

PHOTO BY AUDRA ANTCHAK

Cedar Gateway, a recently completed affordable housing project in downtown San Diego, fulfills multiple planning goals.

# Planning San Diego's Housing

**PLANNING TOOLS**

SHOULD COMMUNITIES PREPARE A STAND-ALONE HOUSING plan? Or should they integrate housing into the comprehensive plan through a housing element? How does the plan relate to other major planning issues such as transportation or the work of the housing authority? This article profiles one city's efforts to create and implement a housing plan.

Each community has specific needs in terms of housing. Some common focus areas include the provision of affordable housing, preservation of housing stock, green homes, foreclosed housing and vacant lots, and sustainability planning.

San Diego used the creation of the housing element to consider how critical planning goals can be brought together to obtain maximum effect. The San Diego Housing Element shows how a large jurisdiction can achieve broad consensus in integrating transportation, economic development, and housing policies into a single document that provides tangible steps toward implementation. Adopted unanimously by the San Diego City Council in March 2013, the General Plan Housing Element 2013–2020 is a comprehensive plan

with specific measurable goals, policies, and programs that address the city's critical housing needs and foster the development of sustainable communities. The plan relates not only to the city, but also serves to support the state of California's greenhouse gas emission reduction targets and therefore has a statewide dimension.

San Diego's issues range from a growing population's demand for housing to the need for adequate affordable housing. With a population of 1.3 million, San Diego is the nation's eighth largest city and is forecasted to grow by 29 percent by the

year 2030. In the San Diego region, the high cost of housing is not only a problem for low- and very low-income residents, it is also a major problem for a large number of moderate-income working families. Although housing prices have dropped somewhat in recent years, so too have the number of building permits for housing at all levels of affordability, thus impacting the overall housing inventory. It is imperative that enough housing is produced to meet the present and future demands.

The economic downturn has made it evident how critical housing is to many communities' economies. So too, housing is a critical component to San Diego's economic rebound as it is of vital importance for employee retention and recruitment. High home prices make it more difficult for San Diego businesses to compete with businesses in other cities. To advance the continued growth of San Diego's diversifying economy, including its emerging knowledge-based workforce, the Housing Element acknowledges that the city must implement more reforms to meet its present and future housing needs. To that end, the document includes a section identifying ways to reduce governmental constraints by streamlining the entitlement process for new residential development. This includes a number of expedited programs for affordable, infill, and sustainable housing, as well as a series of updates to the city's land development code. The goal is that these regulatory relief strategies will reduce permit processing times and create more certainty in the entitlement process by providing clear parameters for development and the consistent application of regulations.

### **The housing element and other city plans**

The integration of planning efforts extends the plan's effectiveness. The housing element devotes a chapter to efforts to cultivate the city as a sustainable model of development. The document incorporates the city of San Diego's award-winning City of Villages strategy as its key framework. The City of Villages approach focuses residen-

tial and employment growth into mixed use activity centers that are pedestrian friendly and linked to the regional transit system. This is an important component of the effort to reduce local greenhouse gas emissions; it provides opportunities for more people to make fewer and shorter auto trips because they have the option to walk or bicycle to school or work, or to run errands. The document includes ongoing efforts to facilitate higher density development and supporting infrastructure and amenities located at strategic points along the existing and planned transit system.

A mixed use, transit-oriented development called COMM22 is one such example. Currently under construction at Commercial and 22nd streets, COMM22 will combine affordable family and senior rental housing with day care facilities and commercial and office space. Integrating multiple goals, the development will be located adjacent to the light-rail trolley station, thus supporting transportation, workforce access, and sustainability goals. As part of the development, area infrastructure will receive significant upgrades, including major streetscape improvements funded at over \$9 million in grants from a partnership between the city, the California Department of Housing and Community Development, and the San Diego Association of Governments.

Other examples of how planning goals are integrated through the new housing element are the successful infrastructure programs that promote the conservation of nonrenewable energy resources, carbon reduction, and car ownership reduction. These programs include the world's largest all-electric carshare and the development of grant-funded parks to support infill affordable housing. Residential water surveys, water-efficient landscaping, and solar energy partnerships are also notable strategies.

Two other housing projects currently under development are worth highlighting. The Village at Market Creek and Civita have been selected by the state as models of sustainability. These large-scale, mixed use developments include on-site affordable

housing projects and a number of innovative, eco-friendly features such as comprehensive pedestrian pathway networks, smart grid infrastructure, on-site parks and public art, and water recycling and conservation features.

