of the public hearing review process where the Planning Commission finds that, due to the receiving property's relationship to surrounding properties, reduced setbacks will not adversely impact the privacy enjoyed by residents occupying surrounding properties. If this finding is made, minimum setbacks may be reduced to comply with the minimum requirements for detached accessory structures in single-family districts, as specified in subsection 32-22.9 of the Danville Municipal Code.

4. Accessory dwelling units proposed in a Town-identified Scenic Hillside or Major Ridgeline Area shall be developed in compliance with Section 32-69 of the Danville Municipal Code, and shall be subject to review under a Development Plan application and considered by the appropriate review body as outlined in the Scenic Hillside and Major Ridgeline Development regulations.

5. Nothing in this section shall preclude the ability of the Planning Commission to approve accessory dwelling units, to be constructed as part of a new housing development to help the development meet the requirements of the Town's Inclusionary Housing for Affordable Housing Ordinance, which do not conform to the design and development standards contained within this section.

(Ord. #2017-5, § 2)

32-76.5 Deed Restriction.

Before obtaining a building permit for an accessory dwelling unit, the property owner shall file with the County Recorder a declaration or an agreement of an owner occupancy restriction, executed by the property owner, which has been approved by the City Attorney as to its form and content, and stating that: "The accessory dwelling unit shall be in effect only so long as the owner of record of the property occupies either the primary residence, or the accessory dwelling unit." This agreement is initiated to ensure the Town's ability to enforce the owner occupancy restriction.

(Ord. #2017-5, § 2)

32-76.6 Existing Accessory Dwelling Units.

a. An existing, approved accessory dwelling unit not in conformance with this section shall be considered a nonconforming accessory dwelling unit. If a property owner wishes to alter an existing nonconforming accessory dwelling unit, the requirements of this section will apply to the proposed alteration.

b. An existing but not approved accessory dwelling unit that meets the requirements of this section may be legalized if the property owner modifies the accessory unit to address any deficiencies identified through a life/safety inspection by the Town Building Division.

(Ord. #2017-5, § 2)

32-76.7 Exceptions.

a. Exceptions to this section may be granted by the Chief of Planning as a reasonable accommodation under Section 32-71.

b. A setback exception for detached accessory dwelling units may be approved by the Planning Commission pursuant to Section 32-76.4.b.3.(a).

(Ord. #2017-5, § 2)

32-76.8 Variances.

Variance permits to modify any standards contained in this section may be granted by the Planning Commission upon meeting the appropriate variance findings.

(Ord. #2017-5, § 2)

32-76.9 Appeals.

Approvals for accessory dwelling units under this chapter may be appealed for cause within ten days of project approval in accordance with Section 32-4.7 of the Danville Municipal Code and where the appropriate appeal fee is submitted.

(Ord. #2017-5, § 2)

COUNTY OF SAN BENITO
INCLUSIONARY HOUSING PROGRAM

ADMINISTRATIVE
MANUAL

County of San Benito
Resource Management Agency

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EXECUTIVE SUMMARY

This Administrative Manual describes the day-to-day procedures for the implementation of the County of San Benito Inclusionary Housing Ordinance (Chapter 21). In the event of a discrepancy between the Administrative Manual and Inclusionary Housing Ordinance (Chapter 21, County Code), the language of the Ordinance will take precedence.

As identified in the Ordinance, the goals and objectives for the Inclusionary Housing Program include:

- Achieving a balanced community with housing available for persons of all economic levels;
- Encouraging a mix of housing supply types that provides housing opportunities throughout the County ~~for a mix of households~~, including very low, low and moderate income households;
- Providing a priority for occupancy of Inclusionary units for households with a household member(s) who live or work in San Benito County;
- Ensuring long-term affordability of the Inclusionary units by requiring affordability restrictions and resale controls; and,
- Encouraging the participation of the private and non-profit development communities to provide Inclusionary units.

The Inclusionary Housing Program provides an opportunity for very low, low and moderate income households to purchase and/or rent affordable housing units throughout San Benito County. Policies and procedures in this Manual provide for the following:

- New residential developments in the County shall include at least 15% of the units to be affordable to very low, low and/or moderate-income households. Or provide 20% of the units to be very low, low, and/or moderate off site.
- The Inclusionary units provided shall be sold at affordable costs and the units shall remain affordable for a term of 30 years.
- If it is a rental unit the unit shall remain affordable for a minimum term of 55 years.
- Inclusionary units are considered an important and valuable resource for all County residents and, as such, shall be monitored annually to ensure that they remain decent, safe and affordable housing units.
- Creative implementation of the Inclusionary requirements shall be encouraged, including the development of mixed-use housing and employee housing.

I. OPTIONS TO COMPLY WITH INCLUSIONARY ORDINANCE

The County of San Benito has adopted an Inclusionary Housing Ordinance (San Benito County Code, Chapter 21). This Ordinance requires that 15% of the units/lots in new residential developments be affordable to very low, low and moderate-income households. The ordinance requires 20% of the units/lots be affordable to very low, low, and/or moderate of available off site units. The Ordinance is applicable to developments of five or more residential units/lots. Requirements of the Ordinance can be met through one of three options:

1. On-Site Option
2. Off-Site Option
3. Payment of In-Lieu Fees

Developments of 1-4 units have no Inclusionary obligation. Developments of 5 to 6 units/lots are expected to meet their Inclusionary obligations through the payment of In-Lieu Fees, although the developer/owner can choose to build an Inclusionary housing unit instead of payment of In-Lieu Fees, if they so desire. Developments of 7 or more units/lots are expected to meet their Inclusionary obligation through the development of Inclusionary housing units.

1. ON-SITE OPTION

A. Inclusionary Percentage (15%) Requirement

For developments of 7 or more residential units/lots, at least 15% of the units must be set aside for Inclusionary housing. The Inclusionary units must be developed on the same site as the market rate units.

Exceptions: In certain unusual and infrequent situations, an exception to the mandatory on-site requirement is available. These exceptions would result in provision of units off-site (see Section 2 below, “Off-Site Option”) or payment of In-Lieu Fees (see 3 below, “Payment of In-Lieu Fees”).

B. Levels of Affordability

The intent of the Inclusionary Housing Ordinance is to provide a range of Inclusionary units affordable to different household income levels. Inclusionary units shall be affordable to very low, low and moderate-income households. For developments of 7 or more units, at least 15% of the units must be set aside for Inclusionary housing.

Inclusionary Household Affordability Requirements:

<u>Size of Development</u>	<u>Inclusionary Requirement</u>	<u>Moderate Income</u>	<u>Low Income</u>	<u>Very Low Income</u>
1-4	None			
5-6	Payment of In-Lieu Fees			
7-13	Provide 15% Inclusionary Requirement	1 unit + payment of in lieu fee for fractional difference		
14-19	Provide 15% Inclusionary Requirement	1 unit + payment of in lieu fee for fractional difference	1 unit	
20	Provide 15% Inclusionary Requirement	1 unit	1 unit	1 unit

21-26	Provide 15% Inclusionary Requirement	1 unit + payment of in lieu fee for fractional difference	1 unit	1 unit
27-33	Provide 15% Inclusionary Requirement	2 units + payment of in lieu fee for fractional difference	1 unit	1 unit
34-39	Provide 15% Inclusionary Requirement	2 units + payment of in lieu fee for fractional difference	2 units	1 unit
40	Provide 15% Inclusionary Requirement	2 units	2 units	2 units
41+	Provide 15% Inclusionary Requirement	5% of all units 2 unit minimum	5% of all units 2 unit minimum	5% of all units 2 unit minimum

The table above outlines the inclusionary obligation according to the method of “rounding up” the fractional requirement. According to the size of the proposed development, 41 or more units, the 5%/5%/5% based on all units are applied. The rounding up process for a 41+ unit development would be as follows: the 5% moderate-income requirement is 2.05, the 5% low-income requirement is 2.05, and the 5% very low-income requirement is 2.05. The minimum requirement for each income level is 2. Beginning with the very-low income figure and rounding up, the 2.05 very-low income figures is rounded down to 2 units and the 0.05 remainder is added to the next highest income category, low income. The 0.05 would be added to the 2.05 low-income with a resultant figure of 2.10. This figure is rounded down to 2 units and the remainder of 0.10 is added to the 2.05 very moderate income figure with a resultant figure of 2.15 that is rounded down to 2 unit with a remainder of 0.15. The result would be that for the 41-unit/lot project a total of 6 on-site units would be required. The same type of rounding up process would be applied to each proposed development. If a fractional amount still remains at the very low-income level, then the developer has the option of paying an in-lieu fee based on the fractional requirement or providing an additional inclusionary unit.

C. Design, Size and Location of Units

The exterior appearance of the inclusionary units must be compatible with the market rate units. Compatibility includes the architectural style and detailing, though the interior may differ to the extent authorized in the affordable housing agreement.

The inclusionary units shall be similar in number of bedrooms as the market rate units. For a 2 bedroom unit the minimum is 900 square feet. For a 3 bedroom unit the minimum is 1,150 square feet. For a 4 bedroom unit the minimum is 1,360 square feet. A ~~minimum of 50% of the affordable units shall be 3 bedrooms.~~

To the extent feasible, the inclusionary units shall be scattered throughout any development that also includes market rate units. However, inclusionary units may be clustered if it is found that such an arrangement better meets the objectives of the program.

D. Timing of Inclusionary Units

The inclusionary units must be developed concurrent with the development of the market rate units. The phasing plan for the release of building permits for both the inclusionary and the market rate units shall be described in the Master Inclusionary Developer Agreement.

2. OFF-SITE OPTION

A. Inclusionary Percentage Requirement

For certain residential developments of 5 or more units/lots, the inclusionary units may be developed on a site different (off-site) than the market rate units. To qualify for this option, the developer must demonstrate to the satisfaction of the approving body that the off-site units will provide a “greater contribution” than units provided on-site.

“Greater contribution” means, at a minimum:

- More inclusionary units are created off-site than would normally be required by the 20% Inclusionary Housing mandate; and
- Units developed under the off-site option must be newly constructed units. Existing units cannot be substituted in the off-site option. Off-sites units only allowed if their location is identified and is owned, or site control is demonstrated by the applicant, at the time of the first approval. Further, to the extent feasible, the off-site units must be located within the same general area or nearest community as the market rate units.

