



December 2008

**“HE WHO PAYS THE PIPER ...”**

**An Assessment of Research on Inclusionary Zoning**

By David Rusk<sup>1</sup>

**Executive Summary**

In May 2008, Altus Clayton, a consulting group, released a report on “The Potential Effects of Inclusionary Zoning in Canada;” the report was commissioned by the Canadian Home Builders’ Association and purported to be a balanced review of existing research on inclusionary zoning, primarily in the United States.

Over the past five years research on inclusionary zoning (IZ) has focused on Northern and Southern California, the Boston area, and the Washington, DC area – three of the four regions where IZ in various forms has been most practiced to date.<sup>2</sup> The Altus Clayton report, however, presents a very selective and biased assessment of such research in reaching its primary conclusions, as follows:

**1. Altus Clayton: “Inclusionary zoning policies lead to reduced supply of new housing across the market.”**

For the California market, only two studies in 2004 by the Reason Public Policy Institute (RPPI), a libertarian think tank, commissioned by Home Builders Association of Northern California and the California Building Industry Association, support this conclusion. *Examining only cities with IZ policies*,<sup>3</sup> RPPI 2004 found

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<sup>2</sup> Inclusionary zoning is also used as a tool by New Jersey municipalities to meet their affordable housing obligations under the *Mt. Laurel* doctrine. New Jersey data often fail to distinguish between inclusionary housing units and affordable units produced through other policies. No study of New Jersey’s programs has been made since “Inclusionary Housing in California and New Jersey: a Comparative Analysis (1997), published by the National Housing Conference/Center for Housing Policy.

<sup>3</sup> Only six of Orange County’s 41 cities had IZ laws; seven of Los Angeles County’s 88 cities; and 53 of the multi-county San Francisco Bay Area’s 105 cities.

**“Inclusionary zoning drives away builders, makes landowners supply less land for residential use, and leads to less housing for homebuyers—the very problem it was instituted to address.”**

However, *examining trends in these regions’ entire housing markets*, other researchers unanimously rejected that conclusion.

- University of Maryland National Center for Smart Growth Research and Education (commissioned by the National Association of Home Builders) examined trends in all 369 municipalities in California from 1988 to 2005: **“[I]nclusionary zoning program had a small and insignificant effect on total housing starts over the study period. Our analysis suggests that housing starts in municipalities were 0.15 percent greater in municipalities with an inclusionary zoning program compared to those without.”**
- New York University Furman Center for Real Estate and Urban Policy (commissioned by the National Housing Conference/Center for Housing Policy) analyzed housing data for 105 cities in the San Francisco Bay Area from 1974 to 2006: **“[T]he analysis shows no evidence of a statistically significant effect of IZ on either single-family permits or single-family housing prices.”**
- David Paul Rosen & Associates (published in *NHC Affordable Housing Policy Review*) concluded that **“after reviewing 20 years of building permit history for both multifamily and single family housing in 28 California jurisdictions plus the state itself, no correlation whatsoever was found between a city’s adoption of inclusionary housing and a reduction in housing development activity.”**
- I myself (reviewing the RPPI reports for Empower Hampton Roads, a faith-based affiliate of the Gamaliel Foundation) tracked housing production trends from 1970 to 2000 for all 41 cities in Orange County (and ultimately for all 88 cities in Los Angeles County and for all 105 cities in the San Francisco Bay area). I found that **“The [RPPI] studies’ conclusion that housing production has been reduced in cities adopting IZ laws ignores the fact that the same trend is occurring in non-IZ cities as the regional market becomes more densely developed and raw land disappears.... The existence of an inclusionary zoning ordinance does *not* have a statistically significant relationship to the rate of housing construction.”**
- Finally, an independent evaluation of the Reason Public Policy Institute’s San Francisco Bay Area report concluded that **“the narrow scope of the research, the flawed research design, the data limitations and the**

**weakness of the analysis are so consequential that few, if any, of their conclusions are useful to policy makers.”<sup>4</sup>**

For the Boston area, NYU very tentatively observed that **“the results from Boston-area suburbs provide some evidence that IZ has contributed to ... lower rates of housing production.”** However, though the NYU regression analysis incorporated the effects of 27 different variables, one variable that was *not* considered was the level of actual production of inclusionary housing units (if any). The “evidence” was simply a minor but statistically significant negative correlation between whether or not a suburban town had an affordable housing-related zoning provision of some sort and the level of single family home production.

In this paper I have shown that only 22 of 107 towns that have some form of affordable housing provisions in their zoning codes report any level of associated production; 47 reported no production; 13 responded “yes” but gave no production figures; and 25 didn’t answer at all. (My experience is that vagueness or silence means nothing to report.) For the 22 towns cumulative zoning provision-related production was 520 units by 2003; that was equivalent only 0.24 percent of their total housing stock in 2000, or roughly three percent of all housing units built since enactment of their affordable housing-related zoning provisions. In short, inclusionary zoning in the Boston suburbs is a Potemkin village – all façade and no substance behind. NYU’s “IZ/no IZ” variable is clearly a proxy for something else. The reality is that town councils almost invariably enact IZ laws *after* housing prices have skyrocketed. IZ is the result, not the cause, of higher home prices.

For the Washington, DC area, NYU found “no effects of IZ on permits or prices, although it is impossible to determine whether this reflects the true impacts of IZ or simply the severe data limitations.” (With “Big Box” county governments dominating the Washington area, NYU felt that it didn’t have a large enough sample size for reliable statistical analysis.) However, in a paper commissioned by the Wisconsin Realtors Association and the Madison Area Builders Association, Prof. Kerry Vandell of the Center for Urban Land Economics Research: University of Wisconsin-Madison opined about Montgomery County, Maryland (the USA’s biggest producer with 12,540 IZ units) that “residential development was directed away from the County for some other reason [i.e. than lack of developable land] during the 1990s.” In context, Dr. Vandell clearly implies that the county’s IZ policy was that reason.

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<sup>4</sup> “Policy Claims with Weak Evidence: a Critique of the Reason Foundation Study on Inclusionary Housing Policy in the San Francisco Bay Area (June 2004)” by Dr. Victoria Basolo, Associate Professor of Planning, Policy, and Design at the University of California-Irvine and Dr. Nico Calavita, Professor in the Graduate Program of City Planning at San Diego State University.

Since Montgomery County had the second highest housing production in the Washington region during the decade, and Fairfax, Loudoun and Prince George's counties (the first, third, and fourth largest housing producers) all had IZ laws as well, Prof. Vandell's criticism hardly merits rebuttal.

**Summing up, there is *no* credible basis in USA research on inclusionary zoning that, as Altus Clayton concluded, "inclusionary zoning policies lead to reduced supply of new housing across the market."**

## **2. Altus Clayton: "Inclusionary zoning can cause the average price of new homes across the market in certain jurisdictions to increase."**

RPPI's finding for the San Francisco area that "the price of new homes increased by \$22,000 to \$44,000 per unit due to inclusionary zoning policies (net of any change in price for other reasons)" is certainly eye-catching. It turns out, however, that this "finding" is not based on any empirical evidence but on an economic model used by RPPI. (More about the value of hypothetical economic models below.)

NYU found that there were no negative price effects of IZ on market prices in the San Francisco and Washington areas and, as with the Boston region's housing production levels, with negligible IZ production, there is no plausible basis for NYU's statement that IZ might have negative price effects on market-rate housing in the Boston area.

However, UMD examined trends in new, single-family home sales in the San Francisco and Sacramento areas from 1988 to 2005. UMD found that

- **"We estimate that inclusionary zoning programs raise housing prices by approximately 2.2 percent.**
- **"Also, we estimate that the effects of inclusionary zoning are greater in higher priced housing markets. Specifically, we estimate that inclusionary zoning programs lowered the price of housing that sold for less than \$187,000 [in 1988 dollars] by about 0.8 percent and increased the price of housing that sold for more than \$187,000 (in 1988 dollars) by about 5.0 percent."**

Two overall comments about UMD's finding:

- In 1988 dollars, the sales price of new homes in the San Francisco and Sacramento markets increased from about \$170,000 in 1988 to \$355,000 in 2005 – a real increase of 109 percent. Assuming that UMD's finding is valid, IZ's impact on average home price represented about 2 percent of the total reasons for the real price of housing having more than doubled over 17 years.

- I am not surprised that UMD found that IZ laws were associated with an average 2.2 percent increase in the price of new homes in these markets. For some percentage of new homes built in four out of five cities studied in the San Francisco and Sacramento areas, builders were paying an in lieu of fee that *NYU 2007* felicitously characterized as “impact fee for affordable housing” that was not off-set by compensatory benefits. So, *market conditions permitting*, they sought to pass it along in the form of higher prices.

**In summary, NYU (no) and UMD (yes) conflict on whether or not IZ contributes to price increases of new market-rate homes in the San Francisco area. If yes, UMD does find that the effect is relatively minor (two-three percent). However, it is plausible that improperly designed IZ laws, extorting “impact fees for affordable housing” from small projects, could have an effect of that modest magnitude.**

### **3. Comparing Economic Models and Builder Pro Formas**

Both Altus Clayton and RPPI engage in building extensive hypothetical economic models to justify their ideological view that IZ is bad public policy. The full section of this paper critiquing the RPPI model should be read carefully. However, in brief, their models share two basic assumptions.

First, both assume that IZ units will be identical in size and cost to market-rate units and are simply discounted in sales price per local government mandate.

Second, (and more importantly), both assume that cost-offsets (most notably density bonuses) are not provided by the local government.

Neither assumption reflects real life regarding how builders meet inclusionary housing requirements in many communities. Inclusionary, for-sale homes are almost invariably smaller and with more modest appliances, internal finishes, etc. They cost substantially less than surrounding market-rate units.

And density bonuses frequently accompany inclusionary developments, yielding not only “free land” for inclusionary homes but also for bonus market-rate units.

The test of an inclusionary zoning policy is not what professors might model but what builders reflect in their *pro formas* for actual developments. Examples are provided of actual pro forms in this paper. They show an IZ law increasing a builder’s overall profits by 25 to 30 percent on the projects analyzed.

**In short, the reliance of libertarian think tanks (and their industry sponsors) on hypothetical economic models testifies to the endurance of the time-honored academic adage: “Never let the facts interfere with a good theory.”**

**4. Altus Clayton: “Inclusionary zoning does not produce a high volume of ‘affordable housing’ – typically, only 3-7 percent of the net new housing produced annually in inclusionary zoning jurisdictions.”**

Guilty as charged – though IZ proponents contend that IZ should be seen as only one tool in a comprehensive plan for providing affordable housing. Even in Montgomery County, MD, with the USA’s oldest and largest IZ program, its 12,500 IZ units are barely one-quarter of the 44,000 price-controlled housing units in the county (about one out of every eight housing units).

With properly structured IZ laws that fairly balance meeting a community’s affordable housing needs with protecting a builder’s profitability, a prototype IZ law with a 15 percent set-aside, a threshold of 10 or 20 units (covering about 80 percent of building permits), and providing a 30 percent density bonus could be expected to yield inclusionary units averaging 10-12 percent of new residential construction.

The results would not be inconsiderable. Between 1990 and 2005, an estimated 13.5 million housing units were built in 118 high housing cost regions. If we assumed that a uniform IZ set-aside of 15 percent were applied throughout these 118 regions at a minimum project size of ten units or more and a target price point of 80 percent AMI, roughly 1.6 million IZ units (12 percent of all housing built) would have been built *without any need for public subsidies beyond non-cash density bonuses*. Such region-wide coverage would require state mandates; however, the estimate gives some idea of the potential of inclusionary zoning.

A final judgment on the Altus Clayton review of IZ research in the United States for the Canadian Home Builders Association:

**The report played the tune the piper paid for.**

## Introduction

During a visit to British Columbia in May (where I presented a program on inclusionary zoning [IZ]), my client, the Greater Vancouver Regional District, asked my reaction to a just-released Canadian report on inclusionary zoning. The report was “The Potential Effects of Inclusionary Zoning in Canada (May 2008)” by Altus Clayton, a consulting group; the report was commissioned by the Canadian Home Builders’ Association (CHBA). In July, while I was presenting a similar program in Toronto, my client, The Wellesley Institute, asked about my evaluation of the same Canadian report. Most recently, the Ford Foundation requested me to prepare an assessment of IZ research as principal researcher for the Innovative Housing Institute.<sup>5</sup> As the Altus Clayton report to CHBA cites most of the major IZ studies in the USA, I will use it as a framework for my own assessment for the Ford Foundation as well as responding to my Canadian clients.

Early in its report (page 2) Altus Clayton observes that “Studies on inclusionary zoning are conducted by various organizations, including government agencies, non-profit organizations, industry associations, academics, etc. They reveal a wide array of conclusions *with strong correlations between the conclusion and the organization’s wider policy perspective* [emphasis added]” – in short, “he who pays the piper calls the tune.”

That observation most certainly applies to Altus Clayton’s own report as commissioned by CHBA.<sup>6</sup> Altus Clayton does a very selective reading of the research cited and reaches some sweeping (and negative) conclusions about IZ that are not sustained by much of the cited research itself (as I will document below).

