POLICY WHITE PAPER: CITY OF SANTA ROSA

DENSITY BONUS ORDINANCE UPDATE



This document prepared for the City of Santa Rosa

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EXECUTIVE SUMMARY

The California State Density Bonus Law (SDBL) was adopted in 1976 to address California's affordable housing needs. As originally enacted, the SDBL sought to increase the production of affordable housing by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, and/or reductions to applicable development regulations.

The City of Santa Rosa has adopted a local Density Bonus Ordinance (included in Zoning Ordinance Chapter 20-31) that complied State law at the time the ordinance was adopted and through to the last amendment in 2012. Several updates to SDBL have occurred since 2012 and Santa Rosa's local Ordinance is currently inconsistent with State law. This report provides an overview of the SDBL to highlight its basic provisions, and the six amendments that have been adopted to the law since 2012 (AB-2222, AB-744, AB-1934, AB-2556, AB-2501, and AB-2442). The report clarifies necessary updates to the Santa Rosa Density Bonus Ordinance to comply with State law.

In addition to ensuring compliance with SDBL, this report assists the City with implementing its Housing Action Plan (2016), which provides clear direction on updating the local Density Bonus Ordinance to increase regulatory incentives that promote affordable housing production. Specifically, Program #1 and Program #4 of the Housing Action Plan direct the City to develop a local density bonus ordinance that allows for density beyond the 35% provided by the SDBL. The Housing Action Plan calls for a supplemental density bonus of up to 100%, as well as a structure for processing supplemental density bonus applications.

In Chapter IV of this White Paper, a series of recommendations are provided for a supplemental density bonus program in Santa Rosa. The recommendations provide for additional density bonuses of up to 60%, 80%, and 100% of base density, depending on site suitability, which is determined by evaluating the following factors:

- **Priority Development Areas (PDAs) and Service Capacity**. Larger bonuses are considered if a property is within a PDA. These sites typically are located in areas with larger-scale development, have access to necessary infrastructure, and are close to major transit service routes.
- Land Use Designations that allow denser residential development. Where higher density residential development is already permitted, a greater degree of density bonus is considered to incentivize affordable housing production with future projects.
- **Proximity to single-family neighborhoods**. Sites that border predominantly single-family residential developments are proposed to have a lower supplemental density bonuses to ensure an appropriate scale of development is achieved in transition areas.
- Existing conditions, infrastructure and development patterns. Sites adjacent to major infrastructure (predominantly major corridors) are considered to have a better capacity to handle higher density development and therefore greater supplemental density bonuses are proposed in these areas.



- **Redevelopment Impediments**. Properties with existing development that would require increased investment to redevelop are targeted with higher supplemental density bonuses to overcome redevelopment barriers.
- Access to transit. Proximity to transit reduces parking demand, which enables higher density development, thus greater supplemental density bonuses are proposed in these areas.
- **Proximity to Schools**. Sites within a ½-mile of schools are considered more appropriate for higher density development. Reduced density bonuses are provided for properties located further from schools.
- **Preservation Districts**. Single-family areas in Santa Rosa's preservation districts face excessive redevelopment pressure because they are typically located close to the urbanized core of the city. Supplemental density bonuses are targeted to the periphery of preservation districts if other factors align to support supplemental density bonuses.

The structure for the proposed supplemental density bonus program in Santa Rosa is based on a point system. A request for larger density bonuses results in a larger required number of points to qualify for the bonus. Points are generated predominantly through the production of affordable housing across a range of income levels. A smaller share of the required points may also be generated by providing certain community benefits that may include:

- Open space
- Historic or Landmark Preservation
- Family-sized units
- Infrastructure/Capital improvements
- Public art
- Innovative Community Benefits supported by City Council using a predictable model that balances the degree of community benefit with capital invested.

The next step in developing a supplemental density program in Santa Rosa is to evaluate the proposed structure with the community, to gather feedback and reactions to the program, and to revise the recommendations for an improved policy that is appropriate, viable, and effective in Santa Rosa. Following the community outreach and refinement of the proposed amendments to the City's existing Density Bonus Ordinance, the proposal will be scheduled for review and consideration by the Planning Commission and City Council.



I. INTRODUCTION

The California State Density Bonus Law (SDBL) was adopted in 1976 in recognition of California's acute and growing affordable housing needs. The SDBL has been amended multiple times since adoption in response to evolving housing conditions, to provide clarification on the legislation, to respond to legal and implementation challenges, and to incorporate new or expanded provisions. The SDBL, as originally enacted, sought to address the affordable housing shortage by encouraging development of low- and moderate-income units; over time, the law was expanded to recognize the need for housing for households at a wider range of income levels and with specialized needs.

The SDBL incentivizes affordable and other specialized housing production by requiring local agencies to grant an increase to the maximum allowable residential density for eligible projects, and to support the development of eligible projects at greater residential densities by granting incentives, concessions, waivers, or reductions to applicable development regulations. An example of a concession or incentive is a reduction in the number of parking spaces that may be required for a project, or an increase in the allowable building height that applies to the project. The SDBL applies to projects providing five or more residential units, including mixed-use developments. Density bonuses and associated incentives, concessions, waivers, or reductions are intended to offset the financial burden of constructing affordable or specialized units.

All local governments are required to implement the SDBL or adopt local ordinances that are consistent with State law. Local jurisdictions may adopt an ordinance that allows greater incentives and bonuses than the SDBL. The City of Santa Rosa amended its local density bonus ordinance in 2012; since that time a series of updates were adopted at the state level to amend the SDBL, including three major updates that took effect January 1, 2017.

The purpose of this White Paper is to propose changes to the City's existing Density Bonus Ordinance that will bring it into conformance with SDBL, and to implement the Housing Action Plan.

The Housing Action Plan directs the City to utilize the density bonus program as a key incentive for affordable housing production in Santa Rosa. The Action Plan also directs the City to adopt a supplemental density bonus program that provides for density bonuses of up to 100% where feasible and appropriate in the City.

Based on input from City staff, this White Paper focuses on several key aspects of SDBL for consideration in updating the City's ordinance. These topic areas include:

- Preparing an overview of SDBL
- Identifying updates to the SDBL that are not reflected in local ordinance
- Evaluating SDBL implementation in land use designations with no maximum, base density
- Clarifying density bonus application requirements
- Clarifying the relationship between the City's inclusionary housing ordinance and SDBL
- Understanding opportunities for density bonuses beyond 35% (the SDBL maximum)
- Understanding the bases for denying incentives, concessions, waivers, or reductions
- Clarifying the implementation of SDBL locally with respect to environmental review, preservation districts and landmarks, and neighborhood compatibility.



Density Bonus Basics

This chapter begins with an overview of the current SDBL; it highlights the basic provisions of the SDBL and clarifies those updates that have taken effect since adoption of the City's density bonus ordinance in 2012. The chapter concludes with a review of key considerations relevant to SDBL implementation in Santa Rosa.

Basic Provisions: Sliding Scale (Income-Based) Density Bonus

To better understand recent changes to the SDBL it is helpful to begin with an understanding of the basic tenets of the SDBL prior to this date because the City of Santa Rosa was in substantial conformance with these tenets. Prior to January, 2017 a residential project could qualify for a density bonus on a sliding scale proportionate to the allocation of affordable housing units relative to total units in the base project (i.e. prior to receiving the density bonus) as summarized in Table 1.

As illustrated in the example below, a project in which 13% of the total proposed units were designated as low-income units, would qualify for a density bonus of 20% (for meeting the 10% minimum required low-income allocation) plus an additional 4.5% bonus for exceeding the minimum requirement (the density bonus increases at a rate of 1.5% for every 1% of low-income units provided above the minimum). Projects providing for-sale moderate-income units in common interest developments (e.g. condominium, community apartment, planned development, or stock cooperative projects) are also eligible.

DENSITY BONUS PROJECT EXAMPLE:

Base Project Total Units:	66 rental apartment units
Affordable Units:	8 units (targeted to low-income households)
% Affordable Units:	8 units ÷ 66 units = 12.1% = 13% (after rounding up)
Market-Rate Units:	58 units = 87% of total project units
Eligible Density Bonus:	For providing the minimum 10% of total project units at the low-income level: 20% For exceeding the minimum required % of low-income units: (13-10) x 1.5 = 4.5% 13% of the project's units are affordable, 3% higher than the required amount Each 1% of low-income units over the minimum 10% yields an extra 1.5% bonus Total Density Bonus = 20% +4.5% = 24.5%
Density Bonus Units:	66 project units x 24.5% = 16.2 units = 17 units
Total Project Units:	83 units (58 market-rate, 8 low-income, 17 density bonus units)



AFFORDABILITY LEVEL OR HOUSING TYPE	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS OF 35%
VERY LOW-INCOME	5%	20%	2.5%	11%
LOW-INCOME	10%	20%	1.5%	20%
MODERATE-INCOME A	10%	5%	1.0%	40%
SENIOR-CITIZEN HOUSING ^B	35 Units	20% of senior units	N/A	N/A
CONDO CONVERSION Moderate Income ^c Lower Income ^c	33% 15%	25% ° 25% °	N/A	N/A
LAND DONATION D	10% of Market Units	15%	1.0% : 1.0%	30%
CHILD CARE FACILITY ^c	N/A	sq. ft.		

Table 1 - Requirements	for Density	Bonus Eligibility and	Associated Density Bonuses
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^A Moderate-income units in common-interest developments (e.g. condos) and offered to the public for purchase ^B Includes senior mobile home parks; project must limit residency based on age requirements pursuant to Section 798.76 or 799.5 of the Civil Code. A Senior Citizen Housing Development is defined in Civil Code Section 51.3(b)(4) as a residential development for senior citizens that has at least 35 dwelling units.

^c Or 1 concession/incentive of equal value at the City's option.

^D Projects must select one income-based, or specialty housing category as the basis for calculating the density bonus. Bonuses for an income or housing category can be combined with a bonus for land donation, up to a maximum of 35%; a square footage-based density bonus may be granted for child care facilities beyond 35%.

Basic Provisions: Fixed-Rate (Specialized Housing) Density Bonuses

Projects that provide specialized units for senior-citizens may be eligible for flat-rate density bonuses if the minimum qualification criteria are met. A senior-citizen housing project is defined as a development that provides at least 35 units, where 100% of the units are designated for senior-citizens. Qualifying senior-citizen projects are eligible for a fixed density bonus equal to 20% of the number of senior-citizen units provided. For example, a project with 40 such units would receive a bonus of 8 additional units.

In the case of condominium conversion projects, if the project provides at least 33% of total proposed units for low- or moderate-income households, or if 15% of the total proposed units are allocated to very-low income households, the project may be entitled to a fixed 25% density bonus. This density bonus can be exchanged for one concession at the local jurisdiction's or applicant's option.



Basic Provisions: Other Density Bonuses

Projects may also receive a density bonus for donating land for the construction of affordable housing or by providing child care facilities associated with a housing development. To qualify for a bonus through land donation, the land must be of sufficient size to develop at least 40 units, with the appropriate General Plan land use designation and zoning classification for residential development, and must be served by basic utilities.¹ The land must be located within ¼-mile of the boundary of the proposed project within the local jurisdiction. At minimum, the acreage and zoning classification of the donated land must accommodate construction of very-low income units equivalent in number to 10% of the proposed market-rate units. This is determined by examining both the number of marketrate units proposed, and the average square footage of the market units. Affordable units provided on donated land be of equivalent average size to the market rate units in the project.

LAND DONATION PROJECT EXAMPLE:

Project Market-Rate Units:230 unitsDensity Bonus Requested:25%Base Density for Donated Land:12 dwelling units/acre

Minimum Land Donation Requirement:

Acres Required for 40 units:	
10% of Market Rate Units:	
Acres needed for 23 units:	
Min. Land Donation Requiremen	nt:
Resulting Density Bonus Amoun	It:

40 units ÷ 12 units/acre = 3.33 acres 230 units x 10% = 23 units 23 units ÷ 12 units/acre = 1.92 acres 3.33 acres (larger of 3.33 and 1.92 acres) 15%

Achieving 25% Density Bonus through Land Donation:

25%
10% (for 15% bonus) + 10% for another 10% bonus
20% x 230 units = 46 units
46 units ÷ 12 units/acre = 3.83 acres
: 3.83 acres (larger of 3.33 and 3.83 acres)

The eligible density bonus for land donation increases by 1% for each 1% of very-low income units that can be built above 10%. Land donation-based bonuses can be combined with other bonuses up to a maximum of 35%. The land must be transferred to the local government or to an affordable housing developer approved by the jurisdiction. Units constructed on the donated land must be subject to a deed restriction ensuring housing affordability for very low-income households for a period of 55 years. Because of the parcel size requirements for land donation to be eligible under the SDBL, the land donation option is typically only practical for larger (subdivision) developments.