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B. Levels of Affordability

Inclusionary Household Affordability Requirements for Off-Site Units:

<u>Size of Development</u>	<u>Inclusionary Requirement</u>	<u>Moderate Income</u>	<u>Low Income</u>	<u>Very Low Income</u>
1-4	None			
5	Provide 20% inclusionary units	1 unit		
6-9		1 unit + payment of in lieu fee for fractional difference		
10		1 unit	1 unit	1 unit
11-14		1 unit + payment of in lieu fee for fractional difference	1 unit + payment of in lieu fee for fractional difference	1 unit + payment of in lieu fee for fractional difference
15		1 unit	1 unit	1 unit
16-19		1 unit + payment	1 unit	1 unit

		of in lieu fee for fractional		
20 lots or more		8% of all units	6% of all units	6% of all units
		1 unit minimum + payment of in lieu fee for fractional	1 unit minimum	1 unit minimum

C. Design, Size and Location of Units

The exterior quality and appearance of the inclusionary units must be compatible with development in the vicinity of the off-site location and be found to result in a positive benefit to the area. The inclusionary units shall be similar in number of bedrooms as the market rate units (up to four bedrooms), but the square footage size of the inclusionary units may be less than the market rate units, but in no case shall any inclusionary unit have a total floor area (excluding the garage) less than ~~1,200~~900 square feet. To the extent feasible, the inclusionary units shall be scattered throughout any development that also includes market rate units. However, inclusionary units may be clustered if it is found that such an arrangement better meets the objectives of the program.

D. Timing of Inclusionary Units

The inclusionary units must be developed concurrent with the development of the market rate units. The phasing plan for the release of building permits for both the inclusionary and the market rate units shall be described in the Master Inclusionary Developer Agreement.

E. Approval Process

The provision of inclusionary units off-site will only be approved in developments that can demonstrate that they meet the “greater contribution” test specified above. The intent of the Inclusionary Housing Ordinance is to create developments that include a mix of household income ranges and housing options, which is more possible with on-site development. Therefore, off-site inclusionary housing will only be approved for developments that provide more benefit to the community in terms of number of inclusionary units and affordability levels as specified above. The “greater contribution” test must be met to the satisfaction of the approving body.

3. PAYMENT OF IN-LIEU FEES

A. Projects Eligible for Payment of In-Lieu Fees

Projects of 1-4 Units/Lots

All projects of 1-4 units/lots are not required to provide any inclusionary housing or in lieu fee.

Projects of 5-6 Units/Lots

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All projects of 5-6 units/lots are eligible to pay In-Lieu Fees to meet their Inclusionary Housing requirement. However, developers also have the option of building an inclusionary unit instead of paying the In-Lieu Fees.

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Projects of 7 or More Units/Lots

1. Payment of In-Lieu Fee for Fractional Obligations:

For inclusionary obligations that result in a fractional inclusionary requirement (e.g., a 7 unit development would have an inclusionary obligation of 1.06), the developer/owner can either pay an In-Lieu Fee for the fractional difference of the inclusionary obligation or they may provide an additional inclusionary unit instead of paying the fee.

2. Payment of In-Lieu Fee for Total Inclusionary Obligation:

Projects of 7 or more units are expected to produce inclusionary units on-site. However, in very rare and limited circumstances, a project of 7 or more units may meet its inclusionary obligation by only paying In-Lieu Fees. To qualify, the developer must conclusively demonstrate, based on evidence in the record, in connection with the first approval for the residential development, that specific characteristics of the development site, such as lack of access to services, zoning which requires large lot development, or potentially high maintenance costs, make the site unsuitable for households at the required income levels.

B. In-Lieu Fee Calculation

~~The In-Lieu Fee applicable to a project shall be consistent with the adopted In-Lieu Fee Schedule in effect at the time that a development application is deemed complete by the County. Based upon the 15% requirement, the current In-Lieu Fees are based on a 5-unit development. A copy of the current In-Lieu Fee Schedule is contained in Appendix G of this Manual.~~

Developments Requiring a Fractional Amount of In-Lieu Fee:

~~Developments of 7+ units will provide the expected number of affordable units in addition to paying a fractional amount of an In-Lieu Fee or providing an additional affordable unit.~~

In-Lieu Fee Calculation:

~~The Resource Management Agency and Housing Office shall calculate the In-Lieu Fees on an annual basis, based on a calculation approved by the Board of Supervisors. The Board of Supervisors shall then adopt the fees annually. If new In-Lieu Fees are not adopted annually, the existing fees shall remain in place until such time that updated fees are adopted.~~

~~The In-Lieu Fee is the difference between the cost of purchasing a median price home and the cost of providing a single-family unit affordable to a four (4) person household with an income at 100% of median income. The In-Lieu Fees are based on a five (5) unit development. The In-Lieu Fee example provided in the table below is only an example. For current In-Lieu Fee calculations please see Appendix G of this Manual.~~

~~Example of In-Lieu Calculation based on County median income:~~

- ~~1. Median income range is \$54,351 (81%) to \$67,100 (100%).~~
- ~~2. Housing affordability based on income would be \$217,404 (81%) to \$268,400 (100%).~~
- ~~3. To determine affordability gap take the difference between County median home price and median housing affordability at 81% and 100%.
~~— \$378,000 – \$217,404 = \$160,596 (81%)
— \$378,000 – \$268,400 = \$109,600 (100%)~~~~
- ~~4. To determine average cost to subsidize the median income range, the affordability gap for 81% and 100% would be added together and divided by 2:
~~— \$160,596 (81%) + \$109,600 = \$270,196 ÷ 2 = \$135,098
— \$135,098 divided by 5 units (standard project used to determine fees) = \$27,019.60 per lot/inclusionary unit~~~~

Example Calculation of Fractional In-Lieu Housing Fee:

All projects subject to the Inclusionary Housing Policy and payment for an in lieu fee for any fractional difference will follow this guideline. If the number of required affordable units required from a plan is fractional number, (rounded to the nearest tenth) the developer may either round up the required number of affordable units or make an in lieu payment just for the fractional unit. For example if the project includes 39 total units the total affordable project units are 5.85. The project is expected to provide 2 moderate income units, 2 low income units, and 1 very income unit. The payment of the fractional unit is round to the nearest tenth, so .9. The development can decide to provide 6 affordable units or pay the fraction of .9.

In-Lieu Fee Calculation:

The Director of Resource Management Agency or his/her designee shall calculate the In-Lieu Fees on an annual basis based on.... The Board of Supervisors shall then adopt the fees annually as part of the Master Fee Schedule.

C. Calculation and Payment of In-Lieu Fee (Timing)

Payments of in lieu fees shall be made in full prior to the issuance of a certificate of occupancy and final inspection, unless an affordable housing agreement otherwise provides. Except as otherwise provided in the affordable housing agreement for the residential development, building permits for corresponding market rate units will not be issued until building permits have been issued for off-site units, and final inspections for occupancy will not occur for corresponding market rate units until final inspections for occupancy have occurred for off-site units.

D. Use of In-Lieu Fees

Comment [JS1]:

The In-Lieu Fees shall be used in accordance with the adopted San Benito County Affordable Housing Ordinance Ch.21.03.012. The Affordable Housing Policy instructs the Housing Advisory Committee, which is comprised of two Board of Supervisors, two Planning Commission, and ~~one~~ three members appointed by the Chair of the ~~the Board from the affordable housing development community~~-Board. Of the three community members there is preference for one members from the affordable housing development community, one from the development community and one member with a financial or accounting background. Inclusionary In-Lieu Fees shall be dedicated to the development of affordable housing projects and support of the housing programs within the County. Please refer to the Affordable Housing Ordinance Ch. 21.03.012 for specifics.

II. Marketing and Selection Procedures

The Resource Management Agency & Housing Programs Coordinator shall have overall responsibility for the marketing of inclusionary units and the selection of households to occupy those ~~units unless an affordable housing agreement indicates otherwise.~~ There may be instances where it is appropriate to delegate some of those responsibilities to the development and/or real estate community. This section of the Manual discusses the overall marketing and selection procedures.

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I. MARKETING RESPONSIBILITIES

A. Resource Management Agency & Housing Coordinator

Staff at the San Benito County Resource Management Agency shall be responsible for the general marketing of the Inclusionary Housing Program. This would include providing the following types of information:

- Developer fact sheets
- Homeowner fact sheets
- Tenant fact sheets
- Public Notices in newspaper, social service agencies, libraries, etc. regarding eligibility for occupancy and waiting list procedures
- Presentations at community events or organizations
- Other marketing materials as appropriate

Marketing materials should be available in both English and Spanish, as well as in formats accessible to the visually handicapped (e.g. large print format or Braille).

B. Property Owner/Developer

As part of the Master Inclusionary Developer Agreement, the owner/developer may be required to submit a Management and Marketing plan for the County's approval. The Management and Marketing Plan shall contain at least the following elements:

For rental development

- Marketing and Tenant Selection Plan, including marketing procedures, efforts to market to special needs groups, selection process and bi-lingual procedures
- Description of property management team
- Copies of rental agreements/leases
- Procedures for complying with fair housing laws
- Selection Procedures for Tenants (including priority for households who live/work within San Benito County)
- Initial rents and utility allowances (provided by staff)
- Agreement to maintain adequate property insurance
- Preferences may be given to employees in employer sponsored developments

For homeowner developments

Description of how the developer will coordinate occupancy of units with inclusionary homeowner selection procedures. (See Section 2 for description of these procedures.)

2. SELECTION OF INCLUSIONARY OCCUPANTS

A. Rental Units

The owner/developer management agency shall be responsible for selecting tenants upon initial occupancy and subsequent vacancies. The selection procedure shall follow the marketing and selection plan submitted by the developer and approved by San Benito County Resource Management Agency or designee, if determined to be required for the project (including any revisions required by the County as a condition of project approval), and updated as needed.

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B. Homeowner Units

The owner/developer shall follow the procedures as listed below.

1. Countywide Eligibility List (Inclusionary Homeowners)

The San Benito County Resource Management Agency shall be responsible for establishing and maintaining a countywide waiting list for occupancy of homeowner inclusionary units. To create the list, the San Benito County Resource Management Agency shall publish notices in newspapers circulated in the San Benito County area (in both English and Spanish), provide public notices at community gathering areas (e.g. social service agencies, libraries, etc.), and distribute information to the real estate community. Information should include:

1. Homeowner Fact Sheet (See Example in Appendix A)
2. Priorities for Eligible Applicants,
3. Income Requirements,
4. When the Application Period Opens/Closes (if applicable), Application Packet, and
5. Telephone/Contact for Questions

From the applications submitted, the San Benito County Resource Management Agency shall create a list of potential applicants. The applicants shall then be ranked by priority on the waiting list. Priority shall be given to households with members who are either:

- Residents of the San Benito County for a period of at least one year prior to application submittal; or
- Persons who have worked within the San Benito County for at least 6 months prior to application submittal.