However, lest I be accused of “the pot calling the kettle black,” let me acknowledge my own biases.

- I have given hundreds of speeches and workshops advocating IZ.
- As a nationally-known advocate of IZ, I have keynoted the National Inclusionary Housing Conferences in 2005 and 2007.
- I have read through dozens of local IZ ordinances and helped compile, review, and analyze statistics on IZ production (and non-production) in hundreds of cities and counties.
- I have actively helped shape IZ policies in several communities, including Madison WI and Washington DC; and

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<sup>5</sup> The Ford Foundation is providing financial support for this assessment.

<sup>6</sup> I will henceforth refer to this study as “*AltClay 2008*.”

- Though not a city resident, I was appointed one of the 13 voting members of the Baltimore City Council’s Task Force on Inclusionary Zoning and recommended a mandatory IZ ordinance that was ultimately adopted.

The breadth and depth of my involvement had led me to formulate certain basic principles about what constitutes an effective IZ policy.

- First and foremost, an effective IZ law must be a “win/win” policy that helps meet community housing needs while protecting a builder’s profitability;<sup>7</sup> protecting builder profitability, for land already zoned for residential development, means
  - **Minimally**, the builder’s customary profit *from the overall development* should not be reduced by the inclusionary requirements over what it would have been without any inclusionary requirement;
  - **Preferably**, the builder’s customary profit *from the overall development* should be enhanced by increased profits from the sale of additional market-rate units generated by the density bonus that should automatically accompany inclusionary requirements; and
  - **Optimally**, the builder’s customary profit *from the overall development* should be further enhanced not only by additional profits from the sale of additional market-rate units generated by the density bonus but also by profits on the sale of the inclusionary units themselves (that are also covered by the density bonus).
- The valid test of the impact of an IZ policy’s provisions is not what microeconomic models might hypothetically argue (a favorite technique of IZ critics) but what is the impact of different IZ provisions upon a builder’s pro forma for actual projects in a specific housing market.
- Thus, an effective IZ policy should be framed with the active collaboration of progressive local builders.
- Only in relatively unaffordable housing markets do builders have the economic incentive to maximize the amount of new housing units that can be built on high-cost land; thus, on already zoned residential land, density bonuses in excess of the percentage of IZ units required will generally be the economic fuel that powers an effective IZ law.

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<sup>7</sup> I will use “builder” as an umbrella term that also includes “developer,” recognizing that the two functions are often carried out by different parties.

- The minimum project size (“threshold”) should be set at a level where a builder can realistically implement a full density bonus; where actual site constraints or competing local policies, such as open space requirements, effectively prevent implementing a full density bonus, the IZ percentage should be scaled down proportionally.
- In relatively affordable housing markets, when a development is otherwise receiving major public subsidies or benefiting from a major rezoning that greatly increases its residential development capacity, there *may* be opportunity for inclusionary housing, but the question must be approached cautiously.
- There is always a trade-off between the percentage of IZ units (“set-aside”) and target income (or “price point”). The higher the target income, the higher the achievable set-aside; the lower the target income, the lower the achievable set-aside.
- IZ policies should generally have the goal of producing the larger number of IZ units at a reasonable price point that can be achieved by the builder; other sources of public subsidy (in particular, demand-side or direct client subsidies) should be used to extend the range of affordability to lower income households.
- A local public agency should be responsible for certifying and referring income-eligible IZ buyers or renters both to relieve builders of administrative costs and assure that valid marketing efforts are made during “grace” periods.
- Finally, an effective IZ law must be mandatory (or “automatic”); purely voluntary, incentive-based policies rarely result in IZ units being built. However, a mandatory IZ law’s provisions must apply automatically on both sides of the “win/win” equation: automatic set-asides must be matched by automatic density bonuses and other cost-offsets “as of right.”

Unfortunately, there are a number of local IZ laws that do not adhere to some of these standards, particularly in California, thus giving some plausibility to negative evaluations of IZ in such places. However, long-standing IZ programs in Montgomery County, MD and Fairfax County, VA, for example, do adhere to these standards, and nine of the USA’s ten largest homebuilders are profitably active in Washington, DC’s suburban market (at least, until the current collapse of the national housing market).

### Identifying Who Pays the Piper

Both in the text and in its four-page appendix, *AltClay 2008* is (in my view) quite coy about who has paid for or sponsored the academic studies and surveys cited. Let me sort that out, concentrating only on those studies that ostensibly base their

findings on empirical evidence rather than solely on hypothetical microeconomic models. In addition, I have not reviewed the few Canadian studies cited but will confine myself to studies addressing American housing markets.

### Builder-Commissioned Reports

*Housing Supply and Affordability: Do Affordable Housing Mandates Work?* (April 2004) and *Do Affordable Housing Mandates Work? Evidence from Los Angeles County and Orange County* (June 2004) by Benjamin Powell and Edward Stringham of the Reason Public Policy Institute (RPPI). Both reports share many common passages word for word with only changes in the data cited (the San Francisco Bay area for the April 2004 report; Los Angeles and Orange counties for the June 2004 report) [to be cited collectively as *RPPI 2004* or individually as *RPPI 4-2004* and *RPPI 6-2004*]. The reports were supported by research grants from the Home Builders Association of Northern California and the California Building Industry Association.

*Inclusionary Zoning: Myths and Realities* (November 2003) by Kerry D. Vandell of the Centre for Urban Land Economics Research: University of Wisconsin-Madison [to be cited as *Vandell 2003*]. This report was commissioned by the Wisconsin Realtors Association and the Madison Area Builders Association.

### Mixed Builder/Housing Advocacy Organization Reports

*The Effects of Inclusionary Zoning on Local Housing Markets: Lessons from the San Francisco, Washington DC, and Suburban Boston* (November 2007) by Jenny Schuetz, Rachel Meltzer, and Vicky Been of the Furman Center for Real Estate and Urban Policy, New York University [to be cited as *NYU 2007*]. Financial Support provided by the Center for Housing Policy of the National Housing Conference (NHC).

*Inclusionary Housing and Its Impact on Housing and Land Markets* (February 2004) by David Paul Rosen & Associates, published in *NHC Affordable Housing Policy Review* [to be cited as *Rosen 2004*]

*Inclusionary Zoning: Pros and Cons* (October 2000) by Robert W. Burchell and Catherine C. Gailey of the Center for Urban Policy Research at Rutgers University, published in *The New Century Housing* series of the Center for Housing Policy of the National Housing Conference

*Zoning for Affordability in Massachusetts: An Overview* (January 2002) by Philip B. Herr Associates, published in *Affordable Housing Policy Review* of the National Housing Conference

*Inclusionary Housing in California and New Jersey: a Comparative Analysis* (1997) by Nico Calavita (San Diego State University), Kenneth Grimes (Wilshire Community Council) and Alan Mallach (City of Trenton), published in *Housing Policy Debate*, a publication of the Fannie Mae Foundation

### Affordable Housing Advocacy Organization Reports

*Affordable by Choice: Trends in California Inclusionary Housing Programs* (August 2007), a survey by the California Coalition for Rural Housing and the Nonprofit Housing Association of Northern California [to be cited as *NPH 2007*].

*Inclusionary Housing in California: 30 Years of Innovation* (2003), an earlier survey by the California Coalition for Rural Housing and the Nonprofit Housing Association of Northern California [to be cited as *NPH 2003*].

*Expanding Affordable Housing through Inclusionary Zoning: Lessons from the Washington Metropolitan Area* (October 2001), a survey by Karen Destorel Brown of The Brookings Center on Urban and Metropolitan Policy [to be cited as *Brookings 2001*].

Two clusters of sponsors dominate this list: the Reason Public Policy Institute and the Center for Housing Policy/National Housing Conference.

The Reason Public Policy Institute (RPPI) is a unit of the Reason Foundation based in Los Angeles. “The Reason Foundation’s mission,” as described in these publications, “is to advance a free society by developing, applying, and promoting libertarian principles, including individual liberty, free markets, and the rule of law.” The Reason Foundation is the California link in a nationwide chain of what I have called “little Cato Institutes” – libertarian think tanks among whose central principles is opposition to public regulation in almost any form. The two reports’ principal authors, Benjamin Powell and Edward Stringham, are both Assistant Professors of Economics at San Jose State University and Adjunct Scholars of the Reason Foundation. Both received their Ph. Ds from George Mason University (in 2003 and 2002, respectively).<sup>8</sup> It is frankly unthinkable that any building industry group would commission the Reason Foundation to do a study without expecting that the result would be strongly anti-land use regulation. As shall be shown in detail below, the Reason Foundation delivered as anticipated.

The Center for Housing Policy (CHP) is a different story. It is the public policy research arm of the National Housing Conference. “For more than 75 years, the nonprofit National Housing Conference (NHC) has been the United Voice for Housing. A membership drawn from every industry segment forms the foundation for NHC’s broad, nonpartisan advocacy for national policies and legislation that promote suitable housing in a safe, decent environment. NHC’s research affiliate, the Center for Housing Policy, specializes in developing solutions through research.

CHP’s research agenda is guided by a 45-member advisory council consisting of for-profit industry representatives (e.g. National Association of Home

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<sup>8</sup> The “Critiques of Libertarianism” website (<http://world.std.com/~mhuben/libindex.html>) observes that “The Economics Department of George Mason University has been strongly shaped by tens of millions of dollars of donations by the libertarian Koch Foundations of the billionaire Koch brothers. Most, if not all, of the staff is affiliated with the Koch-financed Mercatus Center, a libertarian pro-corporatist think-tank. The result is a propaganda mill with academic credentials.”

Builders, Trammel Crow Residential), non-profit housing providers (e.g. BRIDGE Housing Corporation, Nonprofit Housing Association of Northern California), Fannie Mae and Freddie Mac (formerly of the private sector), housing finance intermediaries (e.g. Enterprise Community Partners, Local Initiatives Support Corporation), think tanks (e.g. liberal Brookings Institution, conservative Hudson Institute), and academics (e.g. Johns Hopkins, Harvard).

NHC/CHP tries to achieve balance in its research. It does not take advocacy positions unless there is industry-wide consensus. Such clearly does not exist on inclusionary zoning. However, it has commissioned a number of (generally positive) reports on inclusionary zoning and is one of four sponsors of the bi-annual National Inclusionary Housing Conference to promote best practices.

Finally, the focus of the publications of affordable housing advocacy organizations cited has been basic data collection rather than evaluation. I have placed The Brookings Institution in this group primarily because of the absence of for-profit industry representatives in its process rather than its advocacy.

#### NAHB-National Center for Smart Growth Study

In light of *AltClay 2008*'s observation that regarding IZ evaluations there are “*strong correlations between the conclusion and the organization's wider policy perspective,*” it is regrettable that *AltClay 2008* did not review a study released shortly before the appearance of its own report: *Housing Market Impacts of Inclusionary Zoning* (February 2008). The study was conducted by the National Center for Smart Growth Research and Education of the University of Maryland and (most interestingly) had been commissioned by the National Association of Home Builders (NAHB). NAHB had embraced the *RPPI 2004* reports with enthusiasm, helping spread the word to state and local chapters around the country. But the *RPPI 2004* reports had been so discredited by less ideological academics (like San Diego State's Nico Calavita, the dean of California housing analysts) that NAHB clearly felt a need for a more impartial analysis.

So NAHB turned to the National Center for Smart Growth Research and Education. The Center was founded in 2000 as a cooperative venture of four University of Maryland schools: Architecture, Planning and Preservation; Public Policy; Agriculture and Natural Resources; and Engineering. “The Center's mission is to bring the diverse resources of the University of Maryland and a network of national experts to bear on issues related to land use and the environment, transportation and public health, housing and community development, and

international urban development. The Center accomplishes this *through independent, objective, interdisciplinary research*, outreach and education [emphasis added].”<sup>9</sup>

Of the various IZ evaluation studies, the Center’s had the most detailed data sets that it analyzed with the most rigorous methodology. And clearly, as an academic institute created in the context of then-Maryland Gov. Parris Glendening’s Smart Growth initiative, the Center’s findings about IZ could not be accused of being pre-ordained by an anti-public regulation ideology. Commissioned by NAHB, I will refer to the study as *UMD 2008*.

*UMD 2008* sought to answer two questions:

- **What is the effect of inclusionary zoning laws on the number and composition (single family v. multifamily) of new housing construction in California from 1988 to 2005?** For this data set municipalities were the unit of analysis. Cities that adopted inclusionary programs are located throughout the state but are most common in the coastal areas, especially in the San Francisco, Los Angeles, and San Diego metropolitan areas. “In general,” the study observed, “municipalities that had inclusionary zoning programs, relative to those that did not, had higher incomes, higher housing prices, higher growth rates, more neighbors with similar policies, and were closer to the coast.
- **What is the effect of IZ laws on the price and size of new for-sale housing in the San Francisco Bay and Sacramento areas from 1988 to 2005?** Newly constructed single family homes sold were the units of analysis. In addition to sales prices, the study collected data on the physical features of the house, the neighborhood in which the house is located, and the policies of the pertinent governmental jurisdiction, including features of any applicable inclusionary zoning programs.