Projects that provide a child care facility may be eligible for a density bonus of equal or greater square footage as the proposed facility. The bonus is a floor area of up to five square feet per square foot in the child care facility in existing buildings (10 square feet per square foot for new construction). To

¹ The General Plan designation and zoning for the land must allow residential densities in compliance with Government Code Section 65583.2(c)(3), which outlines minimum densities that are appropriate to accommodate housing for lower income households in the local context (ranging from jurisdictions in nonmetropolitan to metropolitan counties).



qualify, the distribution of children attending the facility that are from very low-, low-, and moderateincome households must match the income distribution of households in the proposed project; the SDBL is silent on the legal framework that is required to demonstrate this compliance.

Basic Provisions: Affordability Restrictions

Subsection 65915(c) details provisions for ensuring the continued affordability of units that qualify a project for density bonuses pursuant to the SDBL. All affordable rental units shall be subject to a recorded affordability restriction for 55 years or longer as may be dictated by another financial partner involved in the project. Rental affordability is subject to following terms:

- Very low-income units: rents may not exceed 30% of 50% of the area median income (AMI)
- Low-income units: rents may not exceed 30% of 60% of the AMI
- Area median income is determined annually by the Department of Housing and Community Development based on federal Department of Housing and Urban Development data.
- Rents must include a reasonable utility allowance
- Household size must be suitable to the affordable unit:
 - ✓ Studio Units: 1-member household
 - ✓ 1-Bedroom Units: 2-member household
 - ✓ 2-Bedroom Units: 3-member household
 - ✓ 3-Bedroom Units: 4-member household, etc.

Affordable units offered for sale are subject to following terms:

- Very low-income units: housing costs may not exceed 30% of 50% of the AMI
- Low-income units: housing costs may not exceed 30% of 70% of the AMI
- Moderate-income units: housing costs may not exceed 30% of 110% of the AMI

In for-sale projects, applicants must enter an equity-sharing agreement with the local government to distribute the value of appreciation, improvements made by the property owner, and any subsidies provided by the local government. Value generated to the local government through appreciation and recuperation of initial subsidies are to be used within five years of the sale to promote home ownership.

Basic Provisions: Incentives and Concessions, Waivers, and Reductions

A project that meets the minimum requirements to qualify for a density bonus is eligible for the bonus as summarized in



Table 1, and a certain number of concessions and incentives subject to a sliding scale proportionate to the number of affordable units provided by the project. A concession or incentive is defined as:

- (1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum State building standards, such as reductions in setback, square footage, or vehicular and bicycle parking space requirements. The requested concession or incentive must result in an identifiable and actual cost reduction to provide for affordable housing costs or rents.
- (2) Approval of mixed-use zoning for housing projects if associated commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the non-residential land uses are compatible with the housing project, and existing or planned development in the immediate area.
- (3) Other regulatory incentives or concessions that result in identifiable and actual cost reductions to provide for affordable housing costs, which may include the provision of direct financial incentives or land for the housing development by the City.

Table 2 summarizes the number of incentives/concessions that a project may utilize depending on the proportion of affordable units included in the development. For example, a project containing 22% low-income rental units qualifies for two (2) incentives or concessions per the SDBL. In the case of projects involving qualified child care facilities, the local government may opt to grant the applicable density bonus or forgo the bonus in exchange for one (1) additional concession or incentive that contributes to the cost of constructing the facility. Land donations and senior-citizen projects that qualify for density bonuses are not entitled to any incentives or concessions under the SDBL.

TARGET UNITS	PERCENT OF TARGET UNITS PROVIDED IN PROJECT		
VERY LOW-INCOME	5%	10%	15%
LOW-INCOME	10%	20%	30%
MODERATE-INCOME (FOR-SALE)	10%	20%	30%
CONCESSIONS PROVIDED BASED	ON PERCENTAGE OF UNITS F	ROVIDED ABOVE:	
NUMBER OF CONCESSIONS	1	2	3
CONDOMINIUM CONVERSIONS Very Low- or Low/Moderate-Income	1 concession/incentive or tl	ne prescribed density bo	nus, at City's option
DAY CARE CENTER	1 concession/incentive or the prescribed density bonus, at City's option		

Table 2 - Schedule for Receiving Development Incentives or Concessions Per SDBL Section 65915(d)

Concessions and *incentives* are differentiated from *waivers* and *reductions* in the SDBL. Projects that are eligible for a density bonus, and that are approved for *concessions* or *incentives*, cannot be subjected to any development standard that will have the effect of physically precluding the construction of the project. If a local development standard is found to have this effect, applicants have the option of requesting a *waiver* or *reduction* of any development standard that may preclude completion of the project; there is no limit on the number of waivers that may be requested. *Waivers* or *reductions* do not take the place of *concessions* or *incentives* that the project is qualified to receive. Legislative updates to the SDBL that took effect on January 1, 2017 introduced several amendments affecting the evaluation and granting of incentives, concessions, waivers, and reductions.



Basic Provisions: Alternative By-Right Parking Standards

Beyond incentives, concessions, waivers, and reductions, projects that qualify for a density bonus because they provide affordable housing or are a qualified senior-citizen housing project are also eligible for reduced parking ratios, as presented in Table 3. These reduced parking ratios are inclusive of accessible and/or guest parking requirements, and apply to both market rate and density bonus units. Applicants have the option to request even lower parking ratios as a concession or incentive.

Table 3 - Parking Requirements Available by Request Under Density Bonus Law

UNIT TYPE	MAXIMUM ON-SITE PARKING REQUIREMENT (TANDEM OR UNCOVERED PERMITTED)
0-1 bedroom	1 space/unit
2-3 bedrooms	2 spaces/unit
4+ bedrooms	2.5 spaces/unit

In 2015, AB 744 was passed to amend SDBL and include additional project criteria that would result in reduced parking requirements. These and other amendments to SDBL which have taken effect since adoption of Santa Rosa's local ordinance in 2012 are summarized in the following section.

Post-2012 Regulatory Updates to the SDBL

Since the last amendment to the local density bonus ordinance in Santa Rosa in 2012, State law has been amended substantively through six Assembly Bills.² The most sweeping changes were signed in September, 2016 by Governor Brown and took effect January 1, 2017. The following section overviews each update and provides a summary of the updated SDBL provisions in Table 5.

AB 2222 (2014). Expands affordability terms to 55 years; requires affordable unit replacement

In September, 2014, Assembly Bill (AB) 2222 was signed into law to amend several aspects of the SDBL. Prior to the bill, affordable units provided to qualify for density bonuses were subject to affordable income restrictions for a period of 30 years; AB 2222 extended the affordability term to 55 years.

Additionally, AB 2222 introduced an affordable-unit replacement requirement in an effort to help address the potential displacement of existing tenants. The bill requires that projects using a density bonus replace each rental unit that that have been occupied by very low- or low-income households within the five-year period preceding the development application. Applicants could elect to either:

- provide replacement units of equivalent or greater number to units that are occupied by lower income households or subject to a rent or price control, or
- ensure that units are affordable to very low-, or low-income households.

The replacement provisions contained in AB 2222 were substantially expanded and clarified in the January, 2017 amendments adopted through AB 2556.

² Additional non-substantive technical updates or corrections were adopted through AB 806 (2012) and AB 383 (2013)



AB 744 (2015). Requires local governments to allow reduced parking requirements

Assembly Bill 744 was adopted in 2015. The bill required that local governments, upon request from an applicant developing a rental housing project that is density bonus-eligible, grant further reductions in parking requirements depending on the project's proximity to transit. Table 4 summarizes the maximum parking requirements established under this bill. The provisions of AB 744 expand the parking reduction options available to developers that were provided in the SDBL.

PROJECT TYPE:	100% Affordable Rental Project	Mixed Income Project with at least: 20% low-Income or 11% v. low income	For Citizens >62yrs	For Special Needs
Unobstructed access within 0.5-miles to major transit stop	•	0		
Project served by Paratransit, or Unobstructed access within 0.5-miles to major bus stop ^A			•	•
Maximum Required Parking Ratio	0.5/unit	0.5/unit	0.5/unit	0.3/unit
A With hus service at least eight times daily			A STATE OF A	1 0000000000000

Table 4 - Summary of Maximur	Parking Requirements for D	DB Projects by Type and Transit Acces
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ith bus service at least eight times daily

"Unobstructed access:" a resident can access the stop without meeting natural or constructed impediments. "Major transit stops:" a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service of 15 minutes or less during peak commute periods. Major transit stops includes stops shown in the applicable regional transportation plan. For a property or project to qualify, all parcels within the project must have no more than 25% of their area farther than one-half mile from the stop and not more than 10% of the residential units or 100 units, whichever is less, shall be farther than one-half mile from the stop

Jurisdictions may however require higher parking ratios for housing near transit if the city has completed a parking study within the last seven years that supports the need for more parking.

AB 1934 (2016). Includes a density bonus option for commercial projects with affordable housing.

AB 1934 expanded the SDBL to provide incentives for commercial developers to contribute to affordable housing. The bill provided a bonus for commercial developers that enter an agreement with a housing developer to provide affordable units in a mixed-use joint project, or as two separate but related projects. Commercial developers must define how they are contributing to the affordable housing development; three options are recognized by the SDBL:

- The commercial developer may directly build the units.
- The commercial developer may donate a portion of the development site, or property located elsewhere, to the housing developer to build affordable housing.
- The commercial developer may make a cash payment to the housing developer to offset the . construction cost for affordable housing.

To qualify for the density bonus, the proposed affordable units must contain a prescribed number of low- or very-low income units: at least 30% of the total units proposed shall be for low-income households, or at least 15% shall be for very low-income households. If the affordable units are to be constructed off-site (separate) from the non-residential development, the units must be located on a site that is:



- within the local jurisdiction;
- near public amenities, including schools and employment centers; and
- located within one-half mile of a major transit stop.

The provisions of AB 1934 do not prevent an affordable housing developer from utilizing the density bonus, concession or incentives, waivers or reductions, that are available through the SDBL. Furthermore, the amendments did not reduce or waive affordable housing impact fees that may apply to commercial projects in the jurisdiction.

The provisions of AB 1934 are subject to a sunset clause of January 1, 2022. Any projects approved under the bill's provisions must be reported to the Department of Housing and Community Development by the city or county in an annual report.

AB 2556 (2017). Provides clarifying language on addressing replacement units.

As described above, AB 2222 amended the SDBL in 2014 to preserve existing affordable housing units by prohibiting an applicant from receiving a density bonus, incentive, concession, waiver or reduction, if a development removed units that—at any time in the five-year period preceding the application—were occupied by lower-income households or subject to a form of rent control. AB 2222 is reflected in the §65915(c), and includes the stipulation that projects may overcome this restriction by replacing affordable units with units of equivalent affordability, size and/or type. AB 2222 failed to clarify how replacement unit requirements should be determined if resident income level were not verifiable. AB 2556 (2017) provides clarifying language to satisfy the replacement unit requirements in the SDBL:

- Projects shall provide at least an equal number of replacement units of equivalent size and affordability. Equivalent size means providing at least the same total number of bedrooms.
- For currently-occupied units that would be removed, if the income level of the household is not known, it shall be presumed that the building is occupied by the same proportion of *lower income* renter households to all renter households as is the case for the jurisdiction as a whole. The lower-income household share for the jurisdiction shall be based on current Comprehensive Housing Affordability Strategy Database (CHAS) statistics reported by the Department of Housing and Urban Development (HUD).
 - ✓ The current proportion of *lower income* renter households (those earning less than 80% of Area Median Income in the 2010-2014 CHAS data cycle) in Santa Rosa is 55.4%.³
- For buildings vacated or demolished within five (5) years of the development application, if the income level of the last occupants in previously existing units is not known it shall be presumed that very low- and low-income households occupied the units in the same proportion of very low- and low-income renter households to all renter households in the jurisdiction based on current CHAS statistics report by HUD.
 - ✓ The current proportion of *very low-income* renter households (those earning up to 50% of Area Median Income) and *low-income* households (those earning over 50% but less than 80% of Area Median Income) in the 2010-2014 CHAS data cycle in Santa Rosa are 15.7% and 21.9% respectively.⁴

³ Data is current to May 26, 2017. Source: https://www.huduser.gov/portal/datasets/cp.html

⁴ Data is current to May 26, 2017



- AB 2222 did not clarify the required rent level for replacement units when the current occupant of a rent-controlled unit was not lower-income (e.g. due to wage increases). If a project would replace rental units in existence within 5 years of the application that are subject to a form of rent or price control, the local government can choose to require that either:
 - ✓ the units are replaced in compliance with a local rent or price control ordinance, subject to agreement by the developer; or
 - ✓ the replacement units shall be made available at an affordable rent or cost for 55 years and shall be occupied by low-income households.

AB 2501 (2017). Streamlines density bonus processing and clarifies application requirements.