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2. Initial Establishment of List

In order to initially establish an Eligibility Waiting List, the County shall first identify all those applicants who meet the live/work priority noted above. Through a random selection or lottery procedure, those applicants will be ranked on the waiting list. After all of the priority applicants have been ranked, the non-priority applicants shall then be ranked on the waiting list, again through a lottery procedure. The Eligibility Waiting List will thereafter contain two sets of applicants: those who meet the priority qualification and those who do not.

Following the initial establishment of the list, new applicants shall be added to the bottom of each portion of the list (either priority or non-priority) as their applications are received and according to whether they meet the priority qualifications. All applicants must ultimately be income-qualified to be eligible for an inclusionary unit.

3. Selection from Eligibility Waiting List

Each time inclusionary homeowner units become available for occupancy, the owner/developer and the Resource Management Agency Housing staff shall follow these procedures:

1. At least ~~120~~60 days prior to issuance of a Certificate of Occupancy for newly developed units, the owner/developer shall notify the County of the number and type of units available (i.e. bedroom size).
2. Within 10 business days of notice by the owner/developer, the San Benito County Resource Management Agency shall cause to be pre-qualified the top five applicants on the list. Pre-qualify means that the information submitted by the applicant regarding income, residency, place of employment and any other relevant information has been verified and found to meet current requirements. Verification shall be conducted by either the Resource Management Agency staff or a designee agency (i.e. Housing Authority of Santa Cruz County).
3. The San Benito County Resource Management Agency shall provide the developer/owner with a Referral List of at least five pre-qualified applicants.
4. Owner/developer shall directly contact and work with the persons on the Referral List provided in the order provided.
5. Owner/developer shall conduct all additional screening and selection of applicants from the Referral List. All applicable Fair Housing Laws must be observed.
6. Selected applicants will be responsible for securing their own financing for the proposed inclusionary unit. Within 6 weeks of being selected, applicants will be required to submit documentation that they have qualified for their permanent mortgage financing. If they have not obtained financing commitments within that time frame, the developer/owner has the option of rejecting them and working with the next applicant(s) from the Referral List until all persons on the Referral List have been provided with an opportunity to buy a unit. Owners who are not able to fill vacant units from the Referral List may request additional names from the Eligibility Waiting List.
7. If candidates on the Referral List do not become occupants of the inclusionary units, they will be returned to the Eligibility Waiting List with the same ranking as before (except as provided below in Section II.2.B.5., Removal from Eligibility Waiting List).

Comment [JS2]: Is 60 days adequate time?

4. Procedures for Resale of Existing Homeowner Inclusionary Units

In the event that an existing inclusionary homeowner decides to sell a home during the affordability period, the owner will give the County written notice of such intent pursuant to the procedures as described in the owner's original Buyer's Occupancy and Resale Restriction Agreement. ~~Upon receipt of the applicable service fee for obtaining a Re-Sale Value as set forth in Section VI. 4, the San Benito County Resource Management Agency staff shall provide the homeowner with the maximum sale price figure for the unit (see Section III for a further description of the calculation process for maximum sale prices).~~ If an inclusionary homeowner decides to sell their unit during the affordability period in effect according to the terms of their Buyers Agreement, the unit shall be sold to another qualified inclusionary buyer according to the procedures outlined in this manual, including the payment of applicable service fees. However, the new Buyers Agreement shall specify a new affordability period as defined in the Inclusionary Housing Ordinance in effect at the time the unit is sold.

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Should the County not exercise its option to purchase the property, the County will announce the sale to all households on the County's Inclusionary Lottery List. The announcement shall include the following:

1. Address of the unit for sale;
2. Sale price and income level (Moderate, low, very low);
3. Description of the unit (i.e., 2-bedroom/2-bath, single story);
4. Directions to the unit;
5. Seller's contact information;
6. Procedures for prospective buyers to follow:
 - i. Drive by unit to determine interest. Do not disturb the occupants;
 - ii. If interested, obtain a loan pre-qualification letter from a lender;
 - iii. Make an appointment with owner to see the unit;
 - iv. If interested in purchasing the unit,
 - i. Present pre-qualification letter to seller
 - ii. Contact the Resource Management Agency to receive a copy of the list of financial information/ documentation required for qualification for the Inclusionary Program
 - iii. Request a draft of the current Inclusionary housing agreement for review.
 - v. If not interested, let the owners know as soon as possible.

In the case of several interested buyers, one buyer and one back-up buyer will be selected in order of rank based on assigned Lottery numbers.

If there are no interested buyers from the Inclusionary Lottery List, announcement letters shall be mailed to households listed on secondary lists (those households that missed the lottery process; recent Inclusionary applicants, etc.).

The homeowners/sellers shall track all responses received (yes, no and/or phone inquiries) and forward this information to the Resource Management Agency and Housing. It is the homeowner/seller's responsibility to schedule an adequate number of showings or open houses to enable buyers to view the premises and to follow-up with interested buyers to determine their interest in the unit.

Comment [JS3]: A realtor in this process?

5. Removal from Eligibility Waiting List

Applicants will be removed from the Eligibility Waiting List for any of the following reasons:

1. Fraudulent statements on Application or verification documents;
2. Purchase of a home or other property; or
3. Inability to qualify for financing to purchase a unit after two referrals to an Owner/Developer.

6. Appeal Process

The decisions by the San Benito County Resource Management Agency in establishing the Eligibility Waiting List and/or maintaining the list may be appealed. All appeals must be in writing and must be received within 10 days after the Resource Management Agency and Housing Office has notified applicants of their standing on the List. An informal hearing on the appeal shall be conducted

by the Housing Advisory Committee (HAC) with the Resource Management Agency Director (or designee) responsible for the final decision, based on the HAC's recommendation. The results of the appeal decision shall be communicated to the appellant in writing within 10 days of the hearing.

7. Purging of Eligibility List

The Eligibility Waiting List shall be purged approximately every two years or as needed. A new list shall be developed based on the procedures described above.

8. Options to Marketing/Selection Plan Submitted by Owner/Developer

There may be situations where a developer has a specific target population for occupancy of the inclusionary housing units. For example, a developer of employee housing may request that potential occupants be employees of the employer/developer. The San Benito County Resource Management Agency will review such alternate marketing/selection plans and, if appropriate, will approve such plans in lieu of some or all of the procedures described above.

III. Homeowner Inclusionary Unit Requirements

1. ELIGIBILITY CRITERIA

A. Income

Households eligible for purchase of inclusionary units shall be of very low, low and moderate income. Household income limits are determined annually by HCD/HUD and are based on household size. See Appendix E of this Manual for the current income limits for very low, low and moderate-income households. The definition of income is listed in Appendix D of this Manual.

B. Assets

There is a maximum asset test for purchasers of inclusionary units. See Appendix D of this document for a description of maximum assets and definitions of assets.

C. Live/Work in San Benito County

Household members who live or work in San Benito County shall have priority in the purchase of inclusionary units. See Section II.2 above (Selection of inclusionary Occupants) of this Manual for further information about the priority process.

2. ESTABLISHMENT OF INITIAL SALE AND RESALE PRICES

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A. INITIAL SALE PRICE

The San Benito County Resource Management Agency staff shall provide the developer/owner with the initial sale price for an inclusionary unit. The sale price shall be developed using the following criteria:

Indicated definition of family size for initial sales price health and safety code 50052.5(h)

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For Inclusionary units to be occupied by a Very Low Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify very low median income (usually 50% of median) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
 - i. Multiply 30% of 50% of median income for appropriate household size
 - a. Household of 4: $30\% * \$40,550 = \$12,165$
 - ii. Divide amount by 12 for maximum monthly allowance
 - a. $\$12,165/12 = \$1,013$

4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment
 - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

For Inclusionary units to be occupied by a Low Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify 70% of median income for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
 - i. Multiply 30% of 70% of median income for appropriate household size
 - a. Household of 4: $30\% * \$56,770 = \$17,031$
 - ii. Divide amount by 12 for maximum monthly allowance
 - a. $\$17,031/12 = \$1,419$
7. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment
 - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

For Inclusionary units to be occupied by a Moderate Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify 110% of median income for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
 - i. Multiply 35% of 110% of median income for appropriate household size
 - a. Household of 4: $35\% * \$89,210 = \$31,223$
 - ii. Divide amount by 12 for maximum monthly allowance
 - a. $\$31,223/12 = \$2,601$
4. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment

- iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land)

B. Maximum Restricted Resale Value/Price for Inclusionary Units

Inclusionary homeowners may refinance or decide to sell their unit, terms and conditions consistent with this Manual, as set forth below and in the Resale Restriction Agreement recorded on the property. The Inclusionary homeowner must make their request in writing by certified mail to the Resource Management Agency. The San Benito County Resource Management Agency staff shall determine the appropriate resale or refinance value/price by using the following formula and use Appendix H San Benito County Affordable Housing Worksheet for Resale Price:

Resale Value/Price Without a Bedroom Addition:

1. Property Owner notifies County that they wish to sell, refinance or add a second deed of trust to their property.
2. Staff calculates new resale/refinancing value by:
 - a. Use original sale price as base figure,
 - b. Calculate percentage change in median income from original sale date to current date or most recent household income figures,
 - c. Apply the percentage change figure for median income to original sale price, which is the maximum resale value/price with the following modifications,
 - d. ~~If unit is in decent condition based upon acceptable documentation, apply home improvement credit in the amount of 10% to original sale price,~~
 - e. ~~If unit is not in decent condition based upon acceptable documentation, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,~~
 - f. Add the additional home improvement credit amount (from steps “d” or “e”) to the maximum resale value derived in step c. This is the new resale value/price as modified by home improvement credits.
3. ~~Check new resale value/price to ensure that loan to value (including existing and proposed new loans) does not exceed 90% of resale value/price. Also check if new resale value/price derived from steps a-f above exceeds maximum affordability standard. If so, reduce the resale value/price to a value/price that does not exceed the maximum affordability standard.~~
4. ~~Staff notifies property owner and lender (if appropriate) of new resale/refinancing value and, if applicable, amount of new encumbrance allowed (for refinancing with allowed cash out).~~
5. ~~The Housing Programs Coordinator will receive the appraisal and loan documents from Loan Agency~~
6. ~~Staff will verify whether cash is taken out from Estimated Closing Statement from Lender/Title Company. If cash out must follow the Subordination Requirements, which are listed in Appendix J.~~
 - a. ~~Homeowner must have valid reason(s) for the cash out provision such as maintaining the health and safety of the home and/ or repair to the home.~~
 - b. ~~See Appendix JJ regarding subordination agreement and policies~~

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7. Resource Management Agency and Housing Programs Coordinator or designee shall execute agreement to subordinate County's interest, if eligible.
8. Upon receiving signed amendment from property owner, staff arranges to have appropriate County representative sign amendment and then records amendment.
9. Staff files recorded agreement in property owner's file and ensures that the file reflects new refinancing information. Staff obtains final closing statement at close of escrow. Staff also records request for notice of default.