I will organize the comparison of research findings around these two issues, adding a discussion of the relative value of econometric modeling as compared with analyses of pro formas for actual projects and a final discussion on other issues raised by *AltClay 2008*. I will begin each section with quoting *AltClay 2008*’s statements on the topic, follow with *UMD 2008* findings, then other findings pro or con (generally, *RPPI 2004*), and conclude with my own summary.

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<sup>9</sup> In addition to its research efforts, the Center also partners with Smart Growth America in the Governors’ Institute on Community Design, a program designed to assist governors throughout the United States who are interested in issues of land use, development land conservation, community design, or related issues.

## **I. Effect of Inclusionary Zoning Laws on Overall Housing Construction**

*AltClay 2008*: “If inclusionary zoning policies without adequate compensation are introduced, threatening the feasibility of new housing developments, then, ultimately, housing shortages across the municipality or urban area will emerge [p. iii]” ... “Inclusionary zoning policies have the potential to discourage larger housing developments, denying those benefits [i.e. of a more diverse mix of housing types and incomes]<sup>10</sup> and delaying developments of vacant brownfields.... Moreover, by eroding the viability of some new projects, inclusionary zoning policies lead to reduced supply of new housing across the market ... In the marketplace, inclusionary zoning policies will tend to upset the supply and demand balance, leading to fewer new housing units being built. The supply of new housing will be restricted, as illustrated by example in the last section [i.e. by an Altus Clayton-postulated hypothetical model], as certain residential projects fail to meet viability criteria and ultimately fail to come to market [p. 15].”

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<sup>10</sup> Throughout the text, my clarifying or editorial comments and page citations will be inserted within brackets.

## The California Housing Market

Examining 369 California municipalities (of which 65 had adopted IZ programs between 1989 and 2005), *UMD 2008* found that

- “[I]nclusionary zoning programs had a small and insignificant effect on total housing starts over the study period. Our analysis suggests that housing starts in municipalities were 0.15 percent greater in municipalities with an inclusionary zoning program compared to those without [p. 10].
- “[I]nclusionary zoning programs had a small and statistically insignificant effect on single family housing starts. Our analysis suggests that single family housing starts were 0.19 percent lower in municipalities with an inclusionary zoning program compared to those without [p. 11].
- “[I]nclusionary zoning programs had a small and statistically insignificant effect on multifamily housing starts. Our estimate indicates that multifamily family housing starts were 0.36 percent higher in municipalities with an inclusionary zoning program compared to those without [p 15].”<sup>11</sup>

**In summary, *UMD 2008* found that there was *no reduction* in housing production associated with enactment of inclusionary zoning laws.**

However, the combination of findings #2 and #3 (above) did produce a modest shift in the mix of the kind of housing being built. “[T]he adoption of inclusionary zoning had a [*statistically*] significant effect on the *share* of single family housing starts. Holding all other variables constant, the share of single family housing starts in municipalities that implemented inclusionary zoning programs was nearly seven percentage points lower than in those municipalities that did not implement such a program. The result was very significant [that is, *statistically* significant] – the chances are less than 0.01 percent [*sic*] that there was no effect on inclusionary zoning on this housing mix [emphasis added] [p 11].”

**In summary, IZ policies did produce a shift towards a greater supply of new, lower cost housing units – multifamily units – as the policies are designed to do.**<sup>12</sup>

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<sup>11</sup> For all three regressions the report states that “this estimate is not significant at the 90 percent confidence level.”

<sup>12</sup> According to Gerrit Knapp, Smart Growth Center director, (with whom I met on April 15), NAHB was “not happy” with the finding that IZ had no negative impact on overall housing production and, to compensate, played up the finding of the greater shift to multifamily production in their press release. “From a ‘smart growth’ perspective, isn’t that a positive outcome?” I asked Gerritt. “Of course,” he smiled, “but our contract with NAHB did not call for us to reach that judgment. We were very rigorous in adhering to the terms of the contract.”

*NYU 2007* also analyzed the San Francisco Bay Area housing market as did *UMD 2008* though over a longer period of time (1974 to 2006) than did *UMD 2008* (1988 to 2005). It reached the same finding as *UMD 2008*, namely “[t]he analysis shows no evidence of a statistically significant effect of IZ on either single-family permits or single-family housing prices ... [p 64].” The authors commented that “several problems with the data suggest that those results be interpreted cautiously, especially in light of both the theoretical predictions from the economic models and the results from Suburban Boston [more about both later]. One serious concern is that the identification strategy relies on the year IZ was adopted; the various surveys of IZ do not always agree on the year of adoption [p 64].”

However, the report went on to present “simple graphs of the time patterns in housing production and prices for jurisdictions that adopted IZ in each of the past four decades [that] illustrate how differences among the jurisdictions may have obscured our estimates of the effects of IZ... [T]he changes in annual permits since 1980 are quite similar when comparing all jurisdictions that had not adopted IZ by 2006 and all those that had adopted IZ at some point. However, this comparison obscures considerable variation among jurisdictions with IZ .... In particular, those jurisdictions that adopted IZ prior to 1980 or after 2000 issued substantially more permits, *both before and after adoption*, than jurisdictions that adopted IZ in the 1980s and 1990s. The most recent adopters seem to have been developing much more rapidly in the early decades and saw dramatic drops in the number of permits, *even before adopting IZ*. The small number of jurisdictions in each of these groupings makes it difficult to identify statistically significant patterns, but it appears that *there is at least as much heterogeneity in patterns of housing production across the jurisdictions that have IZ as between those with and without IZ* [all emphases added] [pp 64-65].”

A third confirmation comes from *Rosen 2004* that collected housing production data from 1981 to 2001 for 28 California communities –with and without inclusionary programs – located in Los Angeles, Orange, San Diego, San Francisco, and Sacramento counties. “An analysis of these data shows that for the jurisdictions surveyed, *adoption of an inclusionary housing program is not associated with a negative effect on housing production* [emphasis added]. In fact, in most jurisdictions as diverse as San Diego, Carlsbad, and Sacramento, the reverse is true. Housing production increased, sometimes dramatically, after passage of local inclusionary housing ordinances [p 38].”

*Rosen 2004* also tested housing production trends against the 1986 Tax Reform Act (which significantly reduced favorable tax treatment for construction of market-rate investment property) and key economic indicators: the prime rate, the 30-year mortgage rate, the unemployment rate, and area median home price. Of the

economic indicators *Rosen 2004* found that “the one factor that most clearly tracks housing production is the unemployment rate. For most jurisdictions, there is an inverse relationship between the county unemployment rate and housing production.”

“The passage of the 1986 Tax Reform Act is associated with a sharp drop in new housing production,” the report also noted. “In almost all jurisdictions surveyed, housing production figures dropped significantly after 1986.... In most instances, the drop in housing production after 1986 was not immediate. Therefore, it may be a combination of the recessionary period beginning in the early 1990s and the 1986 Tax Reform Act that dampened production of housing [p 39].”

“In conclusion, after reviewing 20 years of building permit history for both multifamily and single family housing in 28 California jurisdictions plus the state itself, ***no correlation whatsoever was found between a city’s adoption of inclusionary housing and a reduction in housing development activity*** [emphasis added] [p 41],” *Rosen 2004* summarized.

Certainly, *UMD 2008*, *NYU 2007*, and (probably) *Rosen 2004* were direct responses to *RPPI 2004*, the one study that did allege that IZ caused a drop in housing production in California cities.

For the April report on the San Francisco Bay area, *RPPI 4-2004* examined building permit trends for 45 cities. It concluded that

“Inclusionary zoning drives away builders, makes landowners supply less land for residential use, and leads to less housing for homebuyers—the very problem it was instituted to address.

In the 45 cities where data is available, we find that new housing production drastically decreases the year after cities adopt inclusionary zoning. The average city produced 214 units the year before inclusionary zoning but only 147 units the year after. Thus, new construction decreases by 31 percent the year following the adoption of inclusionary zoning.

In the 33 cities with data for seven years prior and seven years following inclusionary zoning, 10,662 fewer homes were produced during the seven years after the adoption of inclusionary zoning. By artificially lowering the value of homes in those 33 cities, \$6.5 billion worth of housing was essentially destroyed [note: \$6.5 billion estimate according to RPPI’s simplistic economic model].

Considering that over 30 years inclusionary zoning has only yielded 6,836 affordable units, one must question whether those units are worth the cost in terms of fewer and higher-priced homes [pp ii-iii].”

The June report on Los Angeles and Orange counties (*RPPI 6-2004*) covered seven cities in Los Angeles County and six cities in Orange County with IZ mandates. Its conclusions tracked the San Francisco Bay Area report.

“Inclusionary zoning drives away builders, makes landowners supply less land for residential use, and leads to less housing for homebuyers—the very problem it was instituted to address.

We find that new housing production drastically decreases the year after cities adopt inclusionary zoning. For all 13 cities average production of housing fell the year following the adoption of inclusionary zoning. In the eight cities with data for seven years prior and seven years following inclusionary zoning, 17,296 fewer homes were produced during the seven years after the adoption of inclusionary zoning. In those cities 770 “affordable” units were produced. One must question whether 770 units are worth the cost in terms of 17,296 fewer homes. By discouraging production of 17,296 homes in those eight cities, \$11 billion worth of housing was essentially destroyed [ditto above][p ii].”

Upon first reading the *RPPI 2004* reports, I brushed off the “findings” derived from a very simplistic economic model, based on assumptions unconnected to any reality (see below). However, assuming that RPPI’s database was valid,<sup>13</sup> the finding of reduced post-IZ housing production was very disturbing. So I undertook my own quick assessment, focusing initially on Orange County as having a more manageable database than Los Angeles County or the eight-county San Francisco Bay Area.<sup>14</sup> My own finding:

**The studies’ conclusion that housing production has been reduced in cities adopting IZ laws ignores the fact that the same trend is occurring in non-IZ cities as the regional market becomes more densely developed and raw land disappears.**

For researchers committed to the principle of “free markets,” it is notable that the Reason Foundation researchers examined only what happened before and after adoption of IZ laws within six cities (out of 34 total) in Orange County and within seven cities with IZ laws (out of 88 total) in Los Angeles County before leaping to their conclusion that IZ laws caused a long-term decline in overall housing production in IZ. What happened to “markets?”

From Census 2000 data on municipal area, current housing stock, and when current units were built, I analyzed housing development trends from 1970 to 2000 in all 34 municipalities plus the seven “Census-Designated Places (CDPs)” in unincorporated Orange County. The results for “urbanized” Orange County, a 510-square mile area that includes 97.7 percent of all housing units, are summarized in Table 1(a).

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<sup>13</sup> RPPI compiled production data from the Construction Industry Research Board yearly housing permit data for single and multifamily dwellings.

<sup>14</sup> My Orange County study was an effort to assist Empower Hampton Roads, a faith-based coalition, that was launching a campaign to have the Virginia Beach City Council enact an Affordable Dwelling Unit (ADU) law. E/HR found the Tidewater Builders Association touting the *RPPI 2004* reports as “conclusive proof” that IZ laws were bad policy.

Table 1(a)  
Housing Production Trends for Urbanized Orange County  
1970 to 2000

period	housing density per square mile at outset of period	annual housing units produced	pct addition to initial housing stock
1970-79	756	26,387	69%
1980-89	1,274	16,718	26%
1990-94	1,602	13,012	8%
1995-99	1,729	12,723	8%

Thus, in urbanized Orange County, where the five municipalities [excluding Huntington Beach] that (at various times) adopted inclusionary zoning accounted for less than 12 percent of the entire housing stock in 2000, there has been a steady downward trend in annual housing production as housing density rises and undeveloped land disappears. County-wide annual housing production in the late 1990s was less than half the annual housing production of the 1970s.

For each of the four time periods I then conducted least-squares linear regression analyses for each period, using a common measure – percentage addition to the initial housing stock – as the dependent variable (Y) and housing density per square mile at the outset of each period as the independent variable (X1). In addition, from 1980 onward, I created a dummy variable (X2) to indicate the presence or absence of an IZ ordinance, assigning a value of 1 to the five municipalities that had such an ordinance and a value of 0 to the 36 other communities that operated without them. The results are summarized in Table 2.

The analysis shows that

- a) **the relative density of housing development at the outset of a study period has a statistically significant (and powerful) explanatory impact on the rate of new housing construction during the forthcoming period (ten or five years); and that the impact is negative (that is, the higher the housing density at the outset of a period, the lower the percentage addition to the city’s housing stock over the next ten or five years) [in effect, another way to say this is, the bigger the base, the smaller the subsequent percentage increase]; and**
- b) **the existence of an inclusionary zoning ordinance does *not* have a statistically significant relationship to the rate of housing construction.**

What are the weaknesses of this analysis? Census reports are very accurate with regard to a community’s total housing units and many of their attributes (e.g. owner-occupied vs. rental, number of rooms, gross rent, even estimated value of owner-occupied homes, etc.). It strikes me that census housing statistics are least accurate when occupants are asked “when was this housing unit built?” which is the basis for the census reports on past housing

construction. Municipal building permit reports would probably be a more accurate measure (though permits can be issued that are never used).