AB 2501 streamlines density bonus application processing in recognition of the financial implications for developers caused by permitting delays. Streamlining changes are described in SDBL Section 65915(a)(3; these changes require that local jurisdictions:

- Adopt procedures and timelines for processing density bonus applications.
- Provide a list of all information required to be submitted with the density bonus application for the density bonus application to be deemed complete.
- Issue completeness determinations on applications within 30 days in compliance with Government Code Section 65943.

AB 2501 includes several additional clarifications and procedural amendments to aid in the application and enforcement of the SDBL:

- Provision 65915(q) and others state that any density calculations resulting in fractional units shall be rounded up to the next whole number. This applies to calculating the:
 - number of affordable units required to be eligible for the density bonus;
 - ✓ base density (i.e. the number of affordable units in the base project);
 - ✓ eligible bonus units;
 - ✓ number of replacement units required (65915(c)(3)(B)(i)); and
 - ✓ required number of parking spaces (65915(p)(4))
- Local governments are prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies that are not described in the SDBL. Cities can however require "reasonable documentation" to establish eligibility for incentives or concessions, waivers or reductions, or reduced parking ratios.
- Developers can forgo an eligible density increase, and accept only concessions or incentives.
- Density bonuses are defined as an increase over the maximum allowable *gross* residential density at the time of application.
- The burden of proof for denying a requested concession or incentive is placed more directly on local jurisdictions, with clarifying language on determining whether a concession or incentive results in cost reductions in support of affordable housing development. The bill amends Section 65915(d)(1)(A)—the first finding of fact to deny a requested concession or incentive. Local jurisdictions must grant the requested concession or incentive unless it "does not result in identifiable and actual cost reductions," to provide for affordable housing. The revised language eliminates ambiguities about who (the developer or the jurisdiction) should determine whether a concession or incentive is financially sufficient.



AB 2442 (2017). Expands the housing categories that could qualify for a density bonus.

Assembly Bill 2442 amends Section 65915(b) to include additional categories of specialized housing that would qualify a project for a density bonus. If at least 10% of the proposed units in a project are designated for very-low income households for a period of 55 years, and are targeted to the following specialized housing types, they may qualify for a density bonus:

- transitional foster youth as defined in Education Code Section 66025.9
- disabled veterans as defined in Government Code Section 18541
- homeless persons as defined in 42 U.S.C. Sec. 11301 et seq.

The density bonus for these projects is 20% of the provided specialized housing units (like the bonus for senior housing); because the specialized units must be income-restricted, the standard density bonus that is available for projects that provide very-low income level units may also be applied.

AB 2442 SPECIALIZED HOUSING DENSITY BONUS PROJECT EXAMPLE:

Base Project Total Units:	66 rental units
Market-Rate Units:	59
Affordable Units:	7 units (very low-income, restricted for 55 years, for disabled veterans)
% Affordable and Specialized:	7 units ÷ 66 total units = 10.6% = 11%
Eligible Density Bonuses:	Specialized housing bonus: 20% of 7 specialized units
	Standard bonus: 11% very-low income units = 35%
Total Density Bonus:	Specialized housing: (20% x 7) = 1.4 units = 2 units
	Standard Bonus: 35% x 66 units = 23.1 units = 22 units
Total Units with Bonus:	90 units (59 market-rate, 7 specialized, 24 density bonus units)



Summary of Density Bonus Law Key Features with Amendments Since 2012:

Table 5 below expands on Table 1 to highlight changes to the SDBL that were adopted since 2012.

AFFORDABILITY	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS OF 35%
VERY LOW-INCOME	5%	20%	2.5%	11%
LOW-INCOME	10%	20%	1.5%	20%
MODERATE-INCOME A	10%	5%	1.0%	40%
SENIOR-CITIZEN HOUSING ^B	35 Units	20% of senior units	N/A	N/A
CONDO CONVERSION Moderate Income ^c Lower Income ^c	33% 15%	25% 25%	N/A	N/A
LAND DONATION D	10% of Market Units	15%	1.0%	30%
CHILD CARE FACILITY C	N/A	Equal sq. ft.	N/A	N/A
SPECIAL HOUSING E	10%	20%	N/A	N/A

Table 5 - Updated Requirements for Density Bonus Eligibility and Associated Density Bonuses

^A Moderate-income units in common-interest developments (e.g. condos) and offered to the public for purchase
 ^B Includes senior mobile home parks; project must limit residency based on age requirements pursuant to Section 798.76 or 799.5 of the Civil Code. A Senior Citizen Housing Development is defined in Civil Code Section 51.3(b)(4): as a residential development for senior citizens that has at least 35 dwelling units.

^c Or an incentive of equal value, at the city's option.

^{*p*} Projects must select one income-based, or specialty housing category as the basis for calculating the density bonus. Bonuses for an income or housing category can be combined with a bonus for land donation, up to a maximum of 35%; a square footage-based density bonus may be granted for child care facilities beyond 35%.

^{*E*} Includes housing for transitional foster youth, disabled veterans, or homeless persons. Such units must be subject to an affordability restriction at the very low-income level for 55 years.



Local Considerations for SDBL Implementation

The City of Santa Rosa is a large city with a sophisticated land use planning regulatory framework; the community contains a variety of unique neighborhoods, historic resources, and local development conditions that must be assessed with respect to SDBL. In consultation with staff, several pertinent issues were identified for specific analysis to ensure appropriate and efficient implementation of SDBL in the community. These issues are highlighted in this section.

Density Bonuses in Areas with No Maximum Density

Applicants have full discretion to seek and accept any applicable density bonus for an eligible project.⁵ It is also the applicant's right to opt for no density bonus or a lesser bonus. Many cities—including Santa Rosa—have Zoning Districts and General Plan Land Use designations with no applicable maximum residential density limit. These are typically associated with dense, mixed-use (downtown) areas. Communities regulate development in these areas through controls on physical form: through setback standards, height restrictions, architectural standards, and design guidelines.

Areas not subject to a residential density limit pose a challenge to interpreting and implementing the SDBL. Three approaches are available to address development in these areas:

- 1. **Density Bonuses through Concessions and Waivers.** Projects in zones without residential density limits can comply with applicable development standards, forgo the redundant density bonuses that may otherwise apply, and simply seek relief from any development standards that may limit the desired density to offset the cost of building affordable housing. In this approach, the onus is on the developer and local jurisdiction to determine how much of a concession to development standards is justified to offset the cost of affordable housing development.
- 2. **Density Bonuses Implicitly Defined**. The local jurisdiction may require that an "implicit" residential density is calculated based on a project put forward that meets all applicable development standards. In this approach, a project defines the applicable residential density for itself based on meeting applicable development standards. This strategy requires controls to ensure that base projects that define density do not undermine development quality to maximize base density and the resultant density bonus. The City of Berkeley has pursued this approach; details are provided in the following chapter on local ordinance comparisons.
- 3. **Expand Density Bonus to Development Standards.** A local jurisdiction may adopt a bonus schedule for development standards that replicates the schedule for residential density bonuses. In this strategy, the local jurisdiction may identify the development standard (such as height or floor area ratios) that are the predominant restriction to larger development projects in areas not subject to residential density limits. For example, a floor area ratio bonus may be provided in exchange for affordable units rather than a residential density bonus. This approach has been adopted in Emeryville and is summarized in the following chapter.

⁵ Gov. Code Section 65915(f)



Density Bonus Application Requirements

One of the issues that SDBL proponents identified and sought to address through AB 2501 is that several communities—deliberately or inadvertently—had restricted access to density bonuses through onerous application requirements and costly reports that were designed to substantiate applications for bonuses. While AB 2501 inserted provision 65915(a)(2) into the Density Bonus Law to prevent frivolous application requirements, interviews with jurisdictions conducted for this white paper indicate that confusion remains about what local jurisdictions can and cannot require as part of a density bonus application. Section 65915(a)(2) reads that the SDBL "does not prohibit a local government from requiring an applicant to provide *reasonable documentation*"⁶ (emphasis added) to establish eligibility for a density bonus, incentives, concessions, waivers, reductions, or parking ratios. Some local governments interpret this language to require developers to submit pro formas showing the amount of profit they will make on a project. However, amendments adopted through AB 2501 are intended to presume that incentives and concessions provide cost reductions, and therefore contribute to affordable housing development. A municipality has the burden of proof of demonstrating that a concession or incentive would not generate cost savings.

Inclusionary Housing Policies

Section 65915(b)(1) outlines the eligibility requirements for density bonuses. The section clarifies that a local jurisdiction must grant a density bonus and associated concessions, incentives, waivers, and/or reductions *"when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section"* that contains affordable units consistent with the schedule outlined in the law. Inclusionary affordable housing units are not units permitted by the density bonus; therefore, inclusionary units have been consistently interpreted as contributing to qualifying a project under SDBL. This interpretation was confirmed in 2013 by the California Court of Appeals in *Latinos Unidos del Valle de Napa y Solano v. County of Napa.*

Density Bonus Beyond 35%

Density Bonus Law Section 65915(n) stipulates that local governments have the option to grant density bonuses in excess of 35% for projects that meet the SDBL, or to grant smaller density bonusses for projects that do not meet minimum qualification thresholds in the SDBL. In other words, projects that either fail to fully meet, or projects that exceed the eligibility requirements of the SDBL may be granted proportionate density bonuses at the discretion of the local government. The City of Santa Rosa Housing Action Plan directs the City to develop a supplemental density bonus program for the City that provides a bonus of up to 100% (see Program #1 in the Action Plan, outlined in the following chapter).

Several communities have adopted local ordinances that support density bonus allowances above 35%. Generally, supplemental density bonuses are permitted for projects that provide additional community benefits or amenities that communities have identified as potentially:

⁶ See Section 65915(a)(2)



- Providing a larger quantity of affordable housing in the base project than required by the SDBL
- Providing affordable housing targeted to extremely low-, or very low-income households
- Providing specialized housing units of relevance or importance in the community, such as workforce housing, family-size units, or other forms of housing.
- Providing a range of public amenities such as:
 - Donating land or contributing otherwise to enhance or maintain open or public spaces
 - ✓ Providing for public art through fee contributions or in kind
 - ✓ In-lieu payment of fees toward community-benefit projects
 - Completing or contributing financially towards infrastructure improvements
- Including exemplary design that contribute to enhancing the local neighborhood
- Contributing to climate change adaptation or mitigation
- Improving, maintaining or rehabilitating historical and cultural assets in the community

Denial of Incentives, Concessions, Waivers, or Reductions

The SDBL mandates that local governments provide concessions or waivers for eligible density bonus projects, unless one of the following findings is made based on substantial evidence:⁷

- (A) The concession or incentive does not result in identifiable and actual cost reductions to provide for affordable housing costs.
- (B) The concession or incentive would have a specific, adverse impact upon public health and safety, the physical environment, or on any real property listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to lowincome and moderate-income households.
- (C) The concession or incentive would be contrary to State or federal law.

For child care facilities, Section 659515(h)(3) provides that a jurisdiction may deny a bonus or concessions for child care facilities if it can determine, with substantial evidence, that the community has adequate child care facilities in the project area.

Ambiguity remains about determining whether a concession or incentive results in identifiable and actual cost reductions, as well as what constitutes a specific, adverse impact; the SDBL refers to a definition provided in Section 65589.5 for the latter: *a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions at the time of application*. Section 65589.5 notes that inconsistency with zoning regulations or a General Plan Land Use designation does not meet this test. Local density bonus ordinances could address these ambiguities by clarifying local issues that constitute adverse public impacts. This is particularly valuable in that AB 2501 placed the burden of proof on local governments to demonstrate that concessions or incentives meet one of the three findings for denial. If a concession or incentive is denied, applicants have the option to initiate legal proceedings. If a court finds in favor of an applicant in such a suit, the local government is responsible for the applicant's attorney fees and costs of suit.⁸

⁷ Gov. Code Section 65915(d)(1)

⁸ Gov. Code Section 65915(d)(3)



Local Integration: CEQA Exemptions, Historical Resources, and Neighborhood Integration

Density bonus projects are not exempt from the California Environmental Quality Act (CEQA). However, two classes of categorical exemption recognized by the Act are often applied to density bonus projects: the *Affordable Housing* exemption (§15194) and the *Residential Infill Projects* exemption (§15195). To qualify for either, the project must be consistent with several threshold criteria established in CEQA §15192, including that the project must be consistent with any applicable General Plan, Specific Plan, or Local Coastal Program (and any related mitigation measures), as well as the local zoning ordinance. Several site-specific conditions must be met to qualify a project for the exemptions; these generally address the presence of ecological and habitat resources on-site, hazardous materials, public health risks associated with excess exposure to hazards such as earthquakes, flooding, wildfires or other hazards. As noted below, properties with historical resources do not qualify for the affordable housing or infill exemptions.

The affordable housing infill exemption is applicable to projects in which 100% of the proposed units are targeted to low-income households. The residential infill exemption is available to projects with mixed income levels, including partial market-rate housing projects.