Resale Value/Price With a Bedroom Addition:

Use Appendix H San Benito County Affordable Housing Worksheet for Resale Price

1. Property Owner notifies County that they wish to sell, refinance or add a second deed of trust to their property.
2. Staff calculates new resale/refinancing value by:
 - a. Use original sale price as base figure
 - b. Calculate percentage change in median income from original sale date to current date or most recent household income figures
 - c. Apply the percentage change figure for median income to original sale price, which is the tentative maximum resale value/price with the following modifications.
 - d. ~~If unit is in decent condition based upon acceptable documentation and/or a unit inspection by Resource Management Agency and Housing Staff, apply a home improvement credit in the amount of 10% to original Sale price~~
 - e. ~~If unit is not in decent condition based upon acceptable documentation and/or unit inspection by Resource Management Agency and Housing Staff, the 10% credit shall be reduced in an amount sufficient to correct deficiencies~~
3. Calculate value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an existing 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the median income for a 5-person household as compared to the median income for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio. An example of this calculation is included in Appendix F. The value of the bedroom is not determined by the actual costs of the addition/improvement.
4. Add the additional home improvement credit amount (from step 2) and the bedroom credit (step 3) to the adjusted resale value derived in step 3.
5. Check the new resale value/price to ensure the unit would still affordable (maximum affordability standard) to a household size appropriate for that unit and the loan to resale value (LTV) DOES NOT EXCEED 90% OF THE NEW RESALE VALUE. If resale price derived from steps 1-6 exceeds maximum affordability standard, reduce the resale price to a price that does not exceed the maximum affordability standard.
6. Property Owner notifies County that they wish to refinance or add a second deed of trust to their property and are planning on a bedroom addition.
7. Staff calculates new resale value and amount of new encumbrance allowed by:
 - a. Use original sale price as base figure,
 - b. Calculate percentage change in median income from original sale date to current date or most recent household income figures,

- c. Apply the percentage change figure for median income to original sale price, which is the maximum resale value/price with the following modifications,
 - d. ~~If unit is in decent condition based upon acceptable documentation, apply home improvement credit in the amount of 10% to original sale price,~~
 - e. ~~If unit is not in decent condition based upon acceptable documentation, the 10% credit shall be reduced in an amount sufficient to correct deficiencies,~~
 - f. Add the additional home improvement credit amount (from steps “d” or “e”) to the maximum resale value derived in step c. This is the new resale value/price as modified by home improvement credits.
3. Calculate value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an existing 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the median income for a 5-person household as compared to the median income for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio and the inclusionary underwriting standards.
4. Add the value of the bedroom credit (step 3) to the maximum resale value derived in step 2 (f).
5. Check new resale value/price from step 4 to ensure that loan to value (including existing and proposed new loans) does not exceed 90% of new resale value/price as derived in step 4. Also check if new resale value/price derived from step 4 exceeds maximum affordability standard. If so, reduce the resale value/price to a price that does not exceed the maximum affordability standard.
6. Staff notifies property owner and lender (if appropriate) of new resale value and amount of new encumbrance allowed (including bedroom addition allowance as calculated in step 2 (e) above).
7. If needed, Resource Management Agency or designee shall execute agreement to subordinate County’s interest to the first or second loan holder. The agreement shall include provisions for notice of default and cure rights for the County.
8. If owner wants to take cash out from the refinancing, staff prepares amendment to existing Resale Restriction Agreement, which will allow property owner to refinance existing debt or add additional second deed of trust. Staff sends amendment to property owner for their signature. Staff will verify whether cash is taken out from Estimated Closing Statement from Lender/Title Company. If no cash out, no amendment is required.
9. Upon receiving signed amendment from property owner, staff arranges to have appropriate County representative sign amendment and then records amendment.
10. Staff files recorded agreement in property owner’s file and ensures that the file reflects new refinancing/second deed of trust information.
11. Staff verifies that property owner has the appropriate building permit for the new bedroom addition.
12. Staff instructs or other appropriate body to open escrow account for bedroom addition amount with joint signatures for releasing funds required of both property owner and County. If bedroom

addition is not completed within a reasonable timeframe, staff will instruct that the funds in escrow be paid back to the lender.

13. Upon notice from property owner, staff inspects property and approves release of funds for bedroom addition as appropriate during the construction process. Staff obtains final closing statement at close of escrow. Staff records request for notice of default.

Bedroom Addition Calculation

Calculate the value of bedroom addition by calculating the change in household size estimate. For example, a bedroom addition to an original 3-bedroom structure (4 person household size estimate) would result in a 4-bedroom unit and a 5-person household size estimate. The value of the bedroom addition depends on the dollar difference between the Area Median Income (AMI) for a 5-person household as compared to the AMI for a 4-person household. Using this dollar amount, estimate the amount of new loan that can be financed with this dollar amount using a 30% for low/very low income and 35% for moderate income housing cost to income ratio and the County’s typical underwriting standards.

C. Determination of Maximum Affordability Standards

For Inclusionary For Sale Units to be Occupied by a Very Low Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify very low-income limit (usually 50% of median income) for the appropriate household size (use current income limits as specified in Appendix E).
3. Determine monthly household allowance for housing payment:
4. Multiply 30% of 50% of median income for appropriate household size
5. Divide amount by 12 for monthly allowance
6. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment
 - iv. Estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

For Inclusionary For Sale Units to be Occupied by a Low Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify lower income limit (usually 780% of median income) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
4. Multiply 30% of 780% of median income for appropriate household size
5. Divide amount by 12 for monthly allowance

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6. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment
 - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

For Inclusionary For Sale Units to be Occupied by a Moderate Income Household:

1. Determine appropriate household size (number of bedrooms in unit + one person = appropriate household size)
2. Identify moderate income limit (usually 11-20% of median income) for the appropriate household size (use current income limits as specified in Appendix E)
3. Determine monthly household allowance for housing payment:
4. Multiply 35% of 11-20% of median income for appropriate household size.
5. Divide amount by 12 for monthly allowance
6. Determine the maximum sale price that the monthly household allowance for housing payment can support using the following parameters:
 - i. 6% fixed interest rate mortgage
 - ii. 30 year mortgage term
 - iii. 5% down payment
 - iv. estimates of property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

3. HOMEOWNER INCLUSIONARY UNIT REQUIREMENTS

A. Occupancy Requirements

The inclusionary unit shall be the owner’s principal place of residence. To be considered as a principal place of residency, the owner shall live in the unit for at least 10 months out of each calendar year. In emergency or hardship situations, the inclusionary owner can seek approval to rent or lease the inclusionary unit for a short period of time (generally a maximum of one year). All rentals or leases must be pre-approved by the County. The owner must submit a letter to the San Benito County Resource Management Agency Staff requesting permission to rent their unit, the reason for the request with appropriate documentation and length of time requested. The San Benito County Resource Management Agency Staff is authorized to review the request, receive a recommendation from the Housing Advisory Committee, and approve or deny the request based on the following:

- There are unique circumstances that justify allowing the owner to be relieved of their obligations to reside in the unit on a temporary basis, such as a necessary temporary move out of the area, the need to provide physical care for a relative, or significant financial hardship where the owner cannot pay the mortgage due to a temporary job loss, divorce, etc.

- The owner agrees that the rental will be on a short term basis and that, if the circumstances continue beyond the agreed upon time frame, the owner will sell the unit to another qualified household pursuant to the Inclusionary Agreement recorded on their property.

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The unit shall be rented to a qualified tenant household at the same affordability level as specified in the owner's Inclusionary Housing Agreement and at an "affordable rental cost". The inclusionary owner may select an income-qualified tenant. An "affordable rental cost" is defined as rent plus a utility allowance. Affordable rental costs shall not exceed 30% of 50% of the Area Median Income (AMI), adjusted by number of bedrooms in the actual unit for very low-income households; 30% of 760% of the AMI, adjusted by the number of bedrooms for low-income households; and 30% of 110% of the AMI for moderate-income households, adjusted by the number of bedrooms. The tenant shall also be income qualified as either a very low-, low-, or moderate-income household. Incomes must not exceed 50% AMI for very low income; 80% for low income; and 120% for moderate income, all adjusted for the actual household size of the qualifying tenant.

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If the request is approved, the owner will be required to execute an Inclusionary Housing Rental Agreement with the County that sets forth the terms of the short term rental, including paying applicable service fees for income qualifying the selected tenant, as described in Section VI.4.

B. Affordability Periods

According to the Affordable Housing Ordinance with the County, the inclusionary owner agrees that the resale value of the home is restricted for a period of 30 years from the original purchase date. If the home is sold or transferred prior to the end of the affordability period the new homeowner is subject to the resale restriction for 30 years. All rental units will a restricted affordability period for a minimum off 55 years.

C. Recordation

When an inclusionary unit is sold or transferred San Benito County will record the following items: Resale Restriction and Option to Purchase, Request for Notice of Default, Deed of Trust naming County of San Benito as beneficiary. The items are recorded to ensure San Benito County is notified of any changes and if the home is sold/transferred.

For a rental unit...

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D. Maintenance and Insurance

~~The inclusionary unit owner must maintain the home, including landscaping, in decent condition. At the time of resale/refinancing, the owner can receive up to a 10% addition to the original sale price if the unit has been maintained in decent condition. The owner shall maintain a standard all risk property insurance policy equal to the replacement value of the home, naming the County as additional insured.~~

~~The otherwise allowable maximum resale price may be increased by a maximum of ten percent (10%) of the initial sale price of the unit as an allowance for improvements made by the selling owners during their ownership. This allowance shall not be increased or decreased based on the value of improvements actually made to a particular home, provided that the allowance shall be reduced to the extent the unit has been adversely affected in value by owner caused damage or deficient maintenance. To facilitate a determination by the director concerning maintenance prior to sale, the seller shall comply with any applicable requirements in the administrative manual.~~

E. Refinancing of First Mortgage/Securing a Second Mortgage

The inclusionary owner may refinance a first mortgage or secure a second mortgage on the property. The County’s lien position shall never be less than third (3rd) position on the property. The owner must contact the Resource Management Agency & Housing Staff prior to refinancing or securing new debt in order to determine a current property value (resale value). The staff procedures for responding to refinancing/resale request are specified in Appendix F of this document.