Table 2  
 Linear Regression Results  
 Y = pct addition to initial housing stock  
 X1 = housing density per square mile at outset of period  
 X2 = IZ/no IZ  
 n = 41

period	adjusted <u>R-square</u>	<i>t stat</i>	<i>t stat</i>
		X1 = housing density density per sq mi <u>at outset of period</u>	X2 = IZ law/ no IZ law
1970-79	0.24	-3.72***	na
1980-89	0.17	-3.22***	-0.86#
1990-94	0.22	-3.62***	-1.12#
1995-99	0.12	-2.67***	-1.17#

\*\*\* statistically significant at 99% probability level

# not statistically significant

The greater weakness of this analysis is the crude measure of housing density (number of housing units in a jurisdiction divided by the jurisdiction’s area [a measure also used by *UMD 2008*]). How much land is actually available for residential development rather than being committed to parks, environmentally protected areas, industrial, commercial, and public uses? Ascertaining that would require detailed analysis of each municipality’s zoning map – clearly a task beyond this critique.

I have examined only the five IZ-cities and 36 other communities in Orange County. Would covering the same ground as the Reason Foundation report by adding the seven IZ cities and 81 non-IZ cities ... in Los Angeles County [or] the 53 IZ cities and 52 non-IZ cities, in the San Francisco Bay Area significantly change my findings? In other words, what would the test of regional housing market trends show with regard to both studies?<sup>15</sup>

An independent evaluation of the Reason Foundation’s San Francisco Bay Area report concluded that “the narrow scope of the research, the flawed research design, the data limitations and the weakness of the analysis are so consequential that few, if any, of their conclusions are useful to policy makers.”<sup>16</sup>

<sup>15</sup> I subsequently did such a parallel analysis of all jurisdictions in Los Angeles County and the San Francisco Bay Area (Appendix A) The explanatory values (adjusted r-square) are very small in the other regions, but the results are the same: the greater the density of housing (that is, in reverse, the smaller the amount of undeveloped land available) at the outset of each five- or ten-year period, the smaller the subsequent increase in new homes constructed at a statistically significant level. **By contrast, the presence or absence of IZ laws had no statistically significant effect on housing production.**

<sup>16</sup> “Policy Claims with Weak Evidence: a Critique of the Reason Foundation Study on Inclusionary Housing Policy in the San Francisco Bay Area (June 2004)” by Dr. Victoria Basolo, Associate Professor of Planning, Policy, and Design at the University of California-Irvine and Dr. Nico Calavita, Professor in the Graduate Program of City Planning at San Diego State University.

## The Boston Housing Market

*NYU 2007* did observe that “the results from Boston-area suburbs provide some evidence that IZ has contributed to ... lower rates of housing production (abstract)....” In greater elaboration, *NYU 2007* explained

“The estimated effects of IZ on single-family permits in Suburban Boston... provide some evidence that IZ constrains new development, but the results are not conclusive. The simplest model, including a dummy variable for the lagged adoption of IZ as well as jurisdiction and year fixed effects, suggest that the presence of IZ is associated with roughly 10 percent fewer single-family permits per year, significant at the five percent level. The regression on log of years since IZ adopted gives a very similar result in magnitude, -0.09, and is significant at the one-percent level.

The median number of single-family permits per year is about 35 during the time period examined, implying that a jurisdiction that adopted IZ in 1990 might have issued 45-50 fewer permits between 1990 and 2005. However, the estimated magnitude on log of years drops by about one-third and *becomes statistically insignificant once controls for market forces are added* [emphasis added].

*If the variables added in Model 3 are accurate estimates of the within-jurisdiction changes in market determinants of permits, these results would imply that observed differences in permits reflect changes in housing market conditions that are correlated with the adoption of IZ, rather than the effects of IZ itself* [emphasis added]. Because it is unclear whether the interpolated values of the variables are accurate indicators of the true values or may be introducing bias into the regression, however, it is difficult to know which specification is better [p 63].”

*NYU 2007* analyzed the possible impact on housing production of 27 different independent variables. *One variable the report did not use, however, was any indication of actual IZ units produced.* The question was treated simply as “yes, there had been some IZ production” or “no, there had not been some IZ production.” In late October 2007, I had been asked by NHC/CHP to give an 11th-hour review of the draft report. (I emailed 10 pages of comments and suggestions from Buenos Aires.) I strongly urged that the researchers put forth an additional effort to fill this critical gap in vital information, commenting as follows:

“How can one reach ANY conclusions about IZ impact on overall housing production levels and housing prices without some measure of IZ production levels? My bet is that for most of the Boston area communities the level of production that has actually flowed from mandatory IZ requirements is a microscopic percentage of total new housing production and that the level of new housing production adds only modestly to the communities’ existing housing stocks.

If so, *despite some marginally statistically significant correlation, doesn't that suggest that*

*any real-world effect actually reflects other market or regulatory conditions that tend to characterize communities that have come to adopt IZ laws rather than any actual effect of the IZ laws [emphasis added]?* Certainly, most IZ communities in the Boston area that I have identified are a) core or close to the core communities that have become very desirable for professional people employed in those core area institutions (in order to avoid lengthy commutes and benefit from a more urbane life style), thus driving up housing prices, and b) are already heavily built up with little or no raw land available for development and dependent on recycling already developed, relatively expensive land for higher residential uses.

Without actual production levels built into the data base, I (for one) cannot give any credence to NYU's negative findings (albeit very cautiously hedged) for the Boston area (Rusk memo to NYU study team on October 21, 2007).

I received the following reply from the research team leader.

“Unfortunately we really don't have resources or staff capacity to do primary data collection, so our analysis in the Boston suburban areas and the DC metro area is constrained by the data that has already been assembled by previous surveys. Gathering data on the number of IZ units produced by even a reasonable sample of the 99 jurisdictions in the Boston area with IZ programs isn't feasible on the budget we are working with. As you know, we use the Local Housing Regulation Database.<sup>17</sup> The compilers of that database ...made tremendous efforts to obtain data on IZ production, but were unsuccessful, even with a much larger staff and budget and a longer timeframe than we have had.... *In any case, the level of IZ production doesn't enter into the main regressions on the effects of IZ on permits and prices (in any of the three geographical areas), so even if we were to obtain that data for the Boston suburban jurisdictions, it would only change the analysis on the question of what municipal characteristics affect production levels, not on the issue of how IZ affects housing markets [emphasis added]* (NYU study team memo to Rusk on November 2, 2007).”

Subsequently, having plowed myself through the 245 pages (in small-type, pdf format) that deal only with the issue of inclusionary housing provisions in the zoning codes of 189 suburban Boston municipalities, I empathize with the NYU team's dilemma. I culled from the database for whatever numerical information was available about actual IZ production levels. Here are my results.

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<sup>17</sup> Available at [www.pioneerinstitute.org/municipalregs/](http://www.pioneerinstitute.org/municipalregs/). The Local Housing Regulation Data Base was compiled as a joint project of Harvard University's Rappaport Institute for Greater Boston and the Pioneer Institute for Public Policy. The Pioneer Institute is Massachusetts' libertarian think tank, but the data gathering effort undertaken appears straight-forward enough (though the uses to which the database will be put may be another question).

Table 1 lists the 22 towns that actually reported specific numbers of units produced that were somehow associated with zoning code provisions (which are not always “inclusionary zoning” as I would define IZ). The numbers are tiny: for eight of the 22, “IZ units” represented less than one-tenth of one percent of the total housing supply (as of Census 2000, the latest available source for town-level data). Another 12 fall below a one percent impact. Only two towns’ reported IZ production exceeds one percent of their housing supply: Sherborn (34 IZ units, or 2.34 percent);<sup>18</sup> and Westwood (386 units, or 7.35 percent, though, more likely, actual IZ units were 33, or 0.61%).<sup>19</sup> (Somerville’s report was clearly erroneous.<sup>20</sup>) Cumulatively, the 520 IZ units produced were two-tenths of one percent of their total housing supply. Of the ten towns with IZ laws enacted prior to 1998, total IZ production (260 units) represented less than three percent of all housing built.

What of all the other towns? My review of the database identified 107 towns out of 186 that reported some treatment of affordable housing through their zoning codes or master plans. (Few, however, had adopted broadly applicable, mandatory, inclusionary zoning ordinances.) In response to the survey question “Have affordable units been developed through this zoning mechanism?” 47 towns responded “no,” 13 responded “yes” but did not provide a specific number, and 25 just didn’t respond at all. Would the IZ unit production record of the 13 generic “yeses” or the 25 non-respondents be any better? Very unlikely. My experience is that local governments with active, productive IZ policies are proud of their record and have production figures at their fingertips. Vagueness or silence usually means nothing is happening.

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<sup>18</sup> A 17-unit condo with 10 affordable units and a 24-unit “rental facility,” which, if 100% affordable, would not be considered “inclusionary.”

<sup>19</sup> Two seniors-only complexes with 180 units and 156 units; it’s unclear if they are mixed-income. Also, two single-family (detached) subdivisions (one with 25 affordable homes out of 100 and the other with eight affordable homes out of 56). By Montgomery County/Fairfax County standards, Westwood would have only 33 inclusionary units.

<sup>20</sup> Somerville adopted a broad IZ law in 1991 with a 12.5% set-aside for all developments of eight or more units. The database reports a city senior planner as saying in 2003 that “The total number of units created since 1991 is probably on the order of 1000. However, some projects have been all affordable, but those units are not a result of the inclusionary zoning ordinance.” Indeed, they weren’t. A later survey (see footnote 19) reported only ten IZ rental units and 41 homeownership units with the first having come on the market in 1997.

**Table 1 – IZ Production Reported in Boston Suburbs as of 2004**

<u>town</u>	<u>IZ units built[planned]</u>	<u>total housing units as of 2000</u>	<u>IZ units as pct of total units</u>
Acton	6	7,680	0.08%
Amesbury	36	6,607	0.54%
Andover	24 (2 yrs)	11,590	0.21%
Arlington	6 + [8]	19,411	0.07%
Ayer	2	3,154	0.06%
Carver	2	4,127	0.05%
Groton	5	3,393	0.15%
Lexington	6	11,333	0.05%
Marshfield	3	9,954	0.03%
Melrose	[18]	11,248	0.16%
Newton	85	32,112	0.26%
Peabody	7	18,898	0.04%
Quincy	100	40,093	0.25%
Sherborn	34	1,451	2.34%
Somerville	51 <sup>21</sup>	32,477	0.16%
Southborough	4	2,997	0.13%
Sudbury	44	5,590	0.79%
Sutton	5	2,950	0.17%
Wakefield	16	9,937	0.16%
Watertown	13	15,008	0.09%
Wenham	12	1,320	0.91%
Westwood	33 (386?)	5,251	0.63%/7.35%

NOTE: Brackets [xx] indicate approved but not yet built as of 2003

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<sup>21</sup> As reported by Rick Jacobus in “Stewardship for Lasting Affordability” (November 2007)

In fact, with a few honorable exceptions, it strikes me that inclusionary zoning in the Boston suburbs is like a Potemkin village – all false fronts with no substance behind. Yet, using a dummy variable (IZ or no IZ), *NYU 2007* found a modest but statistically significant negative impact of IZ policies on lowering production of market-rate housing. How can something that basically doesn't exist have an impact on anything?

Clearly, the regression must be measuring some factor that is not among the independent variables that is common to both the presence of IH/IZ policies and falling market-rate production/rising prices. The answer is easy to find: local governments typically adopt IZ policies when they are already confronted by high-priced housing and a shrinking supply of developable land. In other words, IZ policies don't usually create higher housing costs but are a response to them.

That can be most clearly seen at the metropolitan-level nationally. Let us construct a crude housing affordability index in which 100 means that the median family (defined by HUD's Area Median Income) can just afford the median price home coming on the market (as reported by the National Association of Realtors). Thus, an index value above 100 means that the regional housing market is relatively affordable; an index value below 100 means that it is relatively unaffordable.

With the single exception of Davidson, NC (a toney college town) in the greater Charlotte area (affordability index: 101 in 2006), I do not know of a city or county that has enacted an inclusionary zoning law in a relatively affordable housing market. Local governments are not moved to act until middle income families begin to feel the housing squeeze. Also, it is the effect of density bonuses applied to high-cost land that drives the economics of inclusionary zoning. Thus, inclusionary zoning laws are concentrated in unaffordable, high land cost, regional housing markets, such as Washington DC (index: 63), Boston (61), and San Francisco (35).

A similar phenomenon can generally be seen among jurisdictions *within* a regional housing market. Table 2 groups Boston's suburban towns by counties and generally arrays them by distance from the core city. Though Essex County goes against the pattern (largely because some very high-value towns like Manchester-by-the-Sea do not have IH/IZ provisions, in general, towns that have adopted IH/IZ provisions had higher housing costs in 2000 than towns that have not and the disparity becomes greater and greater as one moves farther out from the core.