Properties listed on the California Register of Historical Resources are protected in the SDBL through Section 65915(d)(1)(B), which establishes that a project requesting a density bonus may be denied the bonus and associated concessions or incentives if it would have a specific, adverse impact upon *any real property listed in the California Register of Historical Resources, and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable.* While the SDBL does not explicitly extend the same protection to locally-designated or eligible properties, the protection would occur through CEQA review of the project.



II. CITY OF SANTA ROSA DENSITY BONUS REGULATIONS

General Plan and Housing Element

The Santa Rosa General Plan includes several provisions that support affordable housing development, including policies that seek to improve project processing and predictability, promote appropriate and supportive land use and development standards, and related implementing policies. Table 6 summarizes policies contained within the Santa Rosa General Plan that relate to affordable or specialized housing and density bonuses. The Housing Element recognizes several programs aimed at maintaining and expanding affordable housing. The City's Housing Authority—established in 1971—is charged with providing decent, safe, and sanitary housing in Santa Rosa. The Authority has four approaches to meet this goal, the first being "develop new units." The Density Bonus program is a key tool in encouraging greater affordable housing development.

POLICY	DESCRIPTION
FAST TRACK	The City's <i>Fast Track</i> policy allows quicker processing of development projects that include affordable units. The City's policy is to process development projects within 90 to 120 days.
OPPORTUNITY SITES	As of the adoption of the General Plan, the City had designated 48 acres of undeveloped land for <i>Medium High Density</i> land use designation and 11 acres of undeveloped land as <i>Transit Village Medium</i> and <i>Transit Village Mixed Use</i> land use designations to provide targeted opportunities for higher-density (affordable) housing development.
LUL-B-1	Promote and participate in cooperative planning efforts with Sonoma County and its cities, especially related to countywide and sub-regional issues such as transportation, waste management, and affordable housing.
LUL-C-9	Preserve and protect the character of older established residential neighborhoods within and adjacent to downtown. Promote the retention of existing housing units when possible, especially those located in structures of architectural or historic interest and significance through a "no net housing loss policy." Permit developments that will result in net loss of housing units only with findings that such loss would be unavoidable and that new development would provide greater public benefits.
LUL-F-1	Do not allow development at less than the minimum density prescribed by each residential land use classification
LUL-F-4	Allow development on sites with a Medium Density Residential designation to have a maximum density of 24 units per gross acre (and up to 30 units per acre provided at least 20 percent of the housing units are affordable, as defined in the Housing Element)
Н-А-2	Pursue the goal of meeting Santa Rosa's housing needs through increased densities, when compatible with existing neighborhoods. Development of existing and new higher-density sites must be designed in context with existing, surrounding neighborhoods. The number of affordable units permitted each year and the adequacy of higher-density sites shall be reported as part of the General Plan Annual Review report.
H-A-5	Improve community acceptance of higher-density housing through community-based outreach, recognition of existing livable neighborhoods, and assurance of well-designed high-density projects.
H-C-3	Require projects requesting residential General Plan amendments to rezone for General Plan consistency.

Table 6 - General Plan Policies Related to Affordable and Specialized Housing Density Bonuses



POLICY	DESCRIPTION
H-C-6	Facilitate higher-density and affordable housing development in Priority Development Areas (PDA), which include sites located near the rail transit corridor and on regional/arterial streets for convenient access to bus and rail transit. Implement existing PDA specific plans—the Downtown Station Area Specific Plan and the North Santa Rosa Station Area Specific Plan—and develop new plans, such as the Roseland Specific Plan, to encourage the development of homes that have access to services and amenities.
H-C-13	Encourage the development of units with three or more bedrooms in affordable housing projects.
H-C-15	Encourage new affordable housing development to provide amenities for residents, such as on-site recreational facilities, children's programs (day care or after-school care), and community meeting spaces.
H-C-17	Evaluate reinstatement of zoning code provisions exempting sites designated Medium Density Residential and Medium High Density Residential from rezoning when affordable housing is proposed.
H-D-1	Continue existing programs for persons with special needs, including disabled persons, developmentally disabled persons, elderly, homeless, large families, single parent households, and farmworkers. Programs include the Section 8 Housing Choice Voucher Rental Assistance Program and funding for services and organizations through the use of Community Development Block Grant and HOME funds. When funding is available, serve households with special needs through the Housing High density development projects should include play spaces for children, as shown above at Amorosa Village. Rehabilitation and Conservation Program and the Community Housing Development Organization (CHDO).
H-D-11	Encourage the development of affordable housing for the elderly, particularly for those in need of assisted and skilled nursing care. Continue to provide funding and offer incentives such as density bonuses, reduced parking requirements, design flexibility, and deferred development fees.
H-F-1	Ensure that residential projects are heard by the first decision-making board, within a period not to exceed 120 days of receipt of a complete application for development approval.
H-F-2	Fast track all development projects that fully comprise units affordable to extremely low-, very low-, and low-income households with long-term affordability restrictions. Utilize a fast track schedule mutually acceptable to the project applicant and the City.
H-F-3	Defer payment of development impact fees for affordable units until permanent financing is available.
H-F-4	Continue to implement the City's Density Bonus Ordinance, consistent with state law.



Housing Action Plan

The Santa Rosa Housing Action Plan, adopted in October, 2016, provides a roadmap to address the City's housing needs and implement the Housing Element. It is presented in five program areas, with 31 program elements that represent specific actions to achieve each program. Several policies in the Housing Action Plan relate to updating and implementing the local density bonus program—these policies are associated with Program #1 (Increase Inclusionary Housing), and Program #4 (Improve Development Readiness of Housing Opportunity Sites):

Program #1: Increase Inclusionary Housing

The City's current inclusionary housing policy allows developers to build units in kind or make payments in-lieu of units. Given the nexus-based maximum fee that can be charged in-lieu, density bonuses and other regulatory tools are essential to incentivizing the construction of affordable housing units. The Housing Action Plan directs the City to amend the density bonus ordinance to:

- Appropriate additional density above state-allowed 35%, with consideration of up to 100%;
- Level of affordability to be achieved through the offering of additional density;
- Incentives for creating smaller units that are less expensive by design.
- Whether the additional density bonus will be allowed in all residential districts or vary by residential density category;
- Neighborhood compatibility (i.e., determining locations where bonuses should be available);
- Whether specific areas of the city should be targeted for density bonus (and other areas excluded) through use of an overlay zone;
- Type of affordable units to be included rental, ownership or both;
- Consideration of and specification of an expanded list of concessions and incentives (as identified in State Law)
- Potential expansion to the list of available concessions or incentives

Program #4: Improve Development Readiness of Housing Opportunity Sites

Program #4 recommends identifying "opportunity sites" with good physical, regulatory, and market potential for multifamily and mixed use development. Regulatory and financial incentives are directed to these areas to maximize affordable housing development. The density bonus program is recognized as one of the key incentivizing tools.

Municipal Code

The Santa Rosa density bonus program was last substantially amended in 2012. As presented in the prior chapter, several amendments to the SDBL have taken effect since that time. Table 7 provides a line-by-line overview of the City's current density bonus regulations and clarifies discrepancies with the State Law. There are 11 consistency gaps identified; these identified consistency gaps do not reflect recommendations to expand on the SDBL, which are outlined in Section IV of this report.

Appendix A provides an overview of density bonus projects processed in the City since 1999. Sixteen projects were completed resulting in 1,107 housing units, of which 195 were affordable density bonus units. Most concessions granted for these projects were related to reduced setbacks and reduced parking requirements. Other concessions include additional height and lot coverage allowances.



Table 7 - Inconsistencies Between Santa Rosa's Current Density Bonus Ordinance and Density Bonus Law

	CITY OF SANTA ROSA DENSITY BONUS REGULATIONS	STATE OF CALIFORNIA DENSITY BONUS LAW - GOV. CODE SECTION 65915
1	Procedures exist but must be updated to be consistent with the SDBL Processing timelines consistent with Gov. Code 65943 are needed Requirements to submit complete density bonus applications are needed	See 65915(a)(3)
2	Section 20-31.050 Eligibility criteria for density bonus Section does not include new specialized housing categories that qualify for density bonuses consistent with amendments adopted through AB 2442	65915(b)(E) allows density bonuses for qualifying projects where 10% of the total units are for transitional foster youth, disabled veterans, or homeless persons.
3	Section 20-31.050.4 Eligibility criteria for density bonus References units in "condominium or planned unit developments"	65915(b)(D) The SDBL references the broader term "common interest developments" ⁹
4	20-31.60 Project specific density bonus & 20-31.100 Required Density Bonus Agreement and terms of agreement. Affordability terms must be 55 years; they are currently set to 30 years.	See 65915(c)(1)
5	Section 20-31.060.D Project specific density bonus Moderate income density bonus schedule does not include 29% level	See Section 65915(f)(4)
6	Section 20-31.060 Project specific density bonus Land donation density bonus schedule does not include 28% level	See Section 65915(g)(1)
7	Section 20-31.020 Definitions does not include: Development standard Maximum allowable density	See Section 65915(o)
8	Santa Rosa ordinance does not include any provisions responding to amendments in AB 2222 and AB 2556 dealing with replacement units	See Section 65915(c)(3)
9	Santa Rosa ordinance does not include provisions responding to amendments in AB 744 dealing with reduced parking standards based on unit income levels and proximity to transit.	See Section 65915(p)
10	Santa Rosa ordinance does not include provisions for commercial development partnered with affordable housing in response to amendments adopted through AB 1934.	See Section 65915.7
11	Santa Rosa ordinance does not include complete provisions related to density bonuses for child care facilities.	See Section 65917.5

⁹ Common interest development is defined as defined in Civil Code Section 4100 means (a) A community apartment project; (b) A condominium project; (c) A planned development; (d) A stock cooperative.



III. LOCAL DENSITY BONUS ORDINANCE COMPARISON

To inform the Santa Rosa density bonus ordinance update, local density bonus programs in several Bay Area jurisdictions were analyzed. Comparable cities were identified by City staff for their relevance to the Santa Rosa context, and their unique approaches to encouraging affordable housing development through density bonuses. Ten cities were selected for in depth review and one-on-one interviews; in addition to the ten staff-selected jurisdictions, local density bonus ordinances for Santa Rosa's official "comparable cities" were also reviewed. The complete list of comparable cities that were reviewed are outlined below:

- Ordinance review with one-on-one interviews (10 jurisdictions):
 - Berkeley
 - Emeryville density bonus provisions exceed state-mandated 35% maximum
 - Hayward
 - o Napa
 - Oakland
 - o Richmond
 - Sacramento density bonus provisions exceed state-mandated 35% maximum
 - San Francisco density bonus provisions exceed state-mandated 35% maximum
 - Santa Cruz
 - Sonoma County density bonus provisions exceed state-mandated 35% maximum
 - Ordinance review (7 jurisdictions):
 - Antioch density bonus provisions exceed state-mandated 35% maximum
 - o Concord
 - o Daly City
 - o Fairfield
 - o Fremont
 - o San Mateo
 - Vallejo

Interviews followed a preliminary review of local ordinances and available public materials on local experiences with density bonuses. Follow-up interviews were designed to clarify provisions in the local ordinance and provide insight into the impact and implementation experience of the local jurisdiction. A list of interview questions is provided in Appendix B.

A summary of ordinance findings is provided at the end of this section in Table 14.



Berkeley



Number of Density Bonus Applications Received: Unknown. Affordability Levels Targeted for Density Qualification: Unknown. Types of Projects Requesting Density Bonuses: Multi-family residential. Location of Density Bonus Projects: Unknown. Requests for Density Bonus Regulatory Changes from Developers: Unknown. Requests to Update the Local Ordinance to Comply with State Law: Unknown. Is the Community Considering Densities Over 35%: Unknown.

Berkeley currently enforces the SDBL; a local ordinance that exceeds the 35% density bonus allowance has not been adopted. Berkeley has, however, adopted a detailed approach to address one of the challenges the city faces when implementing the SDBL: evaluating and granting bonuses within zoning districts and General Plan Land Use designations where there is no specified maximum residential density limit. To interpret and implement the SDBL in these areas, the City developed a process to define the *implicit* residential density limit. Applicants are required to prepare project plans that substantially conform to development standards; the number of units achieved in a conforming design establishes the implicit density for the property. Bonuses are granted based on the implicit density. The City's procedure for reviewing density bonus applications includes four broad steps:

- 1. calculate and define the "Base Project;"
- 2. calculate the requested density bonus using the base project to define the density maximum;
- 3. review concessions and assess their fiscal impact on the project;
- 4. review requested waivers/reductions.

