

Suit . . .

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for affordable housing) until the Housing Element was approved.

While HCD is not threatening to challenge Sebastopol's Housing Element, it is looking for a commitment from the city to provide affordable housing.

"HCD hopes rejection of this project doesn't symbolize the city of Sebastopol's attitude toward affordable housing, and we look forward to being convinced otherwise as we review their Housing Element," said Paul Kranhold, HCD's assistant director of Public Affairs.

Failure by a city to get its Housing Element approved by HCD could result in that city's General Plan being invalidated, according to city attorney Lawrence McLaughlin.

"Development projects and other matters approved by the City, as consistent with its General Plan, can be challenged on the basis that the approval was invalid," wrote McLaughlin in a memo to the city council in June, 1991.

As well, the city could not issue any building permits (unless

In a letter to Timothy Coyle, HCD director, Mayor Lynn Hamilton outlined the city's history in providing affordable housing since 1988, when ABAG issued the housing projections that each city/county must achieve by 1995.

Coyle, who authorized the attorney general to send warning letters to the most recalcitrant cities in drafting Housing Element last November, had sent the council a letter Feb. 12 (10 days after the council's initial public hearing on Orchard Park), reminding the city its Housing Element was not in compliance with state law, and was therefore vulnerable to a legal challenge, and that council action "presents a disturbing implication that the (city) does not intend to meet its affordable housing needs."

In response, Hamilton wrote, "Sebastopol has approved 185 dwelling units which could be considered affordable to households with very low to moderate incomes and has contributed more than \$566,000 in funds to help make them affordable."

The principle difference, against Sebastopol, though, between those residential developments

required by other low-income developments. Based on ABAG's figures, Sebastopol still has to provide 93 housing units for very low income, 48 for low income, 89 for moderate income, and two for above moderate income by 1995.

According to Sebastopol's

Housing Element update, there is enough available land within city limits to exceed the city's affordable housing needs. But to reach that total, Sebastopol will have to increase its zoning densities, to as high as 30 units/acre. The city's existing highest density, downtown, is 15 units/acre.

Despite the city's professed commitment to affordable housing in its General Plan update, Harakavy said he will contact the state attorney general to encourage him to file a lawsuit against Sebastopol.

But, according to Kranhold, that would be unlikely. His threatens the economic, environmental and social quality of life in California."

But, according to Kranhold, the code outlines six reasons for denial of an affordable housing project. And, says Judd, "The state doesn't bring suits directly against cities or counties," said Kranhold. But, with the passage of Senate Bill 2011, in 1990, the state has definitely made it easier for developers or third parties to sue over denial of affordable housing projects without adequate cause. Whether Gardner could sue the city of Sebastopol regarding his project is open to conjecture—or a court ruling. McLaughlin says because the issue dealt with pre zoning, described as a "legislative" act, the councilmembers were not law bound to explain their decision ("findings"). Gardner's attorney, Richard Judd, of Goldfarb & Lipman, contends the opposite is true, based on his interpretation of California Government Code section 65589.5, which prohibits affordable housing claims against the project. A majority of the 100 or so speakers who spoke at the Feb. 16 council meeting, moved to memorial Building to accommodate the large crowd of about 300 people, supported the project.