The inclusionary owner may refinance a first mortgage. If the county provided housing assistance the County’s lien position shall never be less than third (3rd) position on the property. The owner must contact the Resource Management Agency & Housing Staff prior to refinancing to determine a current property value (resale value). The loan to value of the refinance/loan cannot exceed 90% and the homeowner cannot take cash out. The staff procedures for responding to refinancing/resale request are specified in Appendix F of this document

F. Title Changes and Property Inheritance

In certain instances, the inclusionary owner may modify the title on the property. One example is adding or deleting a spouse from title due to marriage, divorce or death. However, in all cases, the owner must contact the Resource Management Agency & Housing Staff prior to the transfer. If the owner dies and there is no surviving owner and a child or stepchild of the owner inherits the property, the child/stepchild shall provide the Resource Management Agency & Housing Staff with information regarding income. If verified as income and asset eligible, he or she shall succeed to the Owner’s interest and obligations under the original agreement. If the child or stepchild inheriting the property is not income eligible or has assets that exceed the maximum allowed or decides to sell the property, it must be sold to another eligible inclusionary applicant for the appropriate restricted resale price. However, the inheriting owner may own and occupy the unit until 12 months after the owner’s death before offering the unit for sale and providing an Owner’s Notice of Intent to Sell.

An inclusionary owner may place his/her unit in a trust, but only if the trust is a revocable living trust where the owner is the trustor. The disposition of the inclusionary unit through such a trust is subject to the same terms and conditions as stated above, including restrictions on the resale of the inclusionary unit.

A notice may be recorded indicating change of title to inheriting child/stepchild, pursuant to these provisions

G. Default and Foreclosure

If an owner violates the terms of the original “Buyers Occupancy and Resale Restrictions” agreement, the owner can be found to be in default of the agreement.

IV. Rental Inclusionary Unit Requirements

1. ELIGIBILITY CRITERIA

A. Income

Households eligible for rental of inclusionary units shall be of very low, low or moderate income. Household income limits are determined annually by HCD/HUD and are based on household size. See Appendix E of this document for the current income limits for very low, low and moderate-income households. The definition of income is listed in Appendix D of this document.

Management Agency or its designee will initially verify the household income of tenants of inclusionary rental units. Subsequent annual certifications of income of renters shall be submitted by the owner/manager of the rental units to and verified by the County as part of the Annual Monitoring Process.

B. Assets

There is a maximum asset test for initial renter eligibility of inclusionary units. The County or its designee will verify the assets. See Appendix D of this document for a description of maximum assets and definitions of assets.

C. Live/Work in San Benito County

Households who live or work in San Benito County shall have priority in the rental of inclusionary units. In selection of tenants, property owners and/or managers shall give reasonable preference to households who live or work in San Benito County.

2. RENT SCHEDULES

A. Initial Rents

The Resource Management Agency or its designee shall determine maximum initial rents. The owner/developer shall be subject to payment of applicable service fees for qualifying tenants as described in

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B. Annual Rent Changes

The Resource Management Agency and Housing Office shall notify property owners and/or property management companies of changes in the affordable rental housing cost annually upon receipt of revised income limits from HCD/HUD. At no time shall the new affordable rental housing cost be adjusted to less than the initial rent at the time the Master Inclusionary Developer Agreement was executed. Section VI.4. The inclusionary units shall be rented at affordable housing costs as specified in the Inclusionary Housing Agreement recorded on the project. An affordable rental housing cost is defined as rent plus a utility allowance as developed by the local Housing Authority. Affordable housing costs shall not exceed 30% of very low-income limits (usually 50% of median income, adjusted by bedroom size) for very low-income households, 30% of ~~60%~~ of median income (adjusted by bedroom size) for low-income households and 30% of 110% of median income for moderate-income households (adjusted by bedroom size).

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3. RENTAL INCLUSIONARY UNIT REQUIREMENTS

A. Household Size & Occupancy

Upon initial occupancy, eligible households must have a household size appropriate for the rental unit. An appropriate household size is defined as a maximum of two persons per bedroom plus one person per unit and a minimum of one person per bedroom.

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Comment [JS5]: Is this accurate? Is this what we want or number of bedrooms +1

B. Lease Requirements

Except as may be provided in an agreement that allows the rental of a For Sale unit under hardship conditions, as described in Section III.3.A. above, all tenants must be provided with a lease that has a minimum period of 12 months. The lease must comply with all applicable federal and state laws. The lease shall include provisions that specify the maximum household size allowed in the unit and requirements that the unit be maintained in a decent and safe condition. Further, the lease must

include requirements that prohibit subleasing, require the tenant to report any changes in household size or income during their tenancy, and further specify that the tenant must comply with all monitoring requests of the Resource Management Agency or its designee.

C. Changes in Household Size or Income During Tenancy

If the tenant's household income increases above the maximum allowed for very low, low or moderate-income households, the tenant may choose to remain in the inclusionary unit. However, the tenant would have a revised affordable rental housing cost based on their new income category. For example, a very low-income tenant whose income increases and is now a low-income tenant would have a new maximum affordable rental cost based on affordable rents for a low-income unit. A low-income tenant whose income increases such that the household is now a moderate-income tenant would have a new maximum rental cost based on a moderate-income unit. A previous very low, low or moderate income tenant whose income increases above the maximum moderate income limit would have a rental cost that would be the lesser of: a) thirty percent (30%) of the actual household income of the tenant; or b) market rate rent. ~~The property owners/managers must, to the extent possible, maintain the number of units at each income level required by the Inclusionary Housing Agreement recorded on the project.~~ These provisions shall be enforced through Inclusionary Rental Housing Agreements recorded on each project.

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At time of monitoring if income increases above...review annually?

V. MONITORING AND COMPLIANCE PROCEDURES

1. PROJECT MONITORING AND COMPLIANCE

A. Monitoring Procedures: Rental Properties

General Policies:

Rental projects developed under the Inclusionary Program are monitored every two years to determine compliance with the terms of the Regulatory Agreement recorded against the property. The areas to be included in the monitoring process include tenant incomes and rents, payment of property taxes and hazard insurance and review of the terms of the leases.

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An annual certification of ownership is required. The rent schedule for the Inclusionary Program will be provided to the owner with the certification request.

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Procedures:

1. A Monitoring Review Form is initiated for each project. The terms of the Inclusionary Agreement are verified and the rent and occupancy limits are noted on the form.
2. Initial letters are mailed to property owners requesting completion of certifications regarding non-discrimination policies, names and incomes of tenants and the household size, rents charged, and ownership status. Copies of Income Guidelines and Rent Schedules appropriate for the development will be included in the mailing. The owner is instructed to give the tenants a form entitled Tenant Income Verification for completion. These forms are to be returned along with documentation of hazard insurance and copies of current leases.
3. Second Notices are sent by certified mail if the property owner does not respond within fourteen business days.
4. Correspondence will be sent by the sheriff's office, process server, delivery service or hand delivered to the address by a staff member if the property owner fails to respond in a timely

manner to the second notice or if mail has been refused or returned as undeliverable. Owners who fail to respond within seven business days will be referred to County Counsel for further action.

5. Assessor's Office records will be reviewed to verify current ownership and mailing addresses where appropriate.
6. Failure to cooperate with the monitoring review process will be considered a breach of the Inclusionary Agreement and the Regulatory Agreement. County Counsel will be notified of any such breach in order that legal remedies may be initiated.
7. The income guidelines of the Section 8 Program are utilized by Resource Management Agency and Housing Office staff for the monitoring review.
8. Staff will review information provided by the owner and tenants to determine compliance with the Inclusionary Agreement and Regulatory Agreement as it pertains to allowable rents, number of restricted units, current income of tenants and any further restrictions on occupancy specified in the Agreement.
9. The review of rent affordability will include the standards set forth in the Inclusionary Agreement for each individual project.
10. Leases are reviewed to determine if non-discrimination policies and prohibitions against subletting are included.
11. If there are discrepancies between the statements of the owner and tenant, additional documentation will be requested.
12. Payment of hazard insurance in an amount sufficient to replace the structures shall be verified.
13. A letter will be issued to the property owner addressing any compliance issues. The letter will specify a corrective action deadline. In general, a 30-day period will be adequate.
14. When a property has changed ownership without notice to the County and this information becomes known at the time of the monitoring review, staff will schedule an appointment with the new owner to discuss the provisions of the Inclusionary Agreement. Current Rent Schedules and Income Guidelines will be provided.
15. The Monitoring Review Form will be completed. The Inclusionary Housing database will be updated to reflect compliance or non-compliance.
16. Other County offices may be alerted when the monitoring review reveals code violation or dangerous situations.
17. Every effort will be made to provide owners and tenants with the appropriate information to ensure a successful monitoring resulting in full compliance with the Inclusionary Housing Program.

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However, referrals will be made to County Counsel because of failure to cooperate or non-compliance.

B. Monitoring Procedures: For Sale Units

General Policies:

It is the policy of the County of San Benito to annually monitor compliance with the terms and conditions of the Inclusionary Housing Agreement recorded against for-sale units developed under the Inclusionary Housing Program.

Annual Monitoring will include the owner occupancy requirement and prohibitions against rental of the dwelling. The review will provide owners with an opportunity to become familiar with the guidelines of the Inclusionary Housing Program and any changes in adopted policies and procedures.

Monitoring Procedures:

1. Initial letters are mailed to property owners requesting completion of a certification of owner-occupancy and documentation in the form of a utility bill (with the name and address shown), mortgage statement, home insurance, and property tax payment.
2. Second notices are sent by certified mail if the property owner does not respond within fourteen business days.
3. Correspondence may be sent by the sheriff's office, process server, delivery service or hand delivered by staff when the owner fails to respond to the second notice.
4. Assessor's Office records will be reviewed to verify current homeowner's exemption, possible change in ownership and mailing addresses where appropriate.
5. If a property has changed ownership without notice to the County and this information becomes known at the time of the monitoring review, staff will schedule an appointment with the new owner to discuss the provisions of the Inclusionary Housing Agreement. Areas of concern will include review of the buyers' ability to meet standard program eligibility requirements, purchase price and continued participation in the program. County Counsel will be notified of any non-compliance issues in order that appropriate legal remedies can be implemented.
6. Where the review raises compliance concerns, the owner will receive written notice of the compliance issue. In general, a 30-day corrective action period will be given.
7. Other County offices may be alerted when the monitoring review reveals code violates or dangerous situations
8. Every effort will be made to provide owners with the information needed to complete the monitoring review and maintain compliance with the Inclusionary Housing Agreement. However, referrals will be made to County Counsel when appropriate because of non-compliance. Legal remedies specified in the Agreement or otherwise allowed under County Code or State and Federal law will be implemented

2. PROGRAM MONITORING

A. Annual Housing Report

As part of the Annual Housing Report prepared each year by the Resource Management Agency and Housing Office, there will be a brief summary of the accomplishments and challenges of the Inclusionary Housing Program for the previous year.