In coming years, the difficulty of building new affordable units in San Diego will likely worsen due to the California's recent elimination of redevelopment agencies. Why? Historically, the San Diego Redevelopment Agency provided the city and private development various financing and development tools and was the source of much of the funding for affordable housing. In the absence of the agency, the city must explore more robust reforms in order to meet its future housing needs.

The housing element provides innovative recommendations to policy makers, staff, housing advocates, and private developers that are effective, easily replicable, and foster the development of sustainable communities where residents of all income levels have access to jobs, services, and housing by transit, walking, or bicycling. One example are the 2012 Affordable Housing Parking Regulations, adopted by the city council. Generated from a comprehensive study, the regulations reduce parking ratios that, in turn, reduce the overall construction cost for affordable housing units. The study revealed the correlation between transit availability, the proximity to walkable destinations, and the amount of car ownership in affordable housing units.

Upon implementation, the policies and programs contained throughout the housing element could serve as a catalyst for new housing production to provide diverse housing and transportation choices; create more compact, walkable, bicycle-friendly, and transportation-accessible communities; and serve the growing needs of the workforce to ensure long-term economic vitality of the region. The housing element is available online at: [www.sandiego.gov/planning/genplan/heu/index.shtml](http://www.sandiego.gov/planning/genplan/heu/index.shtml).

—Brian Schoenfisch  
Schoenfisch is San Diego's  
housing element project manager.

# Getting the Most Out of Staff Reports

**BEST PRACTICES**

IN NEARLY EVERY COMMUNITY IN THE COUNTRY, CERTAIN DEVELOPMENT projects require review by a planning commission, board of appeals, or governing body that makes a recommendation or decision on the project. Whether the case is a rezoning, variance, or site plan, these development review cases will eventually garner a recommendation or decision of approval, conditional approval, or denial from the commission or board. A thorough and accurate staff report is an important resource for these decision makers. Although that final decision is the ultimate prize in the chess game that is the development review process, it is often anticlimactic after the drama surrounding the issuance of the staff report. Depending on which side of the chess board you sit, the staff report is either glorified or vilified—to be quoted repeatedly or tossed in the recycling bin.

### The purpose of the staff report

Commissioners, attorneys, judges, applicants, neighbors, and professional staff may have different perspectives on the purpose of a staff report—especially when caught up in the emotion of a particular case. While there are likely many other reasons for staff reports—both practical and political—that are not covered here, the following purposes are common to most development review reports:

- ▶ To factually describe the project and the applicant’s request
- ▶ To objectively describe why the application is before the board or commission
- ▶ To anticipate and answer questions likely to be asked at the hearing
- ▶ To provide a professional recommendation
- ▶ To inform officials and stakeholders on the issues of compliance, consistency, and compatibility with adopted plans and applicable regulations
- ▶ To build a public record and a legally defensible foundation—should litigation arise

### The contents of a thorough staff report

The contents of the staff report are both objective and subjective, and it should be clear to the reader which is which. The description of the project site and features should be objective and factual. Those parts of the report that include the analysis of compatibility and key findings are certainly more subjective but must be supported by and rooted in legal and local precedent as well as professional judgment.

At a minimum, a staff report should include sufficient data and analysis to put the case

in context and to support the staff recommendation. The reason for the application and what outcome is expected of the commissioner should be clear. A balanced description of the proposal and the property, as well as maps and exhibits, is considered basic in any report.

The analysis should seek to answer whether or not the project is consistent with adopted plans and in compliance with zoning, engineering, utility, and other regulations. It should discuss precedents for the application, the potential impacts of the project on public infrastructure, and compatibility with the surrounding neighborhood. The analysis should evaluate the findings of fact, and finally, it should contain the staff recommendation along with any recommended conditions.