Table 8 - City of Berkele	y Procedure for Evaluating	Density Bonus Applications
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STEP	ITEM	EXAMPLE
1.1	Calculate residential floor area (must substantially comply with standards)	40,000 sq. ft.
1.2	Calculate Average Unit Size (total residential floor area ÷ total number of units)	2,000 sq. ft.
1.3	Calculate number of base project units (step 1.1 ÷ step 1.2), deduct fractions	20 units
2.1	Determine proposed number and income level of below market rate (BMR) units	4, v. low-income
	Determine percentage of BMR units relative to total units in the base project	20%
2.2	Calculate the eligible density increase (%) based on 65915(f)	35%
2.3	Calculate the number of bonus units (step 2.2 X step 1.3)	7 units
3.1	Review written statement describing requested concessions/incentives	9' ceilings
3.2	Verify that the project qualifies for the requested number of concessions	3 concessions
3.3	 Applicant submits "pencil out pro forma," using the following scenarios: A. Base Project, 100% market rate (pays City's affordable housing impact fee) B. Base Project, with proposed BMR units C. Density Bonus Project, with BMR units and density bonus units D. Proposed Project, with requested concessions/incentives 	
3.4	Pro forma is peer-reviewed by a qualified consultant (at a rate of \$180/hour)	
3.5	Determination whether the concession is necessary pursuant to 65915(d)(1)(A)	
3.6	Review written request for waivers	



Emeryville



Number of Density Bonus Applications Received: Several in the local density bonus program Affordability Levels Targeted for Density Qualification: Diverse, per local requirements Types of Projects Requesting Density Bonuses: Multi-family residential. Location of Density Bonus Projects: In defined overlay zones outlined in the local program. Requests for Density Bonus Regulatory Changes from Developers: None. Requests to Update the Local Ordinance to Comply with State Law: None. Is the Community Considering Densities Over 35%: Already available and highly popular.

The City of Emeryville enforces two, mutually exclusive density bonus programs. One is the State's Density Bonus Law, the second is a local program (Section 9-4.204 of the local ordinance) designed to allow for bonuses above 35%. Developers choose to apply one or the other. If a project is seeking a bonus of 35% or less, it is less onerous to choose the SDBL. Bonus requests over 35% must use the local program, which allows up to a 100% bonus. The local program also provides for a floor area ratio, and/or height bonus that can be used independently or together with residential density bonuses as needed.

Density Bonuses that Exceed 35%

The local density bonus program divides the city into floor area ratio (FAR), height, and residential density area designations. The areas were designated in consultation with property owners and the broader community. Each designation is ascribed a "base" maximum for the applicable standard (FAR, height, or density) as well as a "bonus" maximum. Requests for a bonus in FAR, height, or density within the maximum permitted amount may be granted through a conditional use permit. The base and bonus density limits for each residential density area designation are shown in Table 9. Figure 1 shows a map of the residential density area designations.

Emeryville's program is based on earning points that reflect the size of the density, height, or floor area bonus that is requested. Points are earned by providing affordable housing and other community benefits (explained in detail below). The larger the density bonus request, the more affordable housing and community benefit that a project must provide to receive the bonus. The required number of points that a project must provide is determined by the following formula:

Points Required = (Bonus Request + Bonus Increment) x 100

Bonus request is the amount of FAR, height, or density requested above the base level for the zoning district **Bonus Increment** is difference between the maximum bonus and maximum base amount in the designation.

Emeryville Density Bonus Example:

A multi-family project located in the "70/135" residential density area designation proposes to build 87 units on a one acre property, which exceeds the base density maximum of 70 units per acre by 17 units. To grant the density bonus of 17 units, the project would need to generate 26 density bonus points. At least half, or 15 points, must be generated through the provision of affordable housing units, as outlined below:

Base Project:	87 Unit multi-family development
Area Designation:	"70/135"
Bonus "Request":	(Units Requested less "Base" Units in the Area Designation) = 87 - 70 = 17
Bonus "Increment":	(Maximum Bonus less Base Density in the Area Designation) = 135 - 70 = 65
Points Required:	(Bonus Request ÷ Bonus Increment) x 100 = (17 ÷ 65) x 100 = 26
Affordable Housing r	nust account for <u>at least</u> half of required point total, rounded up to a factor of 5: Points through Affordable Housing = $26 \div 2 = 13$, rounded up to 15



AREA	MAX PERMITTED RESIDEN	MAX BONUS INCREMENT		
DESIGNATION	BASE	BONUS	AMOUNT	PERCENT
20/35	20	35	15	75%
35/60	35	60	25	71%
50/100	50	100	50	100%
70/135	70	135	65	93%
85/170	85	170	85	100%

Table 9 - Emeryville Municipal Code Table 9-4.203(a): Residential Density Area Designations

Figure 1 - Emeryville Municipal Code Figure 9-4.203(a): Residential Density Area Designations



At least half of the required number of "points" must be earned by providing affordable units in the project (rounded up to a factor of 5). Points generated through affordable units are gained by providing a defined number of units across multiple affordability levels (Table 10). This ensures that a variety of housing sizes and types are constructed. For example, to secure 15 bonus points, a rental project would need to provide very low-, low-, and moderate-income units at 3.1%, 4.7%, and 5.8% of total project units respectively, for a total of 13.5% of affordable units. In a for-sale project, moderate-income level units would need to represent 21.5% of total base project units to get the same 15 points.



POINTS		FOR-SALE			
AWARDED	TOTAL	VERY LOW INCOME	LOW INCOME	MODERATE INCOME	MODERATE INCOME
5	12.5%	2.8%	4.3%	5.3%	20.5%
10	13.0%	2.9%	4.5%	5.5%	21.0%
15	13.5%	3.1%	4.7%	5.8%	21.5%
20	14.0%	3.2%	4.9%	6.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	22.5%
30	15.0%	3.4%	5.2%	6.4%	23.0%
35	15.5%	3.5%	5.4%	6.6%	23.5%
40	16.0%	3.6%	5.6%	6.8%	24.0%
45	16.5%	3.7%	5.7%	7.0%	24.5%
50	17.0%	3.9%	5.9%	7.2%	25.0%

Table 10 - Emeryville Municipal Code Table 9-4.204(d)(1): Bonus Points Schedule for Affordable Units

Nonresidential projects that seek an FAR or height bonus can earn points by paying an additional affordable housing impact fee on a sliding scale: a 10% incremental increase to the standard housing impact fee for the project generates 5 points up to a maximum of 50 points if the fee is doubled. Commercial projects that are exempt from housing impact fees can pay the increment portion as if a fee was levied (without paying the base fee) and earn points at the same rate.

After providing at least half of the points through affordable housing, any remaining points can be earned by providing a variety of community benefits. The maximum number of points available through community benefits is 50. The point schedule for community benefits is outlined below:

- Between 20 and 50 points can be earned by providing public open space on a sliding scale. 50 points are earned for open space equal to the greater of 15% of site area or 2,000 sq. ft., 20 points are earned for open space equal to the greater of 5% of site area or 1,000 sq. ft.
- 50 points can be earned for buildings that generate zero net energy load
 - 10 points can be earned for every 1% of project construction valuation contributed toward:
 - The Citywide Parks Fund to provide and improve open spaces
 - Public improvements, not including required improvements for the project
 - The Citywide Utility Undergrounding fund, not including required undergrounding
 - The Citywide Small, Local-Serving Businesses Fund
 - Unique, exemplary community benefit proposals negotiated directly with City Council
- 5 points can be earned for each 5% of total units that are "Family-Friendly" (contain 2 or more bedrooms), where at least 1% of total project units must have 3 or more bedrooms.

Virtually all density bonus applications processed by the City used the local program to take advantage of bonuses over 35%. The local program has resulted in "significant affordable housing development" according to interviews with staff. The most attractive aspects of the program are its flexibility, and the ability to potentially double base density. Defined community benefits that generate a predictable number of points make the process transparent and predictable. No single benefit is used most often; applicants select benefits that are most desirable to them. Another strength is that bonuses for density, height, and FAR can be combined. If multiple bonuses are requested for a project, the point formula is applied to each of the bonus requests and the highest point total is applied. If a project



required 45 points for density and 49 points for height, the project would need to generate 49 points to receive both bonuses; not a combined or averaged point total.

Hayward



Number of Density Bonus Applications Received: 2. Affordability Levels Targeted for Density Qualification: Very Low Income. Types of Projects Requesting Density Bonuses: Multi-family residential. Location of Density Bonus Projects: Transit-oriented development near major transit. Requests for Density Bonus Regulatory Changes from Developers: None. Requests to Update the Local Ordinance to Comply with State Law: None. Is the Community Considering Densities Over 35%: Yes, for energy efficient construction.

The City of Hayward enforces the SDBL as its local ordinance. No tailored policies are provided beyond state regulations. The SDBL has had extremely limited impact on affordable housing construction in the City. Staff planners suggest that educational campaigns targeted to developers about density bonus options available through the SDBL could increase utilization.

Napa



Number of Density bonus applications received: Very limited, last application in 2005. Affordability Levels Targeted for Density Qualification: Based on County funding requirement. Types of Projects Requesting Density Bonuses: Multi-family, 100% affordable housing. Location of Density Bonus Projects: Infill sites and undeveloped areas. Requests for Density Bonus Regulatory Changes from Developers: None. Requests to Update the Local Ordinance to Comply with State Law: None. Is the Community Considering Densities Over 35%: Already provided.

The City of Napa enforces the State Density Bonus Law with adjustment to reflect the local context. The City also provides for a density bonus exceeding 35%. In the local ordinance, Napa has provided expanded information to clarify application requirements for density bonuses to supplement the State policy. In addition to identifying the basis for the density bonus, and any concessions, incentives, waivers, or reductions with substantiating evidence, Napa requires that density bonus applications:

- 1. Provide a preliminary sketch plan showing:
 - the context and compatibility of the project within the surrounding area
 - the number, type, size, and location of buildings, and parking
 - the design of affordable units is compatible with market-rate units in the project.
- 2. Provide information to enable the City to determine whether the SDBL and local code has been satisfied by the applicant. This may include:
 - the cost per unit
 - how requested incentives or concessions make housing economically feasible.
 - summaries of capital costs, equity investment, debt service, projected revenues, operating expenses, and other information deemed necessary by the Director.

Overall, Napa has seen very little market-rate development that utilizes State or local density bonus provisions. Nearly all projects that have utilized the density bonus program in Napa were 100% affordable projects that were predominantly incentivized by County funding. Projects with density bonuses are varied and range from infill development in the developed core, to undeveloped sites



further out of the downtown area. Projects seek a wide range of concessions but parking is the most commonly requested reduction, followed by various waivers for indoor and site improvements (e.g. mandatory laundry facilities in each unit, guest amenities, and carports).

A unique aspect of Napa's ordinance is their approach to density bonuses in lower-density residential areas and transition areas. Napa is a community defined by an iconic medium-scale urban core, surrounded by residential neighborhoods. The local ordinance provides an avenue for applying density bonuses to projects that are below the threshold of five dwelling units established in the SDBL. Density bonus application review in Napa is divided into two categories: large projects (i.e. traditional SDBL projects involving five or more units) require review and recommendation by staff, with City Council having ultimate decision-making authority. Small projects, those that involve fewer than five units in duplexes or triplexes in à district that allows for duplexes and triplexes (i.e. the R-I, R-T, and R-M districts), require Council review only if needed for a concurrent entitlement. The "small project" designation takes advantage of the SDBL provision 65915(n) to effectively extend the SDBL to projects with less than five dwelling units. While this is a unique approach, it has failed incentivized affordable housing production due to the economies of scale that are achieved with larger development projects.

Density Bonuses that Exceed 35%

Napa also provides a provision for exceeding the State-mandated 35% density bonus allowance. Section 17.52.130.F enables density bonuses to upwards of 100% at the discretion of the decision-making body. The language qualifying how an applicant can achieve a supplemental density bonus is left vague (a strict schedule is not provided). The decision-making body weighs the merits of the application in recognition of the following:

- 1. the provision of affordable units in excess of the SDBL requirements
- 2. high quality design that fits within the surrounding neighborhood
- 3. superior mitigation of potential impacts on neighborhoods
- 4. provision of on-site underground parking
- 5. other project amenities or public benefits that contribute to the surrounding neighborhood
- 6. support of Chapter 15.94 (Affordable Housing Impact Fees)
- 7. the inclusion of attractive and functional common space areas.



Oakland



Number of Density Bonus Applications Received: Unknown. Affordability Levels Targeted for Density Qualification: Unknown. Types of Projects Requesting Density Bonuses: Unknown. Location of Density Bonus Projects: Unknown. Requests for Density Bonus Regulatory Changes from Developers: Unknown. Requests to Update the Local Ordinance to Comply with State Law: Unknown. Is the community Considering Densities Over 35%: Unknown.

Because permitted residential densities are relatively high in Oakland, the City does not consider the development standards in the Planning Code to be a constraint to the production or rehabilitation of housing. The City has adopted a Density Bonus Ordinance that mirrors State law, and has incorporated other tools (such as inclusionary housing policy, and an expedited approach to achieving a 35% density bonus within defined Retail Priority Zones). The City does not currently allow density bonuses above 35%. The expedited 35% density bonus is available in each of the city's 5 Retail Priority Zones outlined in the Broadway Valdez District Specific Plan and implemented through the D-BV Broadway Valdez District Commercial Zones. The program seeks to encourage vibrant mixed-use development by requiring a defined square footage of retail space that is required to receive the right to construct residential units on upper floors of a proposed building. When an appropriate retail square footage threshold is met, and the resultant residential units include 15% affordable housing units targeted to either very low- or low-income households, or moderate-income households in a common interest development, the project is entitled to a 35% density bonus through the issuance of a Conditional Use Permit. The program is "expedited" in that meeting the 15% affordable requirement immediately qualifies the project for a 35% bonus.