B. Five Year Report

At least every five years, the Resource Management Agency and Housing will prepare a complete evaluation of the Inclusionary Housing Program. This evaluation will include a summary of housing units produced, households assisted, In-Lieu Fees collected and the use of those fees, recommendations for policy or Ordinance revisions, etc. The public will be asked to comment on the report either prior to or during its preparation and the final report will be presented to all appropriate review bodies.

VI. Other

1. EXEMPTIONS TO ORDINANCE

~~There are exemptions from the Ordinance for developments such as farmworker housing, mobile home park developments and other specific development situations (Section 18.40.050).~~

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~~In addition, in situations where the party subject to a fully executed inclusionary housing agreement, or other document regulating or limiting the operation, price or rent of an inclusionary unit, believes that the document requires modification as a result of unusual circumstances which could not have been foreseen at the time the document was entered into, the affected party may apply to the County Board of Supervisors for modification of the document. (Section 18.40.100 D).~~

2. AFFORDABILITY PERIOD REQUIREMENTS FOR EXISTING INCLUSIONARY UNITS

~~Sale of an Existing inclusionary unit During Affordability Period~~

~~If an inclusionary homeowner decides to sell their unit during the affordability period in effect according to the terms of their Buyers Agreement, the unit shall be sold to another qualified inclusionary buyer according to the procedures outlined in this manual, including the payment of applicable service fees. However, the new Buyers Agreement shall specify a new affordability period as defined in the Inclusionary Housing Ordinance in effect at the time the unit is sold.~~

VII. Appendices

Appendix A. Homeowner Fact Sheet

On the following page is a sample fact sheet that explains the Inclusionary Housing Program for a prospective homeowner. This fact sheet should be provided to potential applicants when they inquire about the program. This fact sheet should be available in both English and Spanish

**INCLUSIONARY HOUSING PROGRAM
INFORMATION FOR POTENTIAL INCLUSIONARY HOMEOWNERS**

1. What is the Inclusionary Housing Program?

The County of San Benito requires that 15% of all newly constructed units must be affordable to very low, low and moderate-income households. Developers must agree to sell 15% of their units at an affordable price to a very low, low or moderate-income household.

2. What is an Affordable Price?

The County of San Benito calculates affordable sale prices annually. The calculation is based on median household incomes for San Benito County and the assumption that no more than 30-35% of an average household's income should be spent for housing costs.

3. How Can I Buy an Inclusionary Housing Unit?

The County maintains an eligibility list for prospective inclusionary homeowners. Generally, a household can qualify if it has a household income that is below the maximum limits for low or moderate-income. Priorities are given to households who have members that live or work in San Benito County. Contact the phone number listed on the bottom of this sheet for more information about household income limits or being placed on the eligibility list.

4. What are my Responsibilities if I Buy an Inclusionary Housing Unit?

In return for the opportunity to purchase a home at an affordable price, the County requires the following while you own the home:

- Maintain property insurance on the home;
- Keep your home (including landscaping) in decent condition;
- Live in the home as your primary residence (in an emergency situation, you can rent your home to another low/moderate income household BUT you must obtain the County's permission prior to renting it);
- When you sell your home, you must sell it for the price determined by the County. You also must sell it to another eligible inclusionary homeowner. The RESALE PRICE is restricted and determined by the County – **it is likely that the resale price will be less than other similar properties that are not inclusionary housing units**; and
- You must co-operate with any monitoring requests during the time you live in the home (such as verification that you are using the home as your primary residence or verification that you are maintaining your property insurance).

**FOR FURTHER INFORMATION:
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023
Phone: 831-673-5313
Fax: 831-637-5334**

Appendix B. Developer Fact Sheet

On the following page is a sample fact sheet that explains the Inclusionary Housing Program for a prospective developer of inclusionary housing units.

**INCLUSIONARY HOUSING PROGRAM
INFORMATION FOR POTENTIAL DEVELOPERS OF INCLUSIONARY UNITS**

1. What is the Inclusionary Housing Program?

San Benito County requires that 15% of all developments of 7 or more units must be affordable to very low, low and moderate-income households. Developments of 7 or more units are expected to construct Inclusionary housing units. Developments of 5-6 units can pay an In-Lieu Fee instead of constructing a unit.

2. How Many inclusionary Units Will I Have to Provide?

Depending on the size of the development you are proposing, you will be required to provide inclusionary units that are affordable to different household income levels. An Affordable Housing attachment will be part of the application process. Please contact the Resource Management Agency for more specific answers.

3. Who Determines the Sale Price (or Rent) for the Inclusionary units?

Staff at the San Benito County Resource Management Agency, will be able to provide you with affordable the sale price or rent for the inclusionary units. The sale price/rent is based on a formula using median household incomes for San Benito County.

4. Who Can Buy or Rent an Inclusionary Unit from Me?

Homeowner Units: The County maintains a list of prospective inclusionary homebuyers. When your inclusionary unit is ready to be sold, the County will provide you with the names of several prospective homebuyers. You must sell the unit to an eligible inclusionary household at the affordable sale price provided by the County.

Rental Units: You must rent the inclusionary rental unit to a household that is qualified by the County (or its designee) as being very low, lower or moderate income. You can select the tenant assuming you follow all fair housing laws and marketing/selection requirements specified by the County.

5. What Are My Responsibilities Once I Sell/Rent the Inclusionary Unit?

Homeowner Units: Once your unit is sold to an eligible inclusionary homeowner, you have no further responsibilities.

Rental Units: Rental units must continue to remain affordable and occupied by eligible households in perpetuity for a minimum of 55 years. Property owners must agree to these restrictions and must agree to cooperate with all monitoring requests by the County.

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**FOR FURTHER INFORMATION:
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023
Phone: 831-673-5313
Fax: 831-637-5334**

APPENDIX C. Developer Procedures

Inclusionary Housing Program Development Review Process

1. Planning receives an application for development of a residential project (i.e., subdivision or use permit).
2. If the project will result in new units, Planning sends an affordable housing implementation plan which is part of the application referral package to the Resource Management Agency Housing Programs Coordinator.
3. The Housing Programs Coordinator reviews the application to determine if the implementation plan meets the Inclusionary Housing requirements or if the project is exempt. ~~or if the project is exempt.~~
4. The Housing Programs Coordinator notifies the assigned planner of the requirements and requests additional information as necessary. If the project involves on-site compliance the applicant will likely be asked to submit additional information about the proposed inclusionary units (design and location) to ensure that the CEQA review includes enough detail.
5. The Housing Programs Coordinator prepares a draft memo to the Planner that provides an analysis of the Inclusionary requirements, recommendation pertaining to compliance, and draft findings and a condition of approval for inclusion in the project packet for consideration by the Approving Body.
6. The draft staff report prepared by the project planner for the project is reviewed by the Housing Programs Coordinator prior to the hearing to ensure that the conditions and draft findings of approval pertaining to Inclusionary Housing are acceptable.
7. The Approving Body is not required to approve but may consider a draft Inclusionary Housing Agreement as part of its approval of the project and can require that the approved Inclusionary Housing Agreement be recorded prior to the recordation of the Final Map or issuance of building permits.
8. The Inclusionary Housing Agreement and supporting documents are executed by the applicant and the Housing Programs Coordinator then recorded and/or Inclusionary In-Lieu Fees are paid or secured.
9. The Housing Programs Coordinator “clears” the Inclusionary Housing conditions of approval by sending a memo to the project planner along with supporting documents.

APPENDIX D. Income and Asset Definition

The following definitions shall be used in determining applicant eligibility for the County's Inclusionary Housing Program. To be eligible for the program, applicants must meet both the income and the asset limitations.

1. INCOME

Maximum Income Limitation

Households occupying inclusionary units shall have incomes that are very low, low and moderate-income, as specified by the contractual agreement for the residential development in which they are located. The definition of very low, low (lower) and moderate-income shall be the same as provided by HCD/HUD and the State of California annually for the San Benito County area. See Appendix E of this document for the current income limits.

2. DEFINITION OF INCOME

The definition of income shall be the same as the federal definition found in 24 CFR Part 5 (commonly known as the "Section 8" definition). As specified in 24 CFR Part 5, the income derived from any assets shall be included in the income calculation. *The only exception to this is when a homeowner applicant is using any of their assets to pay for down payment or closing costs to purchase the inclusionary unit. In that case, the potential "income" from those assets shall not be calculated.* The value of the asset itself, however, is still counted under the asset limitation test below.

3. ASSETS

Maximum Asset Limitation

Homeowners:

The maximum asset limitation is the total of the following for homeowner households:

1. 30% of the purchase price
2. 25% of current median income
3. 6 months of living expenses based on household size

Renters:

Upon initial occupancy, households who are applying for a rental inclusionary unit cannot have assets that exceed \$30,000 for non-elderly households and \$75,000 for elderly households.

Definition of Assets

Assets used to determine the maximum asset limitation allowed are defined in the following table. Any assets disposed of within 12 months prior to applying for an inclusionary unit shall also be included in the calculation of maximum assets. However, exceptions to this may be made in circumstances where assets were disposed of in order to pay medical, legal or other necessary expenses. The Resource Management Agency Housing Manager shall approve all such exceptions. Assets to be Included in Maximum Asset Limitation	Assets to be Excluded in Maximum Asset Limitation
<ol style="list-style-type: none"> 1. Cash held in savings accounts, checking accounts, safe deposit boxes, homes, etc. For savings accounts, use the current balance. For checking accounts, use the average 12 month balance 2. Cash value of trusts available to the applicant. 3. Equity in real estate or other capital investments. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs that would be incurred in selling the unit. 4. Cash value of stocks, bonds, Treasury bills, certificates of deposit and money market accounts. 5. Lump sum or one-time receipts, such as inheritances, lottery winnings, insurance settlements, etc. 6. Personal property held as an investment such as gems, jewelry, coin collections, etc. 7. Mortgages or deeds of trusts held by the applicant. 	<ol style="list-style-type: none"> 1. Necessary personal property except as noted in #6 of the "included" assets. Necessary personal property includes household goods and reasonable transportation. 2. The current value of individual retirement and Keogh accounts. (Any income currently being received from such accounts however shall be considered as "income" in the income calculations.) 3. Cash value of life insurance policies available to the individual before death. 4. Assets that are part of an active business. "Business" does not include rental property that is held as an investment and not a main occupation. 5. In the case of an inheritance of an inclusionary property, the equity in the inclusionary property shall not be counted as an asset in determining whether the party who inherits the property is income/asset eligible.