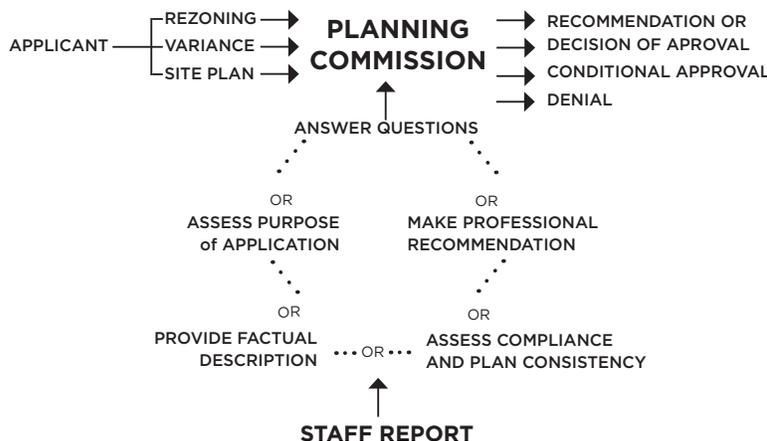
When evaluating projects it is important for the report to paint a picture so commissioners can compare the before-and-after conditions. That is, what are the existing conditions of the site, natural resources, infrastructure, and the adjacent properties now, and what would be the impacts of this development on the site, infrastructure, environment, and neighborhood after the project is built?

Even for the smallest project, this is a significant amount of information and analysis. For example, Loudoun County, Virginia, uses a table of contents in its staff reports to help the reader navigate. Although report details may be too technical for the novice, these details are necessary to analyze and summarize the case for the decision makers, the applicant, and the community stakeholders. Unless you have a crystal ball and know in advance which cases will be litigated, your staff must give the same level of detail and analysis for even the simplest of cases.

### The importance of the three Cs

What are the key findings on which the approving authority is supposed to gauge its decision? Findings are typically related to the concepts of compliance, consistency, and compatibility, and these are often the

## Workflow



factors considered if the case is litigated.

**COMPLIANCE** The report should identify which codes the application is subject to and, generally, how it complies. It should specify sections of the code with which the project does not comply and note whether there are any waivers, alternatives, or conditions to be considered. The report should relay how the application complies with environmental, utility, traffic, and other regulations in addition to zoning.

**CONSISTENCY** The staff report should describe not only the land-use map classification but whether the proposed project is consistent with the goals and policies of the adopted plan. Consistency in applying codes is also important to assure equal protection. The report should identify prior decisions, if any, and indicate why this recommendation is similar (or why it is not).

**COMPATIBILITY** This is probably the most subjective and debated of the parameters. The staff report should evaluate the project's compatibility with adjacent properties. Is the use compatible with those around it? Is the height and scale of the building compatible with those adjacent? Are the site improvements (e.g., parking) and operational features (e.g., hours of operation) in character with the surrounding uses?

### What a good staff report is—and what it isn't

The author of the staff report must recognize and balance its multiple audiences—the public stakeholders, the commissioners, the applicant, and (potentially) a judge. The report must be technical enough to be legally defensible but not so technical that the commissioners don't want to read it. Looks matter! Use a consistent and interesting format; maps and photos can reinforce the text. The city of Orlando,

*The report is not an exhaustive list of conditions or a reminder of code requirements so that staff can say 'we warned you.'*

Florida, uses different fonts, page layouts, and boxes to keep the reader's interest and to maximize the information on each page.

While no amount of conditions can mitigate an incompatible use, planners should have a vehicle to make suggestions to improve a project even if they are not mandatory. Staff reports from Alexandria, Virginia, note whether conditions are

required, recommended, or suggested.

A staff recommendation of approval does not mean the staff is advocating for the project or applicant. Instead, this professional interpretation and recommendation is an affirmation that the project is harmonious with adopted plans and codes that represent the community's values about development. The report is not just an exhaustive list of conditions or a reminder of code requirements so that the staff can say "we warned you" during the permit process. Orlando handles this by differentiating "Conditions of Approval" from "Information for Permit Review."

Commissioners depend on a good staff report that is fair, balanced, and accurate. They will consider the materials provided to decision makers—in addition to public testimony, site visits, and values—when making their vote. The challenge for planners who author such reports is to make them technical and defensible while still readable. It should be a summary of a thorough analysis providing needed information and key findings for decision makers as well as a variety of stakeholders.

*NOTE: This article is from the February 2011 issue of PAS QuickNotes, a publication of the American Planning Association's Planning Advisory Service (PAS). Visit PAS online at [www.planning.org/pas](http://www.planning.org/pas) to find out how PAS can work for your community.*

—Susan Swift, AICP

Swift is the director of Rockville, Maryland's Department of Community Planning & Development Services.

## Observations

We asked planning commissioners and planning directors for their thoughts on the staff report. Here are their replies.