The City's version of the SDBL includes minor modifications to reflect local conditions, including:

- An expanded list of qualifying concessions and incentives to reflect local development requirements (required open space, and required courtyards, for example).
- An expanded basis for the City's right to deny a project that includes:
 - The ability to deny a project if the City maintains an up-to-date and certified Housing Element, and the City has met all applicable Regional Housing Need Allocation requirements for affordable housing for the current period.
 - The development project is proposed on land zoned for agriculture or resource preservation and is surrounded on at least two sides by land zoned for the same.
 - The development project is proposed on land which does not have adequate water or wastewater facilities to serve the project.
 - The development is inconsistent with both the zoning ordinance and general plan land use designation, and the City has adopted an up-to-date Housing Element. This provision appears to conflict with the SDBL and Oakland Municipal Code Section 17.107.115(2), which stipulate that inconsistency with the zoning ordinance or general plan land use designation does not constitute a specific, adverse impact.



Richmond



Number of Density bonus applications received: 1-2 annually, virtually all 100% affordable. Affordability Levels Targeted for Density Qualification: Varies, extremely low-income target. Types of Projects Requesting Density Bonuses: 100% affordable, multi-unit residential. Location of Density Bonus Projects: Transit corridors and hubs, Priority Development Areas. Requests for Density Bonus Regulatory Changes from Developers: Lower Impact Fees. Requests to Update the Local Ordinance to Comply with State Law: None. Is the Community Considering Densities Over 35%: Already granted, no density bonus cap.

The local density bonus ordinance in Richmond expands State law considerably. The program seeks to address several local concerns, including: providing housing for extremely low-income households, providing flexibility for affordable housing developers and the City to approve projects with significant community benefits, and addressing the financial challenges faced by affordable housing developers in the absence of Redevelopment Agency funding.

Richmond's local ordinance recognizes that the community has a large share of low-income households with families. As a result, the local density bonus ordinance incorporates a more aggressive bonus schedule for projects that incorporate units at the extremely low-income level, income-restricted senior-citizen housing, as well as income-restricted units with 4 or more bedrooms. Table 11 below summarizes the expanded density bonus schedule in Richmond. In addition to the more aggressive density schedule for extremely low-income, income-restricted senior, and income-restricted family units, the City enables more concessions for projects with these units as outlined in Table 15.04.602.030-D of the Zoning and Subdivision Regulations of the Richmond Municipal Code.

AFFORDABILITY LEVEL OR HOUSING TYPE	MIN. REQUIRED TO RECEIVE BONUS	BONUS FOR MIN. UNITS	ADDITIONAL BONUS PER 1% INCREMENT OVER MIN.	UNITS NEEDED FOR MAX. BONUS
EXTREMELY LOW-INCOME	5%	30%	1.0% up to 40%	15%
VERY LOW-INCOME	5%	20%	2.5% up to 35%	11%
LOW-INCOME	10%	20%	1.5% up to 35%	20%
MODERATE-INCOME A	10%	5%	1.0% up to 35%	40%
SENIOR HOUSING 8	100%	20%		All senior units with:
Extremely Low-income	10%	40%		10%
Very Low-Income	15%	40%	N/A	15%
Low-Income	20%	40%		20%
FAMILY UNITS (4BR+)				
Extremely Low-income	5%	35%		5%
Very Low-Income	10%	35%	N/A	10%
Low-Income	15%	35%		15%

Table 11 - Affordability-Based Sliding Scale Density Bonus Schedule in Richmond

The City of Richmond also establishes standards for incorporating below market rate units within mixed-income developments to protect against segregation. The local ordinance requires that affordable housing units are integrated with market-rate units in housing developments; units granted through a density bonus, however, may be concentrated in one area.¹⁰

¹⁰ See Section 15.04.602.030.F.4



Density Bonuses that Exceed 35%

Subdivision 15.04.602.030.E effectively establishes Richmond as one of the most liberal density bonus jurisdictions of the cities reviewed. The provision establishes that the City has the authority to grant a density bonus and number of incentives or concessions of any amount above what is described in the local density bonus ordinance for a development that meets the requirements of the ordinance. In practice, this provision allows the City complete latitude to consider unique or creative proposals that are in the community's best interests. Unlike the provisions for bonuses over 35% in other jurisdictions, Richmond does not establish criteria or findings that must be made to grant the additional bonus.

Sacramento



Number of Density bonus applications received: None. Affordability Levels Targeted for Density Qualification: Virtually no projects processed. Types of Projects Requesting Density Bonuses: 1 multi-unit 100% affordable project. Location of Density Bonus Projects: No projects processed. Requests for Density Bonus Regulatory Changes from Developers: None. Requests to Update the Local Ordinance to Comply with State Law: None. Is the Community Considering Densities Over 35%: No. Available for energy efficiency.

The City of Sacramento has received and processed no density bonus projects since the adoption of the SDBL. According to City staff, the primary reason is that the City maintains a growth-friendly zoning ordinance, with development standards that achieve many of the goals that the SDBL sought to achieve through density bonusing, concessions, incentives, waivers, reductions, or parking requirement reductions. The City has eliminated minimum parking standards in several zoning districts, and promoted higher density development generally. The city recently also revised its variance review process, replacing variances with "deviations" that can be reviewed administratively if they involve a modification that is equal to less than 50% of the standard; the Planning Commission reviews deviations of greater than 50%. The findings to grant a deviation are also less onerous than typical variance review findings.

Density Bonuses that Exceed 35%

The City currently permits a density bonus above the state-mandated 35% for projects that meet the SDBL requirements and a local green building standard. The green building standard was incorporated into the density bonus program to avoid undermining the affordable housing density bonus incentive by granting density bonuses for energy-efficient construction when no affordable units are included in the project. To date, no projects have utilized the green building density bonus incentive.


San Francisco



Number of Density bonus applications received: Limited density bonus utilization. Affordability Levels Targeted for Density Qualification: Limited density bonus utilization. Types of Projects Requesting Density Bonuses: Limited density bonus utilization. Location of Density Bonus Projects: N/A. Requests for Density Bonus Regulatory Changes from Developers: Increased density bonus. Requests to Update the Local Ordinance to Comply with State Law: New ordinance adopted in July, 2017 that buildings on State law.

Is the Community Considering Densities Over 35%: July, 2017 establishes an unlimited bonus.

Until recently, the City of San Francisco neglected to adopt a local density program compliant with State law for several reasons. Chiefly, the City has sought to address affordable housing through an aggressive and expanded inclusionary housing policy. One of the key concerns for the City was that local decision-makers felt the State law fails to adequately address the middle-income housing gap.

In July, 2017 the City adopted its first local density bonus program, which builds substantially on State law. The local program provides applicants requesting a density bonus with one of three options, depending on what zoning district their project is located in:

- In all zoning districts except RH-1 or RH-2:
 - "State Density Bonus: Individually Requested" (Sec. 206.6)
- In zoning districts where density is controlled by a ratio of units to lot area and the RH-3 zone:
 - Housing Opportunities Mean Equity-SF (HOME-SF) (Sec. 206.3)
 - "State Density Bonus: Analyzed" (Sec. 206.5) 0

The "State Density Bonus: Individually Requested" (henceforth "Individualized") program is essentially the SDBL. It is designed for projects that meet State requirements but are not consistent with the prevetted concessions and waivers approved for the HOME-SF and "Analyzed" program as described below.

Like other highly urbanized areas, San Francisco's experience is that most development is occurring in areas where no residential density limits apply. In these instances, the City has adopted Berkeley's approach of calculating implicit density based on a project design that substantially conforms to applicable development standards for the site.

Density Bonuses that Exceed 35%

The HOME-SF and "State Density Bonus: Analyzed" (henceforth "Analyzed") programs provide for density bonuses over 35%. HOME-SF is designed for new construction projects of three or more units that request a density bonus greater than 35% (with no density bonus limit). 30% of total proposed units in the project must be affordable across a prescribed income categories:

- 12% of units at 55% of AMI (rental) or 80% of AMI (owner); .
- 9% of units at 80% of AMI (rental) or 105% of AMI (owner); and
- 9% of units at 110% of AMI (rental) or 130% of AMI (owner).



In addition, the projects must meet the following unit size criteria:

- At least 40% of the units must be two and three bedroom units, with at least 10% as three bedroom units; or any unit size mix that includes three bedroom or larger units such that 50% of all bedrooms within the project are provided in units with more than one bedroom.
- Units sizes shall be at least 200 sq. ft. for studios, 500 sq. ft. for 1-bedroom units, and 750 sq. ft. for 2 bedroom units.

The HOME-SF program provides three options for the type of bonus that an applicant can receive:

- 1. Form-Based Bonus applies no residential density limit but restricts a development to height, bulk, unit mix, and other development standards established in the Planning Code.
- 2. Height Bonus up to 20 feet above the height limit (equal to two 10-foot stories).
- 3. Ground Floor Ceiling Bonus up to 5 feet for 14-foot ceilings or walk-up dwellings units.

The "Analyzed" program adopts the same eligibility, affordability, and unit design requirements as the HOME-SF program except that projects must include five or more units (to match State law) and request no more than 35% density bonus (except for senior-citizen housing, which allows up to 50%). The "Analyzed" program density bonus matches State law except for the following:

- senior-citizen housing projects are eligible to receive a bonus of 50% instead of 20%.
- Applicants may combine bonuses from different affordability levels, up to a maximum of 35%. State law requires that projects select one income-based category to define the bonus.

The HOME-SF and "Analyzed" programs include a pre-vetted menu of concessions, incentives or waivers for applicants to select. The menu was developed through an independent study commissioned by the City; each pre-vetted item was deemed consistent with the SDBL, recognized as being generally required to provide for affordable housing costs, and assessed by the City to not have a specific, adverse impact. The menu of concessions and waivers for the HOME-SF and "Analyzed" program is provided in Table 12:

CONCESSION	AMOUNT
Rear Yard Setback	Reduced to greater of 20% of lot depth or 15 feet
Dwelling Unit Exposure	Exposure requirements may be met with windows facing an open area within 25ft
Off-street Loading	Requirement can be waived
Automobile Parking	Up to 50% reduction (up to 75% in the HOME-SF program)
Open Space	Up to a 5% reduction in common open space requirements
Open Space 2	A second 5% reduction in common open space requirements
Inner Court Open Space	HOME-SF Only: a space at least 25ft, x 25ft, can qualify as common open space

Table 12 - Pre-Approved Concessions and Waivers in San Francisco



Santa Cruz



Number of Density bonus applications received: Limited density bonus utilization. Affordability Levels Targeted for Density Qualification: Limited density bonus utilization. Types of Projects Requesting Density Bonuses: Limited density bonus utilization. Location of Density Bonus Projects: N/A. Requests for Density Bonus Regulatory Changes from Developers: None, low familiarity. Requests to Update the Local Ordinance to Comply with State Law: Exploring an update. Is the Community Considering Densities Over 35%: Considered as part of pending update.

The City of Santa Cruz is currently working on an update to the local density bonus ordinance as the current ordinance, which mirrors State law, is out of date. The City has processed only one density bonus project (in 2016) that was a 100% affordable housing project. The economic downturn, and density bonus impediments incorporated into the local density bonus ordinance in 2006 have resulted in limited use of density bonus in the city. Staff have indicated that developers generally are not familiar with the SDBL and how it may be applied to their projects. City-led efforts to broaden understanding of the law and encourage its implementation have been positive, however developers continue to struggle to identify ways to apply the law.

The City's 2006 ordinance was adopted reluctantly as density bonus was perceived to undermine the local zoning ordinance and its provisions to ensure compatibility with existing neighborhoods. To limit excessive deviations from design review standards established in local code, the City applied a tiered process to review concessions that made it onerous for applicants and limited predictability in the process. Concessions that were deemed to have heightened sensitivity were subject to Planning Commission or Council review (e.g. increases in height, bulk, and floor area), which stalled project processing and effectively deterred applicants. The City also required developers to submit detailed pro formas to justify requested incentives, concessions, waivers, or reductions.

Density Bonuses that Exceed 35%

Density bonuses over 35% are being contemplated in the current update to the local density bonus ordinance, however the City is also considering implementing these bonuses through an update to the local inclusionary housing policy (also currently underway). The City is also seeking to achieve the intent of the SDBL by revising base zoning standards in targeted areas that have a greater capacity to support development, such as along primary corridors.