APPENDIX E. Income Limits

San Benito County Income Limits

Income Limits to be updated annually. The Housing Community Development Agency (HCD) typically releases updated information April/May of each year.

San Benito County 4-Person Area 2019~~8~~ Area Median Income- ~~\$81,100~~\$84,500

Income Category	Number of Persons							
	1	2	3	4	5	6	7	8
Extremely Low Income	<u>196002</u> <u>1450</u>	<u>224002</u> <u>4500</u>	<u>252002</u> <u>7550</u>	<u>2795030</u> <u>600</u>	<u>3020033</u> <u>050</u>	<u>3337403</u> <u>5500</u>	<u>3806039</u> <u>010</u>	<u>42380434</u> <u>30</u>
Very Low Income	<u>326003</u> <u>5700</u>	<u>372504</u> <u>0800</u>	<u>419004</u> <u>5900</u>	<u>4655051</u> <u>000</u>	<u>5030055</u> <u>100</u>	<u>5400059</u> <u>200</u>	<u>5775063</u> <u>250</u>	<u>61450673</u> <u>50</u>
Low Income	<u>522005</u> <u>7150</u>	<u>596506</u> <u>5300</u>	<u>671007</u> <u>3450</u>	<u>7455081</u> <u>600</u>	<u>8055088</u> <u>150</u>	<u>8650094</u> <u>700</u>	<u>9245010</u> <u>1200</u>	<u>98450107</u> <u>750</u>
Median Income	<u>567505</u> <u>9150</u>	<u>649006</u> <u>7600</u>	<u>730007</u> <u>6050</u>	<u>8110084</u> <u>500</u>	<u>8760091</u> <u>250</u>	<u>9410098</u> <u>000</u>	<u>1005501</u> <u>04800</u>	<u>10705011</u> <u>1550</u>
Moderate Income	<u>681007</u> <u>1000</u>	<u>778508</u> <u>1100</u>	<u>875509</u> <u>1250</u>	<u>9730010</u> <u>1400</u>	<u>1051001</u> <u>09500</u>	<u>1128501</u> <u>17600</u>	<u>1206501</u> <u>25750</u>	<u>12845013</u> <u>38503</u>

APPENDIX F. Initial Sales Price, Refinancing, and Resale Staff Procedures

1. CRITERIA FOR DETERMINING INITIAL SALE PRICE

Very Low Income Units:

Housing Cost to Income Ratio: 30% of 50% of Area Median Income (AMI) or the maximum income for a very low income household, adjusted for bedroom and household size

Interest Rate and Term: 6% Interest, 30 Year Term

Down Payment: 5% of Sale Price

Estimates of: property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land)

Low/Lower Income Units

Housing Cost to Income Ratio: 30% of 70% of AMI, adjusted for bedroom and household size

Interest Rate and Term: 6% Interest, 30 Year Term

Down Payment: 5% of Sale Price

Estimates of: property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

Moderate income Units:

Housing Cost to Income Ratio: 35% of 110% of AMI, adjusted for bedroom and household size

Interest Rate and Term: 6% Interest, 30 Year Term

Down payment: 5% of Sale Price

Estimates of: property taxes, assessments, loan insurance and financing fees, allowance for property maintenance and repairs, homeowners insurance, homeowner association dues, allowance for utilities and land rent (if home is on rented land).

HOUSEHOLD INCOME LEVEL	SALE PRICE OF A 1 BEDROOM UNIT	SALE PRICE OF A 2 BEDROOM UNIT	SALE PRICE OF A 3 BEDROOM UNIT	SALE PRICE OF A 4 BEDROOM UNIT	SALE PRICE OF A 5 BEDROOM UNIT
Very Low Income (50%)	\$90,670	\$101,983	\$113,294	\$122,379	\$131,463
Low/Lower Income (70%)	\$127,027	\$142,925	\$158,673	\$171,419	\$184,169
Moderate Income (110%)	\$232,660	\$261,656	\$290,750	\$314,046	\$337,342

Comment [JS6]: Debating about deleting the section that discusses the current affordable price because it may change year to year

APPENDIX G. In Lieu Fee and In-Lieu Fee Payment Process



APPENDIX H. Maximum Rents and Utility Allowance Tables

2018 Maximum Rents (Includes Utility Allowances)

	STUDIO	1 BEDROOM	2 BEDROOM	3 BEDROOM	4 BEDROOM	5 BEDROOM
Very Low (50%)	\$709	\$811	\$912	\$1,013	\$1,095	\$1,176
Low/Lower (60%)	\$851	\$973	\$1,095	\$1,216	\$1,314	\$1,411
Moderate (110%)	\$1,560	\$1,784	\$2,007	\$2,230	\$2,409	\$2,587

Instructions for Calculating Rents:

1. Use household size of 1 person per bedroom plus 1 person (e.g. the rent for a 2 bedroom unit would be based on the median for a 3 person household)
2. Use 30% of household income as the maximum rent allowed
3. The maximum rent includes a utility allowance. Therefore, the rent that the tenant pays to the landlord is the maximum rent less the utility allowance.
4. Rents are based on 50%, 60%, and 110% of median income. However, eligibility for the units is based on 50%, 80%, and 120% of median income, adjusted for household size.

Utility Allowances

The Housing Authority updates utility allowance annually. You can access the 2018 allowance at the following webpage.

<https://www.hacosantacruz.org/wp-content/uploads/2017/04/050717-Util-Allows-HandSJB-10.01.18.pdf>

Appendix I: San Benito County Affordable Housing Worksheet

(Worksheet Resale Price of Affordable Housing (Sec 11. A and 11. B of Resale Restriction Agreement))

Date: _____

Coordinator/County Staff: _____

Address of Affordable Unit: _____

Base Price	\$ _____	Work through Steps A, B, & C to get these numbers. The Maximum Resale Price will be the current below market rate
Adjusted Increase to Base Price	\$ _____	
Maximum Resale Value	\$ _____	

A. Calculate Base Price (Refer to recorded Resale Restriction Agreement)

Original Principle of First Lender's Loan \$ _____

Second Lender's Loan \$ _____

Original Amount of Participant's Down Payment \$ _____

Base Price = \$ _____

<p>B. Calculate Increase from Base Price Increased by the percentage of increase in Affordable Housing costs: [California Health & Safety Code 50052.5 (3) & (C)]</p> <p>Base Price x Appropriate Multiplier [Appropriate Multiplier: Divide the Current HUD Median Income by the HUD Median income at time at Purchase.]</p> <p>Increased Base Price [This will be the Maximum Resale Price unless there are improvements to consider. Add Increased Base Price + Base Price]</p>	<p>HUD Median Income at Purchase \$ _____</p> <p>Current HUD Median Income \$ _____ (base price)</p> <p>X _____ (approp. Multiplier)</p> <p>\$ _____</p>
---	--

C. 10% Adjusted Increase Base Price Credit (Considering Improvements)

Qualifying Improvements Must:

1. Be substantial or permanently fixed additional or fixtures that cannot be removed without substantial damage to the residence or substantial or total loss of value of the additions or fixtures;
2. Made or installed by or under the direction of the Owner/Participant
3. Approved by the County in advance of the implementation of the improvement; and
4. Have initial costs that were \$2,000.00 or more

Value of qualifying improvements: \$ _____

(Attached supporting documentation including: County approval and contributory value by appraiser)

Deduct the cost of any necessary repairs from the "Value of qualifying improvements" to have the residence be marketable. This may include cleaning painting, structural, mechanical, electrical, plumbing, and appliance repairs as determined by San Benito County.

Cost of Repairs \$ _____

Total Adjusted Increased Base Price _____

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Appendix I: San Benito County Affordable Housing Worksheet

(Worksheet Resale Price of Affordable Housing (Sec 11. A and 11. B of Resale Restriction Agreement))

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Date: _____ Name of County Staff: _____

Address of Affordable Unit: _____

C. Calculate Base Price (Refer to recorded Resale Restriction Agreement)

Original Principle of First Lender's Loan \$ _____
 Second Lender's Loan \$ _____
 Original Amount of Participant's Down Payment \$ _____
Base Price = \$ _____

D. Calculate Increase from Base Price- % Increase of Area Median Income (AMI)

<p><u>Base Price x Appropriate Multiplier</u> [To calculate Appropriate Multiplier: Divide the Current HUD Median Income by the HUD Median income at time at Purchase]</p> <p><u>Increased Base Price</u> [This will be the Maximum Resale Price unless there are improvements to consider]</p>	<p><u>Current HUD Median Income</u> \$ _____</p> <p><u>HUD Median Income at Time of Purchase</u> \$ _____</p> <p><u>Appropriate Multiplier</u> _____</p> <p>\$ _____ (multiplier x base price)</p>
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E. Adjusted Increase Base Price (Considering Improvements)

Add above total the appraised marked value of "improvements" (the contributory value of approval improvements):

Qualifying Improvements Must:

5. Be substantial or permanently fixed additional or fixtures that cannot be removed without substantial damage to the residence or substantial or total loss of value of the additions or fixtures;
6. Made or installed by or under the direction of the Owner/Participant
7. Approved by the County in advance of the implementation of the improvement; and
8. Have initial costs that were \$2,000.00 or more

Value of qualifying improvements: \$ _____

(Attached supporting documentation including: County approval and contributory value by appraiser)

Deduct the cost of any necessary repairs from the "Value of qualifying improvements" to have the residence be marketable. This may include cleaning painting, structural, mechanical, electrical, plumbing, and appliance repairs as determined by San Benito County.

Cost of Repairs \$ _____

Total Adjusted Increased Base Price \$ _____

Final Restricted Price/Refinance Amount \$

CALCULATE RESALE/REFINANCING VALUE EXAMPLE

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Assumptions:

Originally, unit was a 3 bedroom, 2 bath single family unit (moderate income) Initial Sale Price was \$150,000 in 1995.

Calculation:

\$150,000 Initial Sale Price
+ 34,110 22.74% change in median income, 1995-2003
\$184,110 Maximum resale/refinancing value with following modifications:
+ 15,000 10% of Initial Sale Price "credit" for improvements and/or maintenance
Value of Qualifying Improvements
= 199,110 Resale Value

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\$199,100 Modified Resale/Refinancing Value

Appendix J: Home Loan Subordination Requirements

For San Benito County Resource Management Agency

The information below and on the following page outlines the process for refinancing existing City-County loans and Agreements, or subordination of any loan or deed of trust associated with an Inclusionary Unit property. Subordination of loans not issued by the County of San Benito is necessary to protect the County's interest in maintaining the affordability of the property for the duration of the restriction term (typically 30k years). In most cases, the County's interest will be subordinate to any mortgage loans on the home, as outlined in the deed of trust and/or the signed resale restriction documents.