**Table 2 – Average home values in 2000 between IZ and non-IZ towns**

<u>county</u>	<u>number with IH-IZ</u>	<u>pct of pop with IH-IZ</u>	<u>average home value no IH-IZ</u>	<u>average home value with IH-IZ</u>
Suffolk/Boston	3 of 4	97%	\$215,200	\$169,333
Middlesex	40 of 54	74%	\$266,900	\$290,910
Essex	20 of 34	56%	\$268,964	\$251,595
Norfolk	14 of 28	53%	\$233,487	\$316,936
Plymouth	7 of 27	23%	\$180,010	\$269,737
Bristol	4 of 20	20%	\$157,613	\$179,228

A regression analysis would not pick this common phenomenon up because presumably a dependent variable (change in housing prices) should not be tainted by having a higher related factor (relative level of housing prices) as an independent variable. But that is the reality in the field and it was rapidly escalating housing prices in local markets that caused a growing list of Boston suburbs to enact IH/IZ provisions and not the operation of IZ laws that was driving up housing costs *because little or no IZ housing was being built*. The causation is the reverse of what *NYU 2007* postulated.

### The Washington Housing Market

*NYU 2007*'s analysis of IZ in the Washington DC area

“also reveals no effects of IZ on permits or prices, although it is impossible to determine whether this reflects the true impacts of IZ or simply the severe data limitations [p 65]... Difference-in-difference estimates [that is, pre- and post-event changes within a single jurisdiction] are most reliable when the treatment and control groups are quite similar (or differences can be controlled for in regression analysis), so that the change in the control group can be viewed as the right counterfactual for what would have occurred in the treatment group absent the policy change [p 66]...Overall, our inability to control for pre-existing conditions limit our ability to draw clear conclusions about the effects of IZ in the DC area [p. 67].”<sup>22</sup>

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<sup>22</sup> My “translation:” Our regression analysis is dependent on having a very large number of “little boxes” municipal governments to be analyzed; we cannot deal with a much more limited number of

In the midst of controversy over a pending mandatory IZ law in Madison, WI, the mayor's staff cited Montgomery County, MD; Boulder, CO; and Burlington, VT as model IZ communities. On behalf of the Wisconsin Realtors Association and the Madison Area Builder's Association, *Vandell 2003* sought to make the case that these communities' growth had slowed because of their IZ laws.

*"[W]e are especially surprised at the low rate of [housing unit] growth of Montgomery County (13.2%), since it is a suburban county of Washington, D.C. that would be expected to be prime for higher suburban development rates. In fact, housing units in the Washington D.C. area overall increased 24.8% during the 1990's. At the beginning of the decade, Montgomery County made up 19.0% of the total housing units in the Washington, D.C. metropolitan area, but by 2000 this had dropped to 17.2%. Since there is plenty of vacant developable land yet in the County, it is not because the county is built out and constrained by its boundaries. We are left with the conclusion that residential development was directed away from the County for some other reason during the 1990s [emphasis added] [p. 29]."*

That "some other reason," *Vandell 2003* implies, was probably Montgomery County's IZ law. In responding to *Vandell 2003's* argument,<sup>23</sup> I advised the Madison mayor's staff that

Montgomery County was the site of the **second largest number** of housing units built (48,927) during the decade in the entire metro Washington area. Top building site was neighboring Fairfax County to the east (68,565) and number three was neighboring Prince George's County to the west (46,986). The two Maryland counties both reflected slightly lower percentages of their total inventory having been built during the previous decade (14.6% and 15.5%, respectively) and Fairfax County had only a slightly higher percentage (19.1%) than the four-state metro Washington area as a whole (18.2%).

**Each of these three counties had mandatory inclusionary zoning laws in place** – Montgomery and Fairfax counties throughout the decade and Prince George's County until 1995. It strains credulity to argue that inclusionary zoning laws were driving homebuilders away from the three highest housing production counties in metro Washington. *Their "lagging" percentages were simply a mathematical function of the large initial base housing stocks in each county at the decade's outset.*

Moreover, though Montgomery County still contains some tracts of undeveloped land, it is erroneous to characterize it (as [*Vandell 2003*] does) as having "*plenty of developable land ... [and] is not built out and constrained by its boundaries.*" Montgomery County contains 495 square miles, but since the early 1970s its comprehensive plan has designated almost 40

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"Big Box" county governments" – even though, from many points of view (growth management, fiscal health, economic development, racial and economic integration, etc.) regions of "Big Box" jurisdictions (like Washington DC) are superior to regions of "little boxes" jurisdictions (like Boston or, to a lesser degree, California's coastal metro areas).

<sup>23</sup> I also provided factually based rebuttals of his observations about Boulder and Burlington.

percent of the county to be permanently preserved as farms (93,000 acres, or 145 square miles) and parklands (28,000 acres, or 45 square miles). As of 1998 (my last data), the county's national model Transfer of Development Rights program had permanently preserved 38,250 acres through \$60 million paid by private homebuilders to buy development rights from farmers to increase development density within the county urban growth boundary - five times more than the second largest program in the country! And through its new \$100 million, 10-year "Open Space Legacy" program, the county is building on these achievements.

In fact, simply subtracting the Agricultural Preserve and existing regional parklands from the county's total area (and not trying to net out undeveloped land still available), with 873,000 residents in 2000, in all the remaining portions Montgomery County's density of population was about equal to the density of the Madison *urbanized area* (2,890 residents per square mile). Montgomery County does have plenty of wide open spaces, but most are not available for development *by citizen choice*.

My table [Appendix B] organizes all the jurisdictions of metro Washington by the sequence in which they were officially added to the Washington metropolitan area. In building half of its total housing stock in the 1990s (50.7%, or 31,532 units), Loudoun County VA had, as I recall, the second fastest growth rate among the nation's counties. Its phenomenal growth (and abutting Fairfax County's strong performance) was fueled by the maturing of Dulles International Airport located in eastern Loudoun County just over the Fairfax County line. And throughout the 1990s, Loudoun County had its own mandatory IZ law (though a Fairfax County official once characterized Loudoun County's law as "ADU Lite" to me).

During the 1990s, Frederick County MD north of Montgomery County played a somewhat comparable role (though lacking an international airport). It should be noted that this past spring [that is, in 2003] the Frederick County Council adopted an IZ law almost identical to Montgomery County's.

[*Vandell 2003*] draws a number of conclusions about income trends in these counties as well. At this point, I would just like to note that Montgomery County is the 13th highest income county in the nation and Fairfax County is the second highest. They achieved such lofty standing by becoming the global center of biomedical and genetic research and the world capital of the Internet, respectively, and their IZ ordinances were adopted as explicit and essential tools to achieve those economic development goals.

### **Summing up IZ's Impact on Market-rate Housing Production**

*AltClay2008* claims that USA research on IZ shows that "inclusionary zoning policies lead to reduced supply of new housing across the market." For California markets (where IZ is practiced most widely) only *RPPI 2004* makes such a claim, based on its survey of pre- and post-IZ production of market-rate housing solely in IZ-adopting municipalities. "Inclusionary zoning," *RPPI 2004* concludes, "drives away builders, makes landowners supply less land for residential use, and leads to less housing for homebuyers—the very problem it was instituted to address."

However, examining entire housing markets – that is, both IZ and non-IZ municipalities – all other researchers conclude that IZ *per se* had no negative impact on production levels of market-rate housing:

- *UMD 2008*: “[I]nclusionary zoning program had a small and insignificant effect on total housing starts over the study period. Our analysis suggests that housing starts in municipalities were 0.15 percent greater in municipalities with an inclusionary zoning program compared to those without.”
- *NYU 2007*: “[t]he analysis shows no evidence of a statistically significant effect of IZ on ... single-family permits.”
- *Rosen 2004*: “An analysis of these data shows that for the jurisdictions surveyed, adoption of an inclusionary housing program is not associated with a negative effect on housing production.”
- *Rusk 2005*: “The [*RPPI 2004*] studies’ conclusion that housing production has been reduced in cities adopting IZ laws ignores the fact that the same trend is occurring in non-IZ cities as the regional market becomes more densely developed and raw land disappears... [T]he existence of an inclusionary zoning ordinance does *not* have a statistically significant relationship to the rate of housing construction.”

For Boston’s suburbs, *NYU 2007* ventured that “the results from Boston-area suburbs provide some evidence that IZ has contributed to ... lower rates of housing production.” That conjecture is based on a regression model that treats the existence (or not) of an IZ law as an independent variable regardless of whether or not there has been any appreciable IZ production. As shown above, inclusionary zoning in the Boston suburbs (with few exceptions) is a mirage – a Potemkin village that is all façade and no substance behind. “IZ/no-IZ” must be serving as a proxy for some other factor which, indeed, is probably the fact that city councils typically approve IZ laws *after* a dramatic increase in housing prices has rendered housing relatively unaffordable for a range of middle-income families. IZ laws are not the cause but the effect of rapidly rising home prices.

Why should we credit *NYU 2007*’s finding that IZ has had no negative impact on market-rate production for the San Francisco area and discredit “some evidence that IZ has contributed to ... lower rates of housing production” for Boston’s suburbs if both are based on a methodology that does not take actual IZ production into account? The explanation is that whereas IZ in the Boston suburbs is largely an

illusion, IZ in the San Francisco Bay area is very real. Of 51 Bay Area cities in the *NPH 2003* database, 36 had submitted production data. Only two cities' IZ inventory fell below one-tenth of one percent of total housing supply in 2000; 16 cities' IZ units accounted for between one-tenth of one percent and one percent; 14 cities, one to five percent; and in four cities IZ units accounted for more than five percent of total housing supply. Cumulatively, 32 cities adopting IZ laws by 1997 or earlier had built 11,030 IZ units, accounting for 1.24 percent of total housing supply in 2000 and representing roughly ten percent of total housing units built since adoption of their IZ laws.

*NYU 2007*'s regression analysis of the San Francisco Bay area (where IZ produces a significant number of units) found that IZ has *no* adverse impact of total housing production. It is puzzling indeed why *NYU 2007* would question its San Francisco finding on the basis of a weak statistical indication in the Boston suburban market (where IZ is largely an illusion) that IZ just might have a negative impact on total housing production.

For the Washington DC area *NYU 2007* "also reveals no effects of IZ on permits." The only other USA literature that critically examined the Washington area (*Brookings 2001* was simply a source document) was the *Vandell 2003* essay that opined (however coyly) that "residential development was directed away from [Montgomery] County for some other reason during the 1990s." Since Montgomery County had the second highest housing production in the Washington region during the decade, and Fairfax, Loudoun and Prince George's counties (the first, third, and fourth largest IZ producers) all had IZ laws as well, *Vandell 2003* hardly merits rebuttal.

**Thus, there is *no* credible basis in USA research on inclusionary zoning that, in *AltClay 2008*'s words "inclusionary zoning policies lead to reduced supply of new housing across the market."**

## II. Effect of Inclusionary Zoning Laws on Market Rate Housing Prices

*AltClay2008*: “Inclusionary zoning can cause the average price of new homes across the market in certain jurisdictions to increase .... Higher housing prices in certain U.S. metropolitan areas, such as San Francisco and Boston, are due mainly to land-use restrictions. As a form of zoning restriction, inclusionary zoning ultimately worsens housing affordability ... Inclusionary zoning asks home buyers and land owners to bear the cost of a social subsidy, which is unfair (p. i, 3).” “Affordability among all households is important in order to support economic development and prosperity within the municipality. When new home buyers have to bear the cost of this subsidy, this has negative repercussions on housing affordability (p. ii).” “The price of new homes increased by \$22,000 to \$44,000 per unit due to inclusionary zoning policies (net of any change in price for other reasons) [citing *RPPI 4-2004*] (pp. 3, 11).” “Supply shortages [allegedly caused by IZ causing some new developments to fail to meet financial viability criteria and failing to come to market] ultimately push up the average new home price and rents for new rental units. These higher market prices can be viewed as a ‘subsidy’ from developers (or home buyers) to support the subsidized units. Bearing the cost of this subsidy means that home prices and rents for market units are higher relative to what they would be without inclusionary zoning. Higher market prices for homes means reduced affordability across the entire housing market (p. 15).”

In the previous section I have already dealt with the findings of *NYU 2007* that there were no negative price effects of IZ on market prices in the San Francisco and Washington areas and have suggested that there is no plausible basis for the *NYU 2007* statement that there might be negative price effects in the Boston area. Let me turn in detail to the findings of *UMD 2008* on possible market price impact of IZ laws in the San Francisco Bay and Sacramento areas. Specifically, *UMD 2008* found that

- We estimate that inclusionary zoning programs raise housing prices by approximately 2.2 percent.
- Also, we estimate that the effects of inclusionary zoning are greater in higher priced housing markets. Specifically, we estimate that inclusionary zoning programs lowered the price of housing that sold for less than \$187,000 [in 1988 dollars] by about 0.8 percent and increased the price of housing that sold for more than \$187,000 (in 1988 dollars] by about 5.0 percent.

“These findings suggest,” *UMD 2008* added, “that housing producers did not in general respond to inclusionary requirements by slowing the rate of construction of single family housing but did pass the increase in production costs on to housing

consumers. Further, housing producers were better able to pass on the increase in costs in higher priced housing markets than in lower priced housing markets.”

As a related issue, *UMD 2008* also examined changes in the size of new homes between IZ and non-IZ municipalities.