"A good staff report is like a road map for a commissioner. It should detail the current property conditions, outline the development proposed and relate how the application fits in with adopted regulations and plans. Without a thorough staff report, you run the risk of having uninformed commissioners

### RELATED TOPIC

deciding the future character of your community," says Anne F. McBride, FAICP, who is a planning consultant with McBride

Dale Clarion in Cincinnati and serves on the Anderson Township Zoning Commission.

Richard C. Bernhardt, FAICP, the executive director of the Metropolitan Planning Commission of Nashville and Davidson County, says staff reports "ensure an open process by providing all interested parties with a written professional analysis of planning and land development applications. Staff reports are most effective when accessible to all prior to the expectation of community input. As such, staff reports provide an effective foundation for discussion by providing all interested parties the essential elements of an application, issue, or case."

In New Jersey, Rutgers University planning professor Robert Burchell also serves as chair of his planning commission. Burchell says that they have no planning staff and so rely upon the clerk, or someone with a similar role, to make certain everyone who needs to has signed off on the application or project and that all requirements have been met. A major purpose of the staff report is to make certain the commission is in compliance with all appropriate and legal procedures.

—Carolyn Torma

Torma is APA's director of education and citizen engagement, and is the editor of The Commissioner. Contact her at [ctorma@planning.org](mailto:ctorma@planning.org).

## Takings, Part Two

### LAW

IN THE FALL 2013 ISSUE OF THE COMMISSIONER, I TRACED the development of the “takings issue” up to the Supreme Court’s decision in *Koontz v. St. Johns River Water Management Dist.* A quick summary: Prior to *Koontz*, the Court defined three discrete categories for takings claims. First, if government action totally denied all economic value, or authorized a permanent invasion or occupation of property, there was a “per se” taking under, respectively, *Loretto* or *Lucas*, that required compensation. Second, if government imposed a development exaction on property, it would be analyzed under the *Nollan/Dolan* Dual Nexus Test. Third, and most generally, all other takings claims would be judged under the *Penn Central* ad hoc test.

With the *Koontz* decision, however, the Court significantly expanded upon its rulings on development exactions in a way that is significant for planning.

*Koontz* involved a proposal to build a shopping mall on 3.7 acres of a 14.2-acre lot east of Orlando, Florida. The property contained extensive wetlands that were part of a designated riparian habitat protection zone. Because the development plans called for dredging and filling those wetlands, the developer needed to obtain a permit from the water management district. Florida law requires mitigation for the loss of any wetlands, so the developer proposed to mitigate the loss of 3.4 acres of wetlands—plus about one-third acre of protected uplands—by dedicating a conservation easement on the remaining 10.5 acres, prohibiting further development. Because that proposal did not meet the district’s guidelines for implementing Florida’s wetlands mitigation law, the district replied that it would only allow the development to proceed if the developer agreed to one of two concessions. *Koontz* could either: (1) reduce the size of the development to one acre, alter aspects of the site development plans, and deed a conservation easement to the district for the remaining 13.9 acres or (2) proceed with the development as proposed if he agreed to pay contractors to perform off-site mitigation by plugging ditches, replacing damaged culverts, or performing equivalent mitigation on other properties within the river’s drainage area. When *Koontz* refused, the district denied the development request.

Normally, a developer in this situation would have sought an administrative appeal of the denial, and, if that was not successful, perhaps sought a variance. But *Koontz* sued. Under the Court’s previous decisions, *Koontz*’s takings claim was based on the district’s denial of his application had little chance of success. First, there was no *Loretto*-type claim based on physical invasion or occupation because he still exclusively owned all of his land. Second, because he still could develop his land—the district said he could develop on one acre if he placed a conservation easement on the rest—there was no claim for deprivation of all economic use under *Lucas*. Third, it was unlikely that a *Penn Central* takings claim would prevail because his property still had significant value as measured by what his reasonable investment-backed expectations could be for a parcel that is almost entirely wetlands. That left challenging the district’s proposed exactions as unconstitutional under the *Nollan/Dolan* test for exactions, which is what *Koontz* claimed.

*Koontz* argued that the district had proposed conditions that amounted to an unconstitutional taking for which compensation would be due. Note that these conditions were not imposed, but rather proposed during informal discussions. After remand of an earlier ruling, *Koontz* prevailed in the state trial court, and in an intermediate court of appeal, on the theory that the *Nollan/Dolan* test (1) applies to exactions beyond those that require public occupation of or access to private land and (2) is applicable at the point in time when an exaction is proposed but not yet imposed. The Florida Supreme Court reversed, ruling that the *Nollan/Dolan* test does not apply to exactions that have been merely proposed and neither does it apply to monetary exactions that do not involve the dedication of land. The U.S. Supreme Court granted review and on June 25, 2013, reversed the Florida court in a 5–4 decision.