Sonoma County



Number of Density bonus applications received: 11 applications, 492 units. Affordability Levels Targeted for Density Qualification: Very Low- and Low-Income. Types of Projects Requesting Density Bonuses: Multi-family, some subdivisions. Location of Density Bonus Projects: Within urban service areas. Requests for Density Bonus Regulatory Changes from Developers: Fee reductions. Requests to Update the Local Ordinance to Comply with State Law: No, in County workplan. Is the Community Considering Densities Over 35%: 80% apply through the local program versus State law to take advantage of extra density bonuses.

Sonoma County provides four density bonus programs for applicants, although not all can be correlated to the State Density Bonus Law:

- 1. State law, granting bonuses up to 35%
- 2. County Supplemental Density Bonus, augmenting SDBL for bonuses up to 50%
- 3. Type A or *Rental*, granting bonuses up to 100% by right (not related to SDBL), but not exceeding 30 dwelling units per acre.
- 4. Type C or *Small-Lot Conversion*, grants density bonus in low-density areas, allowing development of up to 11 units per acre (not related to SDBL)

Most density bonus applications processed by the County take advantage of density bonuses beyond State law. Most applicants choose the Type A or *Rental* program, which provides a 100% density bonus by right when 40% of total proposed units are designated as affordable units. Projects that are eligible under any of the four density bonus programs are entitled to guaranteed and additional discretionary incentives as follows:

- Guaranteed Incentives:
 - Fast-track permit processing; rental projects take precedence over for-sale projects;
 - Concurrent processing when projects require multiple permits
 - Preference to affordable housing developments in priority development areas.
- One of the following discretionary incentives per project:
 - Elimination of covered parking requirements;
 - A 20% reduction of any open space requirements;
 - 20% reduction in the minimum parcel size or minimum parcel width;
 - o A 5-foot reduction in side setbacks, and a 10-foot reduction in front setbacks
 - Another incentive that results in identifiable cost reductions for the construction of affordable housing.

Up to two additional incentives are available in compliance with the concession table outlined in the SDBL for projects that provide more than the minimum required number of affordable units (see Table 2). The County is also authorized to grant two or more additional incentives for projects that meet other Housing Element goals (e.g., provision of housing for seniors or individuals special housing needs, including the provision of housing meeting Universal Design standards), provide greater or longer-term affordability, or projects that provide a greater number of affordable units than are otherwise required. Additional incentives that may be granted are proportional in number to the additional affordable and/or special needs housing that is provided.



Density Bonuses that Exceed 35%

The County Supplemental program augments the SDBL by allowing bonuses of up to 50% for projects that provide a certain number of affordable units and other specialized housing units as summarized in Table 13. For example, a project providing 30% low-income units, where 10% of the units in the project overall are "family units," would qualify for a density bonus of up to 50%.

Project Housing Income Level and Type:	% of Project Units	Accessible Units	Family Units (3Br+ & 5persons+)	Energy Efficiency ^A	3 tenets of Universal Design
Extremely low-income	10%				
Very low-income	20%				
Low-income, senior	30%				
Low-income	30%	10%			·
Low-income	30%		10%		
Low-income	40%				· · · · · · · · · · · · · · · · · · ·
SDBL-eligible				•	
Low-income	30%			· · · · · · · · · · · · · · · · · · ·	100%

Table 13 - Features of Housing Projects that Qualify Projects for Supplemental Density Bonuses

electrical energy demand of the units or results in an equivalent reduction in utility costs

The Type A or Rental program is design for projects with two or more rental units that are located within the Type A overlay zones (areas that correspond to the R-2 (Medium Density Residential) and R-3 (High Density Residential) zoning districts that allow up to 12 and 20 dwelling units per acre, respectively). The Rental program provides a 100% density bonus by right so long as the resultant density does not exceed 30 units per acre. A significant benefit cited by County staff is that rental applicants have consistently chosen to utilize the Type A density bonus in-lieu of paying the County's inclusionary housing rental impact fee. This program has served as a tool for the County to achieve on-site affordable rental units within the parameters of the Costa-Hawkins Rental Housing Act.

The Type C or Small-Lot Conversion program is designed for projects of four or more base dwelling units, located areas designated in the General Plan as Urban Residential with a density of two to six dwelling units per acre, and that are zoned R-1 or R-2. Eligibility for the Type C program is established by providing a minimum of 20% of the for-sale units for very low- or low-income households, with remaining units reserved for sale to low- and moderate-income households.

The Type C Small-Lot Conversion program is available only in low- and medium-density residential areas (where the permitted densities range from four to six dwelling units per acre). The Type C program allows for small-lot subdivisions at a density of up to 11 units per acre in these areas. Depending on the base density of the site, the Type C program could translate into a density bonus of between 183% (in areas zoned for six dwelling units per acre) and 275% (in areas zoned for 4 dwelling units per acre). To qualify under the program, projects must comply with site development standards that regulate minimum parcel sizes and parcel orientation.



Applicants may also choose incentives that the Planning Commission bases on the level of affordability provided. The applicant is always allowed two incentives; however, if the project provides more than the minimum number or level of affordability, additional incentives are available. Applicants typically provide family-size units, over other amenities, to qualify for the additional incentives.

Summary of Findings

Table 14 below provides a summary table of the density bonus ordinance review conducted with interviewed jurisdictions and other comparable cities. For planning purposes in Santa Rosa, the table also includes a basic overview of the maximum density bonus permitted in jurisdictions in the immediate vicinity of the City: Novato, Petaluma, Rohnert Park, Cotati, Windsor, and Healdsburg. Table 15 provides an overview of application requirements for density bonus projects across the ten interviewed cities.

It is important to note that few jurisdictions have adopted updates to their ordinances to reflect the most recent changes in SDBL which took effect January 2017.



JURISDICTION	Pop. 2015 Est ¹	RHNA ²	Date DB Adopted	Max Density (Max DB %)	Area Subject to	Affordable (Anecdotal from Staff it	e Units Built Impression f "High/Low")	Ordinance Reference	Comments
	2015 250		Adopted	(1102.00.70)	00.001	2007-14 ³	Due to DB:	nererence	
Antioch	107,501	768	2016	35 du/acre (Add 70% w/ DB)	SH, R-6, R-10, R-20, R-25, R-35	862	N/A	9-5.35	• DB >35% tied to housing type
Berkeley	117,384	1,558	2017	100 du/acre (Add 35% w/ DB)	N/A	193	N/A	23C.12	
Concord	126,268	1,801	2015	85 du/acre (Add 35% w/ DB)	N/A	10	N/A	18.185.050	
Daly City	104,930	809	2014	145 du/acre (Add 35% w/ DB)	N/A	170	N/A	17.52	
Emeryville	10,830	746	2015	85 du/acre (Add 100% w/DB)	Overlay Districts	141	High	9-4.204	DB >35% with CUP, unless part of PUD Point-based system
Fairfield	109,468	1,639		22 du/acre (Add 35% w/ DB)	N/A	33	N/A	25.38	
Fremont	225,221	3,618		70 du/acre (gross) (Add 35% w/ DB)	N/A	492	N/A	18.165.100	
Hayward	152,401	1,766	2005	55 du/acre (net) (Add 35% w/ DB)	N/A	296	Low	10-19.100-280	
Napa	79,113	432	2011	60 du/acre (Add 100% w/ DB)	Discretionary	276	Low	17.52.130	• DB >35% with CUP, tied to affordability, design, public benefits, or amenities
Oakland	408,073	6,949	unknown	103 du/ac (Add 35% w/DB)	Retail Priority	1,689	N/A	17.107	
Richmond	107,597	1,153	2016	120 du/acre (No DB Max.)	Discretionary	470	High	15.04.602	• DB >35% with CUP and PC review
Sacramento	480,566	12,893	unknown	175 du/acre (net) (Add 50% w/ DB)	Discretionary	N/A	Low	17.704	 DB >35% for "green" building standard DB >35% with CUP review
San Francisco	840,763	16,333	2017	218 du/acre (No DB Max.)	Density controlled by units:lot area and the RH-3 zone	6,635	N/A	206.3, 26.5, 206.6	• DB >35% with CUP and PC review
San Mateo	101,335	1,858	2008	50 du/acre (Add 35% w/ DB)	N/A	324	N/A	27.16.060	
Santa Cruz	62,752	434	20064	27.5 du/acre (Add 35% w/ DB)	N/A	N/A	Low	24.16	
Sonoma (County)	495,078	936	2014	20 du/acre (Add 100% w/ DB)	Urban-Residential Zones	417	492	26-89-050	

Table 14 - Summary Table of Density Bonus Regulations for Comparable Cities to Santa Rosa



JURISDICTION	Pop. 2015 Est. ¹	RHNA ²	Date DB Adopted	Max Density (Max DB %)	Area Subject to DB >35%	Affordable (Anecdota from Staff i	Affordable Units Built (Anecdotal Impression from Staff if "High/Low")		Comments
						2007-14 ³	Due to DB:		
Vallejo	118,995	672	2015	27 du/acre (defers to SDBL)	N/A	29	N/A	N/A	Density bonus permitted for PUD, however this is not compliant with SDBL
Santa Rosa	172,066	2,287	2012	40 du/acre (Add 35% w/ DB)	N/A	1,450	195	20-31	See notes above
Maximum Density	Bonus Availab	le in Commu	inities near Sant	a Rosa that may consti	tute the City's competitiv	ve housing dev	elopment marke	t (as identified wit	h City Staff)
Novato	54,133			SDBL	19.25.040: The City s maximum) for a sen Overlay District purs	shall grant a lo ior housing de uant to Sectior	ocal Senior Densi evelopment locat n 19.16.070.	ty Bonus to 30 dw ed in and complic	velling units per acre (may exceed 35% SDBL ant with the Affordable Housing Opportunity
Petaluma	59,340			SDBL	Implementing Zoning	g Ordinance Cl	hapter 27: No pro	ovisions provided ;	for supplemental density bonuses.
Rohnert Park	41,651			SDBL	Zoning Ordinance Se	ction 17.07.02	0: No provisions	provided for supp	lemental density bonuses.
Cotati	7,376			SDBL	Zoning Ordinance Chapter 17.32: The city may choose to grant a density bonus greater than SDBL for a development that meets the requirements of this section. No clarification is provided on supplemental bonuses				
Windsor	27,205			SDBL	Zoning Ordinance Section 27.22.030: Density bonuses of up to 50% may be granted for projects that are 100% affordable to low and/or very low income.				
Healdsburg	11,539			SDBL	Zoning Ordinance Section 20.20.035: Additional unspecified density bonus percentages may be granted for projects that meet SDBL and all units are at least affordable to moderate-income households				

1. Source: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates

 Sources: Association of Bay Area Governments, Regional Housing Need Plan San Francisco Bay Area 2014-2022; Sacramento Area Council of Governments, Regional Housing Needs Plan 2013–2021; Association of Monterey Bay Area Governments, Regional Housing Needs Allocation Plan: 2014 - 2023; Units represent Regional Housing Needs Allocation for Very Low, and Moderate Income levels only. Above Moderate income level units are not included.

3. Source: Association of Bay Area Governments (2015) San Francisco Bay Area Progress in Meeting 2007-2014 Regional Housing Need Allocation (RHNA)

4. Density bonus ordinance update currently underway.



Application Requirements	Santa Rosa	Berkeley	Emeryville	Hayward	Napa	Oakland	Richmond	Sacramento	San Francisco	Santa Cruz	Sonoma County
Project description	Х		Х	Х		Х	Х				Х
Requested concession/incentive	X	Х	Х	Х		Х	Х			Х	Х
Requested waivers/modifications	-	Х								Х	Х
Additional incentives/concessions & rationale		Х		Х				Х			Х
Justification	X	Х	X	Х	Х		Х				Х
Core project Info (e.g. bedrooms/unit, tenure, parking spaces, type of unit)	X										
Density Bonus Application Type (e.g. affordable, senior, land donation, etc.)	X	Х		Х	Х	Х	Х	Х	Х	Х	Х
Number of affordable units (and affordability level)	X	X		X					Х	Х	Х
Location of existing utilities/facilities	X										
Number of base units		Х								Х	
Financial pro forma statement		Х				Х				Х	
Percent density bonus requested		X	Х		Х	Х		Х		Х	
Schematic plans of 'base project' that complies with zoning requirements		X									
Maps (vicinity, context, bonus units and affordable units)	X			X							
Environmental Assessment	X										
Indemnification Agreement	X										
Site Plan	X			X	Х		Х		Х		Х
Documentation that applicant has given written notification to affected existing commercial tenants									Х		
Density bonus/concession for child care facility must show location and square footage										Х	
Density bonus/concession for land donation must show location of land to be dedicated				1						X	
City's may waive development fees to support affordable housing aspect of the development			X			X			X	X	
Applications for Density Bonuses are processes concurrently with related entitlements			X	X		X	X	X		X	X
Provides a Bonus Over 35%			X		X		X	X	Х		X
Conditional Use Permit Required for Bonuses over 35%			X		X		X	X	X		

Table 15 - Summary of Application Requirements for Density Bonus Projects



IV. RECOMMENDATIONS FOR THE SANTA ROSA DENSITY BONUS ORDINANCE

The following recommendations are provided for the update to the Santa Rosa density bonus program based on the research outlined above and feedback received from peer jurisdictions. Reference tables and figures are provided with each item, and supplemental material is provided in Appendix C (mapping of key factors that contributed to the Area Designation where supplemental density bonuses are recommended in Santa Rosa), and Appendix C (renderings of hypothetical density bonus projects, with supplemental density bonuses for illustrative purposes).