- We estimate that the implementation of an inclusionary program lowers the mean housing size by approximately 48 square feet.
- The effects of inclusionary housing size are greater on lower priced homes. Specifically, we estimate that houses that sold for less than \$187,000 [in 1988 dollars] are approximately 33 square feet smaller in inclusionary zoning jurisdictions while houses that sold for more than \$187,000 [in 1988 dollars] are larger in inclusionary zoning jurisdictions by a statistically insignificant amount.

In combination, *UMD 2008* explained, “these findings suggest that inclusionary zoning programs caused housing producers to increase the price of more expensive homes in markets where residents were less sensitive to price, and to decrease the size of less expensive homes in markets where residents were more sensitive to price.”

Several overall comments about this finding:

- From Figure 4 (on page 7) it appears that, in 1988 dollars, the sales price of new homes in the San Francisco and Sacramento markets increased from about \$170,000 in 1988 to \$355,000 in 2005 – a real increase of 109 percent. Assuming that *UMD 2008*’s finding is valid, IZ’s impact on average home price represented about 2 percent of the total reasons for the real price of housing having more than doubled over this 17-year period.
- From Figure 4, it also appears that the size of new home built increased from about 1,640 square feet in 1988 to 2,360 square feet in 2005 – a 35 percent increase. If we assume that 35 percent of the increased sales price was a direct result of the average new home’s greater size, the contribution that IZ policies would have made to the rising cost of new homes was still less than 3 percent of the total price increase.
- The study is tracking increases in average new home sales prices without conveying any information about the range of new home prices. A rising average price can mask the benefits of having a modestly increasing inventory of affordable homes well below the average price for more modest income local workers.

- **Finally, *UMD 2008* and all other studies covered ignore trends in rental housing. Generating more affordable rental housing as an integral part of mixed-income communities is a primary goal of IZ.**

Nonetheless, beyond the rigorous methodology of the researchers, there is added credibility to *UMD 2008*'s finding of a slight increase in average new home prices associated with IZ policies in these two regions because, in my eyes, some key provisions of IZ ordinances as widely practiced in California are not consistent with “fair play” practices elsewhere.

Specifically, I am referring to the minimum project size or “threshold” at which IZ requirements would apply. The principle that I set forth at the outset of this paper is

The minimum project size (“threshold”) should be set at a level where a builder can realistically implement a full density bonus; where actual site constraints or competing local policies, such as open space requirements, effectively prevent implementing a full density bonus, the IZ percentage should be scaled down proportionally.

Though market conditions vary, in general, that standard usually means a “threshold” of ten units or more – a threshold that typically covers about 80 percent of all building permits but also typically involves a parcel of land sufficient in size to accommodate some design flexibility.

Most California communities do not adhere to that “fair play” standard. Of 85 IZ cities and counties for which information is available in the San Francisco and Sacramento areas, 67 (or four out of five) have IZ thresholds of less than ten units. In fact, the threshold is two units in ten cities and the IZ obligation applies to every new housing unit in 15 cities (that is, a threshold of *one* unit).

Overall, for 85 IZ cities and counties in Northern California, the mean threshold size was actually 6.08 units in contrast to the 12 units reported by *UMD 2008*. The difference is that *UMD 2008* included Rio Vista, whose threshold of 400 units – eight times the next largest threshold in the USA – is such an outlandish statistical outlier that it should be excluded from calculating mean threshold size.

*UMD 2008* did not analyze IZ laws for density bonuses (at least, density bonuses are not one of the “descriptive statistics” described in table 2 and UMD staff told me that they did not test for density bonuses in the study's regression analysis). However, *NPH 2003* reported that 94 percent of IZ ordinances provide for density bonuses of some magnitude. Nevertheless, for small developments (i.e. less than ten units) density bonuses often become a paper provision; they

cannot be “harvested” by the builder ... even to cover the land costs of the IZ units required.

So what alternative does the builder have in order to comply with IZ requirements for small projects, including individual spec or custom homes that characterize small builders’ stock-in-trade? The answer is to make a cash payment to the local government, often into an affordable housing trust fund. *UMD 2008* reported that 76 percent of their 65-city sample provide for payment of “in lieu fees.” Having checked specifically, I can report that all 15 cities that have an IZ threshold of one unit collect in-lieu fees.

*NYU 2007* characterized in-lieu fees, particularly for small projects, as an “impact fee for affordable housing.” I have been less charitable. I have publicly branded the combination of low thresholds and in-lieu fees as a “pay to play scheme” and “municipal extortion.”

Thus, I am not surprised that *UMD 2008* found that IZ laws were associated with an average 2.2 percent increase in the price of new homes. For some percentage of new homes built in four out of five cities studied in the San Francisco and Sacramento areas, builders were paying an “impact fee for affordable housing” that was not off-set by compensatory benefits. So, *market conditions permitting*, they sought to pass it along in the form of higher prices.

One wishes that *UMD 2008* would have expanded its analysis to test whether any contrast in price increases exists between IZ cities with real density bonuses (a threshold of ten or more) and IZ cities with imaginary density bonuses at the small project level (a threshold of less than ten). However, such was not included in the specifications for the research design specified by *UMD 2008*’s sponsor, the National Association of Home Builders.

Finally, the precision of *RPPI 4-2004*’s finding that “The price of new homes increased by \$22,000 to \$44,000 per unit due to inclusionary zoning policies (net of any change in price for other reasons)” is certainly eye-catching. It turns out, however, that this “finding” is not based on any empirical evidence but on an economic model used by *RPPI 2004*. In the next section we shall turn to the issue of the validity of findings based on economic modeling as contrasted with findings based on *pro formas* of actual projects used by actual builders.

**In summary, however, *NYU 2007* (no) and *UMD 2008* (yes) conflict on whether or not IZ contributes to price increases of new market-rate homes in the San Francisco area . If yes, *UMD 2008* finds that the effect is relatively minor (two-three percent). However, it is plausible that improperly designed IZ laws, extorting “impact fees for affordable housing” from small projects, could have that effect.**

### III. Comparing Economic Models and Builder *Pro Formas*

*AltClay2008* devotes 5½ pages to a “feasibility case study,” modeling 200-unit condominium apartments in Toronto and Edmonton. Though Toronto- and Edmonton-specific cost data are used, the central assumption is “the total construction square feet is the same with or without inclusionary zoning policies.” That is the same central assumption as the *RPPI 2004* economic model uses. In effect, both *RPPI 2004* and *AltClay 2008*’s economic models assume that inclusionary units are just price-reduced market-rate units.

*RPPI 2004*’s economic model is easy to understand though the analysis and its alleged ramifications on market home prices and local government revenues cover pages 10-19 in *RPPI 4-2004* and pages 6-14 in *RPPI 6-2004*. The heart of the economic model is contained in the following example.

“[W]e estimate that a new home in West Hollywood could be sold for \$588,530. West Hollywood requires that 10 percent of homes be priced at “low” and 10 percent at “moderate,” which we estimate at \$146,875 and \$215,265, an average of \$181,070 per home. That means 20 percent of homes would need to be sold for \$407,460 less than market price. In other words, the cost of providing each inclusionary unit in West Hollywood is \$407,460 (*RPPI 6-2004*: p. 10).” [As used by RPPI, “cost” means “opportunity cost,” or value foregone.]

*RPPI 6-2004* then multiplies the “cost” of providing each IZ unit by the number of units produced since the inception of the IZ program – 19 IZ units in the case of West Hollywood since 1986 (from table 2 on p. 4). Thus, the total “cost” of the IZ program in West Hollywood has been \$5,296,977 (figure 8 on p. 11).

How is that “cost” paid for? Assuming that the 19 IZ units produced were exactly 20 percent of all units built in the covered developments, there were 95 total units built, or 76 market-rate units. Thus, if 100 percent of the cost were shared among those 76 market-rate units by raising their sales price, the increase in sales price for the average market-rate units would have been \$69,697, or a 12 percent increase which is close to the median (that is, presumably IZ-generated) price increase of \$65,952 on each market-rate new home, the report calculates, for the 13 IZ cities in Los Angeles and Orange counties combined. *RPPI 6-2004* also calculates the resulting price increase for market-rate new homes (\$58,081) if only five-sixths of the “cost” is passed on to home buyers or if only half (\$34,849) is passed on to them. (Presumably, the builders themselves absorb the remaining “cost” in the form of lost profits.)

Thereafter, *RPPI 6-2004* calculates the lost revenues from the reduction in taxable valuation from inclusionary zoning; at an assumed one percent of assessed valuation, the lost revenue for state and local government from IZ in West Hollywood would be \$52,970 per year (figure 13 on p 19). Based on a discount rate of 3 percent, the present value of state and local government revenues losses from IZ in West Hollywood would be \$1,671,031 (figure 14 on page 20).

The “cost” of IZ in West Hollywood is among the most modest of the 13 communities. The average “cost” of each IZ unit in Laguna Beach is \$1,468,451, or \$204,114,750 total “cost” in all. (Spreading that out among the 556 market-rate units presumed built in Laguna Beach would have added 25 percent to new homes’ average sales price.) The total “cost” of Irvine’s IZ program has been \$1 billion.

What about impact on governmental revenues? “For the 13 cities the total present value of lost government revenue is upwards of \$752 million (p. 19),” the report summarizes. “Although inclusionary zoning is often pitched to governments as a zero-cost method of creating affordable housing, the costs from lower assessed valuations are quite large.”

But there’s more. According to RPPI’s two reports, enacting IZ laws has caused 28,591 new homes to not be built at a loss of over \$18 billion in value never created! Wow!

What’s wrong with RPPI’s analysis? In reverse order,

- Research by *UMD 2008*, *NYU 2007*, *Rosen 2004*, and *Rusk 2005* (in descending order of methodological rigor) shows that any decline in new home construction in California was not caused by IZ laws.
- If the “cost” of IZ units were truly absorbed by price increases of new, market-rate units, there would be no loss of governmental revenues – just different home owners paying much more (owners of new, market-rate homes) than others (owners of IZ homes). RPPI cannot have it both ways.
- On the other hand, if the cost were totally absorbed by profits sacrificed by builders, their IZ “subsidy” (equal to an estimated 12 percent to 25 percent of market rate sales prices) would have exceeded their customary profit margins (generally, 10 percent of the sales price). During RPPI’s study period (mid-1980s to 2003), builders would have gone out of business in droves while, in fact, the housing industry was booming.

- Assuming that *UMD 2008*'s finding on IZ's impact on market-rate sales prices are valid,<sup>24</sup> *RPPI 2004*'s projections of 12 to 25 percent price increase because of IZ "subsidies" fall far outside any empirical support.
- Rarely do builders just sell their market-rate product at a discount to meet IZ requirements.<sup>25</sup> Except in multifamily apartments, most IZ units are smaller in square footage and with more modest appliances, interior finishes, etc. than their market-rate neighbors. Modeling IZ units as though their "sticks and bricks" costs are identical to costs of market-rate units is not valid. Indeed, *UMD 2008*'s analysis shows smaller square footage for new homes built in IZ communities than in non-IZ communities. In part, that must reflect the effect of smaller IZ units themselves.
- **Most importantly, the RPPI analysis ignores the role of density bonuses.** A properly implemented density bonus program (with the density bonus rate exceeding the IZ set-aside rate) will provide "free land" for both the IZ units (which helps make them affordable) and some bonus market-rate units (that are highly profitable since there is no land cost in their market-rate price).

#### Density Bonuses: RPPI's View

Density bonuses sufficient to generate additional market-rate units are the economic engine that makes a good IZ law work. It is useful to examine RPPI's discussion of density bonuses as it appears on pages 29-30 of the San Francisco report of April 2004.<sup>26</sup> My response will be **[bracketed and in boldface]** following each RPPI point.

"Some advocates of inclusionary zoning argue that density bonuses — or giving builders the option to increase the density of their developments in return for making more of the units affordable — can offset costs, thus mitigating any potential price increases and leaving builders with the same incentive to supply homes. One actually claims that density bonuses can completely make up for the costs of inclusionary

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<sup>24</sup> For the San Francisco and Sacramento markets, UMD estimated an average 2.2 percent price increase, rising to 5.0 percent for the highest priced homes (see page 25 above).

<sup>25</sup> Such can happen. See the example of Franciscus Homes' Eberwine Community (below).

<sup>26</sup> The section was dropped for the Los Angeles-Orange County report two months later — probably more as part of shortening that report by 9 pages rather than for ideological second thoughts; as a result, the issue of density bonuses was relegated to two sentences in a footnote

zoning: “High enough density bonuses create affordable units at no cost to landowners, developers, or other homeowners.”<sup>27</sup>

The assertion that density bonuses offset costs associated with inclusionary zoning has several problems.

First, as generally practiced in the Bay Area, inclusionary ordinances do not even offer density bonuses for meeting the ordinance’s requirements. These jurisdictions only offer density bonuses if developers exceed the ordinance’s requirements.