*Koontz* is an unusual 5–4 decision, however, because the Court also ruled unanimously on one of the two issues presented: All of the justices agreed that the *Nollan/Dolan* standard “applies not only when the government approves a development permit conditioned on the owner’s conveyance of a property interest (i.e., imposes a condition subsequent), but also when the government denies a permit until the owner meets the condition (i.e., imposes a condition precedent).” The Court split 5–4 only on the second issue, whether the *Nollan/Dolan* standard applied to monetary exactions as well as to real property exactions; the majority ruled it did.

Each of the rulings in *Koontz* has significant, and potentially disruptive, implications for planning. First, *Koontz* now requires that development exactions in the form of required monetary payments be able to meet the *Nollan/Dolan* standard. This means that government bears the burden of demonstrating that the monetary exaction assessed has a rational nexus to the regulatory purposes of the permitting program under which it is sought and that it be roughly proportional to the impact of the development for which approval is sought. While the Court’s ruling that the constitution requires the application of this standard to monetary exactions is new, the majority correctly noted that a number of state courts have applied *Nollan/Dolan*, or a similar standard, to monetary exactions for some time.

While meeting this standard should not be difficult for well-conceived and fairly implemented requests for monetary exactions—and may have the positive effect of improving local government planning—the fact that government bears the burden of justifying its monetary exactions could encourage legal challenges. The decision also left unclear whether the *Nollan/Dolan* standard must be applied to monetary development exactions that are imposed through legislation, such as generally applicable development impact fees. The problem with applying *Nollan/Dolan* to those exac-

The American Planning Association Vol. 20, No. 1. The Commissioner (ISSN 2330-4499) is published six times a year. Planning commissioner/official members of APA receive the newsletter as part of their membership package; others may subscribe. For information on subscriptions and membership visit [www.planning.org](http://www.planning.org). Carolyn Torma, Editor; Julie Von Bergen, Copy Editor; Lisa Barton, Design and Production; W. Paul Farmer, FAICP, Chief Executive Officer. Editorial inquiries should be addressed to the editor. Copyright 2014 by the American Planning Association, 205 N. Michigan Ave., Ste. 1200, Chicago, IL 60601-5927; 312-431-9100. All rights reserved. No part of this publication may be reproduced or utilized in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Planning Association.

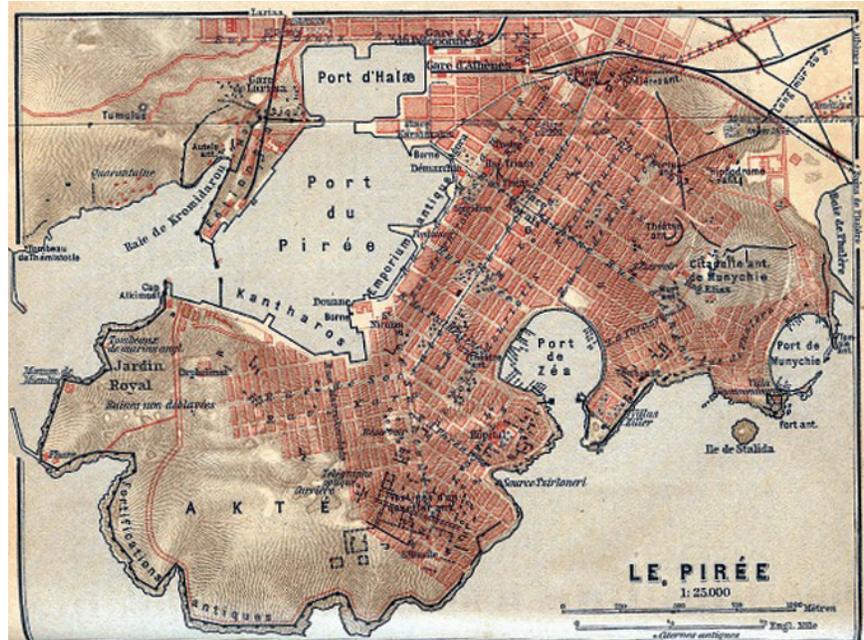
tions is that the Supreme Court, in a 2005 decision in *Lingle v. Chevron U.S.A. Inc.*, had ruled that a claim that a regulation does not “substantially advance a legitimate state interest” was not an appropriate test for determining whether a regulation is a taking. So, reading *Koontz* as authorizing the *Nollan/Dolan* standard to be applied to legislatively imposed development impact fees would seem to conflict with the ruling in *Lingle* that courts should not engage in a “means-ends” analysis of regulations outside of the land dedication context.