Information San Benito County needs to review for a subordination related to a refinance.

- 1) The interest rate and balance due on the existing first mortgage
- 2) County of San Benito's Deed of Trust shall be no lower than third lien position
- 3) New mortgage must be a fixed rate only and must not be longer than a 30 year term
- 4) The interest rate for the new first mortgage is less than the interest rate on the original first mortgage
- 5) Copy of Subordination Package
 - a. Completed Form of Owner Request for City Subordination to Refinance First Mortgage Loan
 - b. Loan Application (Form 1003 & 1008-Completed in last 30 days)
 - c. Copy of Appraisal (completed in the last 60 days)
 - i. Loan to Value cannot exceed 90% of the restricted resale value
 - d. New first mortgage Deed of Trust & Promissory Note
 - e. Estimated closing statement
 - f. Escrow Officer's Contact Information
 - g. Escrow #
- 6) NO CASH OUT
 - a. Unless there is documentation it will be used for necessary home maintenance (e.g. current bid documents for a reroof, additional room to the home)
 - b. A Home Equity Line/Loan of Credit is not an available option as stated in the Resale Restriction Requirement.

Housing Programs Coordinator Responsibility:

- 1) Once the Housing Programs Coordinator receives the subordination package, the documents will be reviewed for completeness. Staff will send an e-mail to the title

company/broker if any documentation is missing. The review and approval process will not proceed until all of the required subordination documents are submitted.

- 2) Housing Programs Coordinator will review the subordination package and determine if the subordination is approved or denied.
- 3) Housing Programs Coordinator will relay approval or denial of the subordination to title company/broker.
- 4) If approved, staff will request Subordination Agreement from title company/broker. Staff will complete Request for Notice of Default, and subordination escrow instructions. The County requires **at least two weeks** to process the Subordination Agreement and Request for Notice of Default for signature.
- 5) Staff will prepare and submit the County's executed documents to the Title Company.

FOR FURTHER INFORMATION:
San Benito County Resource Management Agency
2301 Technology Parkway
Hollister, CA 95023
Phone: 831-673-5313
Fax: 831-637-5334

Appendix K: Home Loan Subordination Requirements

Form of Owner Request for City Subordination to Refinance First Mortgage Loan

To: San Benito County

From: _____ ("Owner")

Property Address: _____ ("Home")

Date: _____

The Owner hereby requests the County of San Benito to approve the Owner's refinance of the existing first mortgage on the Home. The Owner provides the following information which it certifies to be true and correct:

1. Original Purchase Price of Home: \$ _____
2. Original Principal Balance of exiting First Mortgage Loan \$ _____
3. Interest Rate of Existing First Mortgage Loan: \$ _____
4. Outstanding Principal and Interest on existing First Mortgage Loan (as of date of this Request) \$ _____
5. Outstanding Principal and Interest due on all other mortgage loans on the Home. \$ _____
 - (a) \$ _____
 - (b) \$ _____
6. Principal Amount of Proposed New First Mortgage Loan: \$ _____
7. Interest Rate of Proposed New First Mortgage Loan: \$ _____

The Owner hereby certifies the above information is true and correct and this Owner Request is executed under penalty of perjury on _____ **[insert date]**.

By: _____

RECORDED AT THE REQUEST OF AND
WHEN RECORDED RETURN TO:

MAIL TAX STATEMENTS TO:

THE UNDERSIGNED GRANTOR DECLARES:

Documentary transfer tax is \$ _____,

- Computed on full value of property conveyed, or
- Computed on full value less value of liens and encumbrances remaining at time of sale,
- Unincorporated area: City of San Juan Bautista, California, and

GRANT DEED

FOR VALUABLE CONSIDERATION, RECEIPT OF WHICH IS ACKNOWLEDGED:

SAN JUAN EDENBRIDGE, L.P., a California limited partnership ("Grantor") grants to _____ ("Grantee") the following described real property in the City of San Juan Bautista, County of San Benito, State of California:

See Exhibit A attached hereto and incorporated herein.

GRANTEE, by acceptance and recordation of this deed, expressly accepts, covenants and agrees that the property granted hereunder, and Grantee and all successive owners thereto, shall be bound by the covenants, conditions, restrictions, easements, rights, duties, benefits and burdens set forth in the Copperleaf Declaration of Restrictions (CC&Rs) recorded on December 20, 2018, as Instrument No. 2018-0011797 in San Benito County, California, and any amendments and annexations thereto (the "Declaration").

SUBJECT TO:

- (1) general and special real property taxes for the current fiscal year;
- (2) covenants, conditions, restrictions, and easements, reservations, dedications, rights and rights-of-way of record; and

(3) the following restriction on the property imposed by the City of San Juan Bautista:

Said described real property is subject to restrictions upon the rental of the secondary dwelling unit. In the event the secondary dwelling unit is offered for rent, it shall be occupied and shall serve as an affordable rental unit as defined in the San Juan Bautista Municipal Code Section 11-09-400 (B)(4). The rent to be charged for a secondary housing unit shall be so limited as to be affordable to very low or low-income households. The maximum rental amount shall be determined in accordance with San Juan Bautista Municipal Code Section 11-09-300 A(2). In addition, the sale of the secondary dwelling unit separate from the main dwelling unit is prohibited. Any purported sale prohibited by this restriction shall be null and void. This deed restriction shall be in effect for fifty-five (55) years from the date of recordation with the San Benito County Recorder, and during that term, conversion of the secondary dwelling unit to any form of ownership which would eliminate the unit as a rental unit is prohibited per San Juan Municipal Code Section 11-09-400 (B)(5). The City of San Juan Bautista may enforce the restrictions set forth herein.

GRANTOR:

SAN JUAN EDENBRIDGE, L.P.,
a California limited partnership

By: Edenbridge Land and Cattle LLC,
a California limited liability company
Its General Partner

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

EXHIBIT A

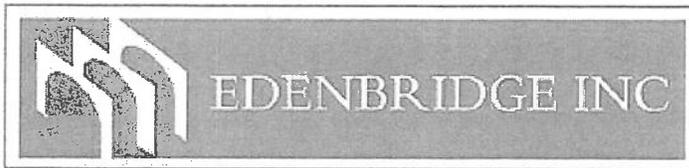
PARCEL NO. 1

Lot [6, 8, 9, 14, 17, 30, 32, 40, 42] of the Copperleaf Subdivision described on that certain Subdivision Map entitled "Tract 337 Copperleaf" recorded on April 13, 2017, in Book 16 of Maps, at page 20, Official Records of San Benito County, California.

EXCEPTING AND RESERVING THEREFROM THE FOLLOWING, all easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support and other purposes all as set forth in the Copperleaf Declaration of Restrictions (CC&Rs) recorded on December 20, 2018, as Instrument No. 2018-0011797 in San Benito County, California, and any amendments and annexations thereto (the "Declaration").

PARCEL NO. 2

Nonexclusive easements and rights for use, enjoyment, access, ingress, egress, encroachment, maintenance, repair, replacement, drainage, support and other purposes all as set forth in the Declaration described herein.



21771 Stevens Creek Blvd.
Suite 200A
Cupertino, CA 95014
Phone: (669) 231-4240
Fax: (669) 231-4250

March 1, 2017

VIA FEDERAL EXPRESS

Mr. Roger Grimsley
City Manager
City of San Juan Bautista
311 Second Street
P.O. Box 1420
San Juan Bautista, CA 95045

Dear Roger:

This letter will confirm our discussion at our meeting yesterday regarding compliance of our Copperleaf subdivision with the City's Inclusionary Housing Ordinance, Chapter 11-09. It is our position that the City's approval of the Vesting Tentative Map for more than five (5) parcels obligates Edenbridge to comply with the Ordinance, and that because that is so, the map approval was not required to include a condition stating that obligation – it is implied in the approval that Edenbridge will comply with all applicable laws. Edenbridge will comply with the City's ordinance by:

1. Per Article 11-09-400 (B)(1)(2)(4)(5), provide 20% housing for very low and low income households in the form of nine (9) secondary dwelling units consistent with the application of the Ordinance by the City to other residential developments. The nine (9) secondary dwelling units will be provided on Lots 6, 8, 12, 14, 17, 30, 32, 40, and 42.
2. Per Article 11-09-400 (B)(4)(5), provide a deed restriction for those secondary dwelling units on the nine (9) lots stated above. The deed restriction shall be placed on the above stated lots at the time the first grant deed is recorded, by attaching to the grant deed the legal description that includes the restriction. The deed restriction will be in effect for a minimum of fifty-five (55) years. A sample of the legal description that includes the deed restriction is attached to this letter.

Page 2 Grimsley letter 3-2-17

If you or the City Attorney have any revisions to the sample deed restriction provided, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy".

Katharine Oesterreich
Project Manager

Attachment

cc: Matt Orbach, Community Development Director
Deborah Mall, City Attorney, Wellington Law Offices
Norm Matteoni, Matteoni, O'Laughlin & Hechtman

**Sample Deed Restriction
Copperleaf Tract 337
Lots 6, 8, 12, 14, 17, 30, 32, 40, and 42**

Property Description

The land referred to herein below is situated in the City of San Juan Bautista, County of San Benito, State of California, and is described as follows:

Lot 6 of the Copperleaf Subdivision described on that certain Subdivision Map entitled "Copperleaf Tract 337", recorded on March____,2017, in Book____of Maps, pages____, Official Records of San Benito County, California.

Said described real property is subject to restrictions upon the rental of the secondary dwelling unit. In the event the secondary dwelling unit is offered for rent, it shall be occupied and shall serve as an affordable rental unit as defined in the San Juan Bautista Municipal Code Section 11-09-400 (B)(4). The rent to be charged for a secondary housing unit shall be so limited as to be affordable to very low or low-income households. The maximum rental amount shall be determined in accordance with San Juan Bautista Municipal Code Section 11-09-300 A(2). In addition, the sale of the secondary dwelling unit separate from the main dwelling unit is prohibited. Any purported sale prohibited by this restriction shall be null and void. This deed restriction shall be in effect for fifty-five (55) years from the date of recordation with the San Benito County Recorder, and during that term, conversion of the secondary dwelling unit to any form of ownership which would eliminate the unit as a rental unit is prohibited per San Juan Municipal Code Section 11-09-400 (B)(5). The City of San Juan Bautista may enforce the restrictions set forth herein.