Even where density bonuses are made available, some of the most enthusiastic promoters of inclusionary zoning concede that they are not a panacea for addressing its substantial costs:

*In many cases, developers do not seek to take advantage of density bonuses for a variety of reasons.*<sup>28</sup>

*First, some developers cannot use a density bonus because their project already has a high number of units per acre...[My observation is that in high-land cost markets, developers are usually eager to squeeze in additional market-rate units but may not get a local government’s approval for a density change; if so, the IZ set-aside should be scaled back proportional to the density bonus actually achieved (as Fairfax County VA does).]*

*Second, a density bonus is not applicable to certain types of developments...because a density bonus...may not be economically beneficial. [???*

*Third, many developers do not seek to increase the density of their developments to maintain a level of density they believe is critical for the marketing of their development. [This is an excuse for not being creative in designing an inclusionary development. Pulte Homes and Toll Brothers, two of the USA’s largest homebuilders, have shown how duplexes and quadplexes that are virtually indistinguishable from their McMansion neighbors can be integrated into inclusionary neighborhoods. ‘I’d druther not’ is not a valid basis for waiving inclusionary requirements.]*

*Fourth, in some instances, a higher density would require developers to change their buildings to a more expensive construction type, which can offset the per unit land cost savings. For example, if a higher density requires*

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<sup>27</sup> Quoting Barbara Kautz, “In Defense of Inclusionary Zoning: Successfully Creating Affordable Housing” *University of San Francisco Law Review*, vol. 36, 2002, p. 1019.

<sup>28</sup> Quoting David Paul Rosen, *Inclusionary Housing Implementation Policies, Practices, and Program Administration* (prepared for City of Los Angeles, 2003), p.45.

*changing the construction of a building from a wood frame to a concrete and steel structure, per unit construction costs may rise significantly. [This specific example is a very valid concern that I have encountered in discussions with multifamily builders in Baltimore. Before waiving the inclusionary requirement entirely, a builder and local officials should explore other alternatives, such as lowering parking requirements to allow for a “horizontal density bonus” or applying other cost-offsets, such as waiving transfer taxes/recordation fees (even for all units), waiving utility hookup charges, waiving impact fees, etc.]*

*Fifth, higher densities in many communities can be controversial. Some existing community members may protest a higher density development in their neighborhood.*

**[Welcome to the world of NIMBY-ism. A well-designed IZ program front-ends all the local political controversy. The IZ policy thereafter is bureaucratically executed at the plan check and building permit desk. I am advised that in 34 year no zoning case has ever been appealed to the Montgomery County Council because of applicable IZ requirements.]**

Yet another problem with density bonuses (and other oft-cited incentives such as development fee waivers) is the risk that they may trigger prevailing wage requirements under 2002 changes to California’s prevailing wage statutes. While to our knowledge neither the courts nor the Department of Industrial Relations has definitively resolved the matter, at least some local jurisdictions have raised the possibility that incentives offered to private developers for the construction of affordable housing may trigger prevailing wage requirements and thereby undermine the efficacy of the incentives:

*California State law intended as incentives for developers to create affordable housing are often ineffective due to competing laws with different priorities. Developers often find themselves in a position unable to take advantage of State Density Bonus law and local financing incentives (i.e., fee waivers and reductions) in order to construct affordable housing because State law also requires developers to pay prevailing wages to all subcontractors when they take advantage of these incentives. . . [P]revailing wage requirements...can add 20 to 30 percent in additional construction costs to a new housing project. Often, this deems the incentives cities can offer to induce developers to include an affordable housing component not much of [an] incentive after all.<sup>29</sup>*

**[As of December 2008 the California Department of Industrial Relations states that residential projects “consisting of single-family homes and apartments up to and including four stories are subject to payment of prevailing wages when paid for in whole or in part out of public funds, including federally funded or assisted residential projects controlled or carried out by an awarding body (emphasis**

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<sup>29</sup> Quoting City of Pittsburg (2004), *Housing Element*, HCD Revision Draft, p. 13-87.

**added]. An example where prevailing wages do apply would be affordable housing subsidized by the California Tax Credit Allocation Commission (see “Effects of Prevailing Wage Requirements on the Cost of Low Income Housing” by Dunn, Sarah et al. (<http://urbanpolicy.berkeley.edu/pdf/DQR0104.pdf>). However, neither Barbara Kautz in “A Public Agency Guide to California Density Bonus Law” (Fall 2005) nor the California Department of Housing and Community Development in “California’s Planning Laws for Affordable Housing” reference density bonuses as falling under the definition of public funding or assistance.]**

In sum, [RPPI 2004-4 concludes], we believe that many advocates of inclusionary zoning have substantially overstated the potential of density bonuses and other incentives to mitigate the very significant costs associated with producing inclusionary units.

### Density Bonuses: A Homebuilder’s View

Let’s leave the world of hypothetical economic models for the real world of the builder’s bottom line. In developing IZ policies I’ve had many meetings with for-profit homebuilders. In fact, as one of 13 voting members of the Baltimore City Council-appointed Task Force on Inclusionary Zoning, I had 17 small group and one-on-one, private meetings with city homebuilders in the Spring of 2006.

I remember well one session with a prominent local homebuilder where we tested various proposed IZ provisions and cost-offsets against the *pro forma* of one of his current projects: a 71-unit townhouse development in the gentrifying Fells Point neighborhood. He was pricing his townhouses at approximately \$500,000 – just about the limit at which Task Force members felt that a proposed menu of cost-offsets (other than density bonuses) could feasibly “hold harmless” a builder’s profits. With an affordable price point of \$260,000 (affordable for a family at 120 percent of Area Median Income), he would have had to provide seven IZ units along with 64 market- rate units.

His re-design options were very limited, he told me. To provide a three-bedroom, affordable townhouse, he would have to locate two bedrooms side-by-side in front and one in back, since the city building code required all bedrooms to have an outside window; moreover, the code required a bedroom to be at least nine feet wide, so an inclusionary townhouse’s front footage would have to be at least 18 feet (that is, not much less than the width of his market-rate townhouses). By drawing down various “as-of-right” cash cost-offsets from the proposed “menu” (Plan A), he would have recouped 95 percent of his projected pre-IZ profit. We figured that by substituting back in one market-rate unit for an IZ unit, his profitability would have been “held harmless” – the minimum basic commitment of the proposed IZ ordinance – without using any density bonus.

We then tested for implementing the full density bonus (Plan B). For a 10 percent IZ set-aside, the density bonus would have been 20 percent (i.e. one bonus market-rate unit for each IZ unit). This would have raised his project from 71 townhouses to 85 townhouses – eight IZ units and 77 market rate units. (Under the “Rusk Rule” fractional units are always rounded off in favor of the builder.) Moreover, the density bonus would only have been available at a price point of being affordable at 80 percent AMI, the IZ units would not have cost \$260,000 but \$175,000.

The bottom line? The profits on his inclusionary development would have increased by about 25 percent! And the inventory of affordable homes would have been increased by eight townhouses priced at \$175,000 with no cost to the city government. His density bonus would have used up all his “points” earned and no further use of the menu of cash cost-offsets would have been available.

“As a practical matter,” the builder cautioned, “I cannot implement the density bonus on this site. To sell a townhouse for \$500,000, I have to provide the owner with adequate, off-street parking, and I cannot get more parking spaces to accommodate 14 more units on this constrained site.”

That struck me as probably correct. A city housing official would have to decide whether to go forward with Plan A or to recommend to the Inclusionary Housing Advisory Council (with its strong industry representation) that the IZ requirement be waived for this project.

In the longer run, there might be other solutions for a Fells Point-type situation. For example, the city might take over the provision of parking on a neighborhood basis, constructing public parking garages and providing free or reduced-rate parking spaces for nearby housing developments. (I have even seen examples of condominiums being built as the outside walls of parking garages, providing “just-outside-your-front-door” access to reserved parking for owners and tenants.) There is certainly a public cost associated with this solution, but as any subsidy to homeowners and renters would be spread among office workers, shoppers, and tourists as well, the cost would be quite reasonable. And Smart Growth compatible.

That builder’s *pro forma* was confidential. Frank Spadea, the head of Franciscus Homes, one of Hampton Roads VA’s largest homebuilders, was the first recipient of the NAHB’s Innovations in Workforce Housing award in 2005. In public presentations in both Virginia Beach and Smithfield, he offered two *pro formas* based on his actual business model. He was illustrating how he would use Virginia’s Affordable Dwelling Unit (ADU) provisions, as further

amended in the 2007 legislative session. That state statute authorizes local governments to enact IZ laws with a 17 percent set-aside and 30 percent density bonus. (Income-targeted “price points” are left to the local government’s discretion.)

Table A is Franciscus Homes’ workup of a prototype affordable townhouse for Smithfield/Isle of Wight County. (The least expensive new townhouse built in the county cost \$200,000 in 2006; the average cost of new, single-family detached homes was \$550,000.)

Table A  
Prototype workforce townhouse:

unit size (sq ft)	1,200 sq ft	
construction cost	@\$65/sq ft	
structure cost		\$78,000
land development cost		\$13,000
local government charges		\$20,000
cash proffer	\$11,000	
other	\$9,000	
subtotal		\$111,000
land cost(w/density bonus)	\$0	
total hard cost (70% of sales price)	<u>\$111,000</u>	
sales price #A		\$158,500
or affordable at 88% AMI		
total hard cost (w/o gov’t charges)		<u>\$91,000</u>
sales price #B		\$130,000
or affordable at 72% AMI		

Table A is the builder’s own summary of its detailed, item-by-item cost sheet. However, the business plan has a simple rule-of-thumb: total hard cost is 70 percent of the target sales price. As I recall, land cost was about \$40,000 per lot. Thus, by providing “free land,” the ADU law would have knocked about \$55,000 off the “market price” of this three-bedroom unit. At a price point of \$158,500, the prototype ADU would have been affordable at 88% AMI. The price point could have been further lowered to \$130,000, or affordable at 72% AMI by

the county government’s waiving the \$11,000 per unit cash “proffer”<sup>30</sup> and the \$9,000 utility hookup-charge.

In Table B, Franciscus Homes took an illustrative 100-unit subdivision under conventional zoning with its market-rate townhouses selling for \$400,000. The builder then applied the required ADU set-aside of 17 percent and implemented the 30 percent density bonus (easy to achieve in wide-open Isle of Wight County and generally achievable in Virginia Beach). For simplicity’s sake, the price of the prototype ADU was rounded off to \$160,000.

The bottom line? The company projected making \$4,000,000 in profits from the conventionally-zoned, 100 market-rate unit development, but \$5,240,000 in profits from the IZ-zoned, 108 market-rate, 22 ADU unit development – an increase of \$1,240,000 in profitability, or a 30 percent boost.

Table B  
“Basic Plan” (using prototype IZ unit)

Conventional zoning:	100 market rate @\$400,000
sales revenue	\$40,000,000
total cost	- <u>\$36,000,000</u>
net profit	\$4,000,000
inclusionary zoning:	130 total units
market rate units	108 @\$400,000
IZ units	22 @ 160,000
sales revenue (market units)	\$43,200,000
sales revenue (IZ units)	<u>\$3,520,000</u>
total sales revenue	\$46,720,000
cost (market units)	\$38,240,000
cost (IZ units)	<u>\$3,240,000</u>
total cost	\$41,480,000
net profit from 130 mixed-income	\$5,240,000
net profit from 100 conventional	- <u>\$4,000,000</u>

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<sup>30</sup> In more conservative Virginia, the county government postures the \$11,000 as a “voluntary proffer” rather than calling it an “impact fee,” but the reality is that no building permits are issued without the proffer having been paid.

increased profit: IZ plan

\$1,240,000

Finally, Franciscus Homes presented a proposal that was actually being made to the City of Suffolk (located just east of Isle of Wight County). They were proposing a 394-unit development called Eberwine. In recent years, using New Urbanist design principles, Franciscus Homes has redesigned its entire product line, targeting the lower end of the “market-priced” market. For Eberwine, instead of building prototype ADUs, they proposed to simply write down the sales price of 17 percent of each of their models from coach homes to villas. The total write-down of 75 homes would represent a total of \$4 million. The amount of the discount would be a lien on each ADU that Franciscus Homes proposed to donate to the city affordable housing fund. Thus, future re-sale prices for the ADUs would be whatever the current market-price would be minus the value of the original discount. ADUs could only be sold to income eligible families at that price, thus maintaining on-going affordability.

The payoff for Franciscus Homes would be that the city would grant a 50 percent increase in density in return for the ADU commitment. Despite the \$4 million write-down in revenues, Franciscus Homes would still make greater profits from the IZ-zoned, 394-unit development (with 319 market-rate homes) than from a conventionally zoned development with a maximum of about 250 market-rate homes.

Table C  
“Optional Plan” (write-down)  
(Frank Spadea’s Eberwine in Suffolk)

<u>model</u>	<u>no.</u>	<u>IZ units</u>		<u>Market units</u>	
		<u>price</u>	<u>no.</u>	<u>price</u>	
coach	35	\$165-190k	134	\$206-237k	
carriage	11	\$190-220k	73	\$237-275k	
cluster	24	\$220-250k	83	\$275-312k	
villas	4	\$225-295k	29	\$312-350k	
total	75	\$207,500	319	\$265,000	

Frank told me that at an NAHB annual convention he had given a workshop on workforce housing. Outlining his Eberwine strategy, he asked “How many of

you would give up about four percent of your gross revenues to get the density you seek?”