The Court’s other ruling, applying *Nollan/Dolan* to exactions that have merely been proposed, may have the unintended consequence of strongly dissuading local governments from entering into negotiations with developers and property owners that could yield good outcomes.

To illustrate—a hypothetical. I am legal counsel to a planning commission. A developer submits a permit application. The commission chair says: “I know that this proposal doesn’t meet our regulations, so we could just deny the permit, but what do you think about our talking with the developer to try to find a win-win solution that would allow us to approve the permit?” My reply: You need to be very cautious about discussing anything that could be seen as an exaction, even a monetary exaction. The *Koontz* decision said that the *Nollan/Dolan* standard applies when government demands an exaction as a precondition for permit approval, but provided no guidance about how or when an exaction proposed during discussions could be considered a demand. In fact, the Court sent the *Koontz* case back to the Florida state courts for a ruling on that issue. So, given that uncertainty, the wiser course is to avoid anything that could be seen as an exaction. Just deny the permit. That way, if there is a lawsuit, the burden of proof will be on the developer and a court would most likely decide the case under *Penn-Central*, which is a much more favorable analysis for us.

—Alan C. Weinstein

Weinstein is an associate professor in the Maxine Goodman Levin College of Urban Affairs, Cleveland State University.



## HISTORY

**THE FIRST PLANNER.** Cities arose in the ancient Middle East in Mesopotamia between 5,000 and 3,000 B.C. Several thousand years later in ancient Greece, formal city planning arose. Aristotle wrote about the first formal city planner in his work, *Politics*. The planner was Hippodamus (498–408 BC), who is credited with devising the orthogonal town plan that formally embodied a rational social order. More than just drawing plans, Hippodamus examined urban problems and believed they needed to be addressed by an administrative system. He is credited with the Urban Planning Study for Piraeus (451 B.C.), the plan for the harbor town that formally divided land into sacred, public, and private spaces.

—Carolyn Torma

## RESOURCE FINDER

**HOUSING.** Planning tackles the issue of housing from multiple perspectives, whether allowing accessory dwelling units in neighborhoods, the significance of the housing crisis, or housing an aging population. Learn more about planning and housing with these publications and products.

### ARTICLES

“Zoning for Accessory Housing”  
Thomas L. Daniels  
*Zoning Practice*, July 2012  
[www.planning.org/zoningpractice/2012/pdf/jul.pdf](http://www.planning.org/zoningpractice/2012/pdf/jul.pdf)

“Rooming House Redux”  
Mark L. Hinshaw & Brianna Holan  
*Planning*, November 2011  
[www.planning.org/planning/2011/nov/rooming-house.htm](http://www.planning.org/planning/2011/nov/rooming-house.htm)

“The Zombie Defense and Survival Kit: How Nashville is Reviving Unfinished Subdivisions”  
Christine Kreyling  
*Planning*, July 2012  
[www.planning.org/planning/2012/jul/zombie-defense.htm](http://www.planning.org/planning/2012/jul/zombie-defense.htm)

### APAPLANNINGBOOKS.COM

Housing an Aging Population  
PAS Essential Info Packet #21  
[www.planning.org/store/product/?ProductCode=EIP\\_E\\_IP21](http://www.planning.org/store/product/?ProductCode=EIP_E_IP21)

Inclusionary Housing  
PAS Essential Info Packet #7  
[www.planning.org/store/product/?ProductCode=EIP\\_E\\_IP07](http://www.planning.org/store/product/?ProductCode=EIP_E_IP07)

*Foreclosing the Dream: How America's Housing Crisis is Reshaping Our Cities and Suburbs*  
William H. Lucy, APA Planners Press, 2010  
[www.planning.org/store/product/?ProductCode=BOOK\\_A64781](http://www.planning.org/store/product/?ProductCode=BOOK_A64781)

### STREAMING MEDIA

Workforce or Mandatory Housing, 2008  
[www.planning.org/store/product/?ProductCode=STR\\_TWMH](http://www.planning.org/store/product/?ProductCode=STR_TWMH)

—Rana Salzmann