“There wasn’t a developer in the room,” he told me, “that wouldn’t take that deal.”<sup>31</sup>

Finally, the anti-IZ literature (including *AltClay2008*) is filled with arguments that, on the one hand, underlying land prices would increase to eliminate the “free land” effect of inclusionary zoning, and on the other hand, if density bonuses are justified in order to correct “suboptimal” restrictive zoning, local planning commissions should just reform zoning across the board to establish optimal conditions in the first place.

Frankly, at this stage in this paper (page 39) I am running out of patience with this theoretical clap-trap.<sup>32</sup> Developers make their fortunes (and lose them as well) in the space that exists between what land owners perceive is the value of their land and what added value developers can cajole from changes in government planning, zoning policies, and infrastructure investments. And the never-ending line of developers seeking zoning changes and variances in an ever-changing world of market tastes, technology, economic opportunities, etc. are testimony to the fact that the optimal zoning plan never exists.

**The reliance of libertarian think tanks (and their industry sponsors) on hypothetical economic modeling testifies to the endurance of the old academic adages: “Never let the facts interfere with a good theory.”**

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<sup>31</sup> Unfortunately, at last report (just before the housing bubble burst), the Suffolk Planning Commission was still balking at approving the increased density for the Eberwine development in the face of intense NIMBY-ism.

<sup>32</sup> I am not entirely illiterate about economic theory. I received my A.B. in Economics from the University of California at Berkeley and was awarded the Departmental Citation by the faculty as “the outstanding undergraduate student in Economics” in 1962.

## IV. IZ’s Contribution to Meeting Affordable Housing Needs

*AltClay2008*: “Inclusionary zoning is an ineffective and inefficient policy, compared to other options ... Inclusionary zoning does not produce a high volume of ‘affordable housing’ – typically, only 3-7 percent of the net new housing produced annually in inclusionary zoning jurisdictions (p. i)” ... “[IZ] is ineffective at producing subsidized housing units ... there are more effective and efficient ways to achieve the same objectives ... [A recent Harvard Institute of Economic Research study] suggests that the ‘affordable housing’ debate should be broadened to encompass zoning reform, especially reducing zoning restrictions, not just public or subsidized construction programs (p. 5).”

### IZ Production Level

In my view, IZ is best practiced in Montgomery County MD and Fairfax County VA. In these two counties alone, for-profit builders have created almost 16,000 IZ units as integral components of developments with an estimated 278,000 market rate units since their respective policies were adopted in 1974 and 1990.<sup>33</sup>

These statistics from two communities where IZ is practiced best illustrate another conclusion: *IZ can be only part of an answer (though an important part) for meeting a community’s workforce housing needs.* Since 1974, Montgomery County’s Moderately-Priced Dwelling Unit (MPDU) policy has produced over 12,500 MPDUs (the USA’s largest IZ program); that is roughly 6.5 percent of all housing units built during that period. With 3,135 units built since 1990 (the USA’s third largest IZ program), Fairfax County’s Affordable Dwelling Unit (ADU) policy has had an even more modest impact (less than one percent of all housing units built during that period). Such limited impact flows structurally from the provisions of their IZ laws:

- Montgomery County’s MPDU law requires a 12.5 percent to 15 percent set-aside (with density bonuses scaling up to 22 percent). For its first quarter-century, the threshold for mandating MPDU set-asides was 50 or more units (probably, in retrospect, higher than it needed to be to protect builder profitability); during the past decade, the threshold has been lowered, first to 35 units, and currently to 20 units as the county builds out

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<sup>33</sup> Estimate based on Table B25034 (“Year Structure Built”) as tabulated by the *American Community Survey 2007*. The estimate of 278,000 “market-rate” units undoubtedly includes several thousand price-controlled units created through other policies, like the federal Low Income Housing Tax Credit.

and larger tracts of land are developed. The set-aside for new high-rise apartment buildings is only 6.25 percent; in 2005 large apartment complexes were about 12 percent of the county's housing stock.<sup>34</sup>

- Fairfax County's ADU law requires up to a 12.5 percent set-aside (with the density bonus scaling up to 20 percent); requires up to 6.25 percent for garden apartments (with the density bonus scaling up to 10 percent); and, until recently, has exempted high rise apartments. (Large apartment complexes are 7 percent of the county housing stock). Its threshold has also been 50 or more units (though Virginia's ADU authorizing statute recently eliminated any minimum threshold).

IZ critiques charge that "[IZ] is ineffective at producing subsidized housing units [*AltClay 2008*, page 5]." The criterion that IZ should account for a major portion of new homes built is a straw man created by its critics. IZ advocates do not claim that IZ does – or should – have a massive impact. IZ policies are designed to have a modest impact; a 50 percent set-aside, for example, would render any market-based policy economically unworkable. What IZ advocates do argue is the IZ should be one tool in an array of policies to meet a community's workforce housing needs. Even in Montgomery County, MD, with the USA's oldest and largest IZ program, the 12,500 MPDUs are barely one-quarter of the 44,000 price-controlled housing units in the county (about one out of every eight housing units).

With the benefit of hindsight even Montgomery County's IZ production level could have readily been raised. As a pioneer feeling its way, the county made two early (and critical) mistakes.

- For the MPDU program's first quarter century, the IZ threshold was set at a minimum of 50 units. That was just a plucked-out-of-the air decision made without benefit of any precedents or experience. (There were none.) As a result, perhaps half of the residential construction activity in those years was exempted from MPDU requirements. Around 2000, the threshold was re-set at 35 units and in 2006 at 20 units. Setting the threshold at 20 units from the outset would probably have raised the average percentage of MPDUs to about 10 percent of all housing built.
- Very clearly, the initial price control period (five years) was set at far too short a time. Within a decade, as the five-year period was rapidly

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<sup>34</sup> Estimate based on Table B25024 ("Units in Structure") of ACS 2005. While all high-rise apartments undoubtedly fall within the "50 or more" units category, the category includes many garden apartment complexes and low-rise but elevated apartment buildings as well.

expiring and MPDUs were being sold off at market rates, the county raised the control period for new MPDUs to ten years (but did not providing for re-setting the clock for a re-sale within the ten-year control period; that was finally done in 2003). Finally, in 2006, the price control period was set at 30 years for new MPDUs. The result is that over the years about 55 percent of for-sale MPDUs has cycled out of the affordable housing inventory; slightly less than half of those that remain (1,700) are permanently owned by the Housing Opportunities Commission. With longer control periods from the outset, Montgomery County's supply of affordable housing would be measurably larger (although non-price controlled MPDUs are still about 20-25 percent less expensive than market-rate townhouses and garden condos).

Fairfax County's overall ADU production level is constrained by another condition: under state law, the county can only apply ADU requirements when the builder applies "for rezoning or special exception or, at the discretion of the local governing body, site plan or subdivision plat." Thus, historically, a good deal of development has proceeded in Fairfax County "as-of-right" without ADU requirements applying. Also, until 2007, the maximum set-aside was 12.5 percent; the state law now authorizes a ceiling of 17 percent (with a 30 percent density bonus)

With properly structured IZ laws that fairly balance helping meet a community's affordable housing needs with protecting a builder's profitability, a prototype IZ law with a 15 percent set-aside, a threshold of 10 or 20 units (covering about 80 percent of building permits), and providing a 30 percent density bonus could be expected to yield inclusionary units averaging 12 percent of new residential construction. The results would not be inconsiderable.

In the past, I have projected IZ's potential impact, for example, using the USA's 100 largest metropolitan areas. Almost by definition, about half of these are relatively affordable markets. To-date, with the sole exception of the Town of Davidson, NC in the Charlotte metro area (affordability index: 101), no city or county has enacted a mandatory IZ law in any relatively affordable state.

Appendix B lists 118 relatively unaffordable metropolitan housing markets located in 31 states and the District of Columbia. Between 1990 and 2005, an estimated 13.5 million housing units were built in these 118 regions. If we assumed that a uniform IZ set-aside of 15 percent were applied throughout these 118 regions at a minimum project size of ten units of more and a target price point of 80 percent AMI, **roughly 1.6 million IZ units (12 percent of all housing built)**

**would have been built** without any need for public subsidies beyond non-cash density bonuses.

Furthermore, if public funds were used to purchase or rent one-third of the IZ units (as Montgomery County and Fairfax County do), local housing authorities and/or non-profits would have acquired **about 540,000 IZ units for very-low and extremely low-income families** (i.e. <50% AMI and <30% AMI). These 540,000 IZ units would be equivalent to about 45 percent of the roughly 1.2 million PHA-owned units *nationwide* and might well equal the number of PHA-owned units in these 118 housing markets. However, by contrast with older public housing projects (that is, non- HOPE VI projects), these 540,000 PHA-owned units would be interspersed throughout mixed-income developments in higher opportunity communities.

Comprehensive IZ coverage of all jurisdictions within a region could only occur by state government mandate (like New Jersey).<sup>35</sup> However, with passage of the Long Island Workforce Housing Act in July 2008, the New York became the first state legislature to mandate that inclusionary zoning laws be enacted by local governments (in this instance, by the 109 cities, villages, and towns in Nassau and Suffolk counties). Moreover, even absent state mandates, the experience around the USA has been shows once the “pioneer” jurisdiction enacts the first IZ law, neighboring jurisdictions steadily follow suit.<sup>36</sup>

A high level of housing un-affordability is largely a bi-coastal phenomena, extending from Seattle to San Diego on the West Coast and from Portland ME to Miami and around to Pensacola on the East Coast (leaping only over North Carolina’s hurricane-plagued coastal zones but including South Carolina’s largely hurricane-free Charleston, Myrtle Beach, and Hilton Head areas). The Southwest and Mountain West are also affected (Arizona, Nevada, New Mexico, Utah, Colorado, and Boise, ID) – a combination of rapid growth and the (pre-housing bust) “California effect.”<sup>37</sup>

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<sup>35</sup> Technically, neither the New Jersey legislature nor the New Jersey Supreme Court has mandated inclusionary zoning. However, with all 566 municipalities facing “no-more-nonsense,” state-mandated requirements for affordable housing (in the wake of NJRC’s successful campaign to repeal RCAs), most will implement inclusionary zoning as one of the major tools to fulfill their affordable housing obligations.

<sup>36</sup> In 34 counties the pioneer has averaged 19 percent of the county’s population (some not even reaching 1 percent). IZ coverage now averages about 55 percent in those 34 counties.

<sup>37</sup> At least, the “urban legend” is widespread that Californians, leaving the Golden State to settle elsewhere in the West, have big equities from selling their homes in California and bid up prices

Elsewhere, the only relatively unaffordable housing market is the greater Chicago-Naperville-Joliet, IL-IN-WI region (index: 79) with some spillover effects for Milwaukee-Waukesha-West Allis, WI (index: 91) and Madison, WI (index: 97). Finally, I am inclined to discount the affordability indices for New Orleans-Metairie-Kenner, LA (91); Gulfport-Biloxi, MS (96); and Baton Rouge, LA (99) as being an immediate, post-Katrina phenomenon though relative un-affordability may truly reflect geographic extension of the Gulf Coast effect west of Pensacola.

### **More Effective and Efficient Ways?**

The presidencies of Ronald Reagan, George H. W. Bush, and, in particular, George W. Bush have placed the federal government in hock. In the wake of the current administration's trillion dollar plus financial sector bailout,<sup>38</sup> though I expect that the Obama Administration and Democratic Congress will do what is necessary fiscally to avert a worse recession, I do expect them to reject the long-term "borrow and spend" practices of its self-styled "fiscally-conservative," Republican predecessors.

Thus, I do not expect any significant level of increases in housing subsidies in the United States from what Canadians call "senior levels" of government. That will be true both for direct federal appropriations (like federal housing vouchers) and for indirect "tax expenditures" (like Low Income Housing Tax Credits).

The Harvard Institute of Economic Research (cited approvingly by *AltClay 2008*) has urged that "the 'affordable housing' debate should be broadened *to encompass zoning reform, especially reducing zoning restrictions* [emphasis added], not just public or subsidized construction programs." I agree.

And I hope that the evidence cited by this paper is convincing that a well-constructed IZ ordinance can generate inclusionary housing that is neither subsidized by lowering builders' profits nor by driving up the price of market-rate homes nor by sacrificing state and local government revenues.

But for two post-World War II generations the housing industry has schooled Americans on the marvels of living in low-density suburbs with

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to buy whatever strikes their fancy in what appears to be (in their eyes) relatively affordable housing markets in their new communities.

<sup>38</sup> Decades ago, my father revealed to me that "the definition of Republican economic policy is 'free enterprise for the poor, socialism for the rich.'" How does that look now in the wake of the Big Bailout of Wall Street?

neighbors just like you. Now the housing industry is being hoisted on its own petard.

The inclusionary housing movement has raised a different battle cry: “Anyone good enough to work here is good enough to live here.” Housing a community’s economically (and racially) diverse workforce is the key that unlocks the door to higher-density residential development – the lynchpin of creating more affordable housing.

Thoughtful inclusionary zoning advocates are progressive homebuilders’ greatest potential allies in the fight against both NIMBY-ism and No-Growth-ism. It is time that state homebuilders associations and CHBA stopped financing ideological screeds disguised as objective research (i.e. *RPPI 2004* and *AltClay 2008*) and become partners in the campaign for change.