- 1. Consistency. Update the local density bonus ordinance to comply with state law (Table 7).
- 2. **Areas with No Density Limits**. Develop a structure, modelled after Berkeley's methodology to assess density bonus applications in areas with no residential density maximum, and:
 - eliminate the requirement for scenario-based pro formas as these additional studies undermine recent amendments to State law pertaining to application requirements.

Table 16 summarizes the recommended process in areas with no density maximum:

Table 16 - Proposed Santa Rosa Worksheet	or Density Bonus Projects in /	Areas without Density Limits
--	--------------------------------	------------------------------

STEP	ITEM	EXAMPLE						
	 components. The base project designs that indstrates the base project, and density bonus components. The base project design shall: substantially conform to Santa Rosa development standards and design guidelines comply with building and fire codes The density bonus component shall: be substantially consistent with the footprint, setbacks, and ceiling heights of the base project (not including concessions/incentives/waivers/reductions). The design shall clearly identify residential and non-residential floor area. Residential floor area shall include living spaces and related utility, circulation, and amenity areas. 							
Α	Identify the floor area dedicated to residential uses	15,000 sq. ft.						
В	Identify the proposed number of dwelling units in the base project	17 units						
с	Calculate Average Unit Size (B ÷ A), round down to whole number As a condition of approval for the project, the average unit size must be maintained in the project unless a concession is granted that allows otherwise.	882 sq. ft.						
D	Calculate average number of project units (A ÷ C), round down to whole number	17 units						
E	Define the number and income level of below market rate (BMR) units, round up	3 (low income)						
F	Determine percentage of BMR units relative to total units (E ÷ D), round up	17%						
G	Calculate the eligible density increase (%) based on F using SDBL tables e.g. 17% low-income BMR units = 20% density bonus + (1.5% x 7) = 30.5%	30.5%						
Н	Calculate the number of bonus units granted for the project (G X D), round up	6 units						
1	Determine the eligible number of concession based on F and SDBL §65915(d)	1 concession						
J	Review written request for concession(s)/incentive(s), determine if it may be denied 65915(d)(1)	l per SDBL						
К	Review written request for waivers and determine whether it may be denied per SI	DBL 65915(d)(1)						



- The Santa Rosa Housing Action Plan directs the City to adopt supplemental density bonuses that exceed the State-mandated 35% with consideration of bonuses up to 100% (see Program #1, and page 22). The following recommendations are provided for structuring the supplemental density bonus program (i.e. bonuses above the SBLD's 35% maximum):
 - Location. Supplemental density bonuses should be targeted to neighborhoods in compliance with Santa Rosa General Plan objectives, notably the Priority Development Areas (Policy H-C-6). Supplemental density bonuses should be reduced in neighborhoods identified for preservation or those that may be subject to excessive development pressure (Policy LUL-C-9).

The City should pursue a three-tiered program that establishes Supplemental Density Bonus Area Designations allowing bonuses of up to 60%, 80%, and 100% in appropriate areas reflecting local development patterns. Several factors—taken together—should determine the boundaries of the Area Designations within city limits. Appendix C provides a detailed review of each of the factors highlighted below (including maps) that have been identified as relevant to defining the boundaries for the supplemental density bonus Area Designations in Santa Rosa:

- · Priority Development Areas (PDAs) and Service Capacity
- · Land Use Designations that allow denser residential development
- Proximity to single-family neighborhoods
- Existing conditions, infrastructure and development patterns
- Redevelopment Impediments
- Access to transit that enables reduced parking per AB 744 updates to SDBL
- Proximity to Schools
- Preservation Districts

Table 17 provides a summary of the structure of the Area Designations for Santa Rosa based on these factors and Map 4 shows the boundaries of the Area Designations within the city. Community input is needed to refine these boundaries.



		Base	In Rel	ation to	Property	Relevant Adjustment Factors ³					
(General Plan Land Use Designation Color Code Matches Map 1, Appendix C	General Plan Density	Devel	opment eas:	Located within an	Properties L 0.5 miles	Located >0.5miles				
L	A set of the	(du/acre)	Inside	Beyond	Overlay	Bus Route ¹	Transit Stop ²	from a School			
1	Residential Land Use Designations						New York Concerning Concerning				
1	MedLow Density Residential	8-13	60%	35%	35%						
No.	Med. Residential	8-18	80%	60%	35%		+20%				
	MedHigh Residential	18-30	100%	80%	35%		+20%	-20%			
٨	Aixed-Use Land Use Designations						,,				
	Retail/Med. Residential	8-18	100%	80%	35%		+20%				
	Office/Med. residential	8-18	100%	80%	35%	2	+20%				
	Office/High Residential	18-30	100%	80%	35%		+20%				
	Public Institutional/Med. Residential	8-18	100%	80%	35%		+20%				
	Light Industrial/Med. Residential	8-18	100%	80%	35%		+20%				
N	on-Residential Land Use Designations tha	t Allow Reside	ential Deve	elopment							
	Transit Village Med.	25-40	100%	100%	100%						
	Transit Village Mixed Use	40 min.	TCON	TUD	100%						
圜	Retail & Business Services		100%	100%	60%						

Table 17 - Recommended Supplemental Dens	ity Bonus Area Designations Based on Locational Eactors
and a second and a supplemental ben	bonds Area Designations Dasea on Locational Factors

Note: 0% designations indicate the property is not eligible for a <u>supplemental</u> density bonus; standard bonuses (up to 35%) still apply 1: Bus Route (Major) includes bus routes in Santa Rosa that provide service at least eight (8) times per day.

2: Transit Stop (Major) includes SMART stations and intersections of bus routes providing 15-minute service (i.e. routes 1, 3, and 5)

3: The relevant adjustment factors in the final three columns augment the supplemental density designations derived from location within PDAs and preservation districts. For example, A property in a Med.-High Residential Land Use Designation located outside of PDA, but within ½-miles of a major transit stop would be placed in the 100% Area Designation. If the property is located further than ½-mile from a school, the property is placed in a lower, moving from the 80% to the 60% area designation. Only the relevant land use designations that are affected by these adjustment factors are listed (i.e. blank cells indicate the occurrence doesn't exist in Santa Rosa. For example, there is no case where a property is in the Transit Village Med. Land use designation and not located near a major transit stop.)



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- **Processing**. Applications for supplemental density bonuses (exceeding the SDBL provisions) should be reviewed through a Conditional Use Permit process to evaluate compliance with the supplemental density bonus provisions outlined below.
- **Points-Based Eligibility System**. Once a project has met the requirements of the SDBL (by meeting affordable and or specialized housing criteria and other standard SDBL requirements), a point-based system modelled on Emeryville's approach should be used. The following formula should be used to calculate the number of points that are required to be eligible for a requested supplemental density bonus within the Area Designations shown in Map 4:

Points Required = (Supplemental Bonus Request ÷ Bonus Increment) x 100 Results must be rounded up to the next whole number factor of 5. Bonus Request: the percentage amount of density requested above the SDBL maximum

Bonus Increment: the difference between the maximum supplemental bonus amount available in the area designation (60%, 80%, or 100%) and the SDB maximum of 35%.

Proposed Supplemental Density Bonus Example:

A project located in the 80% Supplemental Density Area Designation has established eligibility under SDBL by meeting the low-income housing requirements to achieve a 35% density bonus (i.e. 20% of the total units proposed are designated for low-income households). The project would like to receive a total density bonus of 75% (i.e. add a supplemental density bonus of 40% to the 35% bonus from SDBL). The number of points that the project will need to generate under the proposed supplemental density bonus program in Santa Rosa would be:

Points = (40% ÷ (80%-35%)) x 100 = (40% ÷ 45%) x 100 = 88.89 points 88.89 rounds up to **90 points**.

- **Generating Points**. Applicants must meet the required point total established by the formula above by providing affordable housing; a portion of the point total may be met by providing certain community benefits consistent with community needs and the General Plan, as defined below.
 - i. **Points through Affordable Housing**. A minimum of 60% of the required number of points must be met through affordable housing using the schedule outlined in Table 18. The schedule ensures that affordable housing provided to generate points toward a supplemental density bonus are provided across a spectrum of affordability levels for rental units. Specialized housing that is restricted for very low-income households generate points more effectively in order to incentivize the production of those units pursuant to General Plan Housing Element Policy H-D-1.



POINTS		RENTAL PRO	DJECTS: II	NCOME LEVEL	SPECIALIZED	FOR-SALE	
AWARDED	TOTAL	VERY LOW	LOW	MODERATE	V. LOW INCOME	MODERATE INCOME	
5	12.5%	2.8%	4.3%	5.3%	5.5%	20.5%	
10	13.0%	2.9%	4.5%	5.5%	6.0%	21.0%	
15	13.5%	3.1%	4.7%	5.8%	6.5%	21.5%	
20	14.0%	3.2%	4.9%	6.0%	7.0%	22.0%	
25	14.5%	3.3%	5.0%	6.2%	7.5%	22.5%	
30	15.0%	3.4%	5.2%	6.4%	8.0%	23.0%	
35	15.5%	3.5%	5.4%	6.6%	8.5%	23.5%	
40	16.0%	3.6%	5.6%	6.8%	9.0%	24.0%	
45	16.5%	3.7%	5.7%	7.0%	9.5%	24.5%	
50	17.0%	3.9%	5.9%	7.2%	10.0%	25.0%	
55	17.5%	4.1%	6.2%	7.7%	10.5%	25.5%	
60	18.0%	4.2%	6.5%	7.9%	11.0%	26.0%	
65	18.5%	4.3%	6.6%	8.1%	11.5%	26.5%	
70	19.0%	4.4%	6.8%	8.3%	12.0%	27.0%	
75	19.5%	4.6%	6.9%	8.6%	12.5%	27.5%	
80	20.0%	4.6%	7.1%	8.7%	13.0%	28.0%	
85	20.5%	4.7%	7.3%	8.9%	13.5%	28.5%	
90	21.0%	4.8%	7.5%	9.1%	14.0%	29.0%	
95	21.5%	5.0%	7.6%	9.4%	14.5%	29.5%	
100	22.0%	5.2%	7.8%	9.5%	15.0%	30.0%	

Table 18 - Supplemental Density Bonus Point Generation Schedule for Affordable Housing



iii. Point-Generation Alternatives to Affordable Housing. Once at least 70% of the required points are generated through affordable housing, the remaining 30% can be met through additional affordable housing per Table 18, or through community benefits outlined in Table 19 at the applicant's discretion. The community benefits outlined in Table 19 are consistent with community goals as expressed in the General Plan

Community Benefit	Point Calculation	Notes		
	Greater of 5% of site area or 1,000 s.f.: 20 points	Must be in addition to open		
	Greater of 10% of site area or 1,000 s.f.: 30 points	space requirements necessary		
Public Open Space ¹	Greater of 15% of site area or 1,000 s.f.: 40 points	for Design Review approval,		
	1% of project construction valuation to Park Impact Fee: 10 points per 1%	other entitlement approvals, and standard impact fees.		
Historic or Landmark Preservation	1% of project construction valuation toward rehabilitating or improving a landmark property: 10 points per 1%	If property is not owned, joint rehabilitation-improvement agreement must be submitted with landmark property owner		
Infrastructure/ Capital Improvement	1% of project construction valuation to Capital Facilities/Utilities Impact Fees: 10 points per 1%	Must be in addition to improvements required for Design Review or other entitlement approvals.		
Providing family-sized rental units (Housing Policy H-C-13).	10% of the number of affordable units supplied to generate the points for the supplemental density bonus: 5 points for each 10% increment	To meet the 10% provision, the required units must be rounded up to a whole number.		
Innovative Community Benefit	The City Council may determine the number of points to grant for a proposed, innovative community benefit based on schedule of 10 points per 1% of project construction valuation	The benefit must be significant and substantially beyond normal requirements.		

Table 19 Affordable Housing Alternative: Point Generation Schedule

1: Design must comply with applicable provisions of the Santa Rosa Design Guidelines and be approved as part of design review for the project. Open space must be accessible to the public at all times. Provision must be made for ongoing operation and maintenance in perpetuity.



4. Concession or Incentive Vetting. A clear system for vetting concessions and incentives is crucial to avoid legal challenges and costs, and to avoid inadvertently undermining the density bonus program. Clear vetting procedures and standards provide transparency for developers, the City, and the community. Pre-vetted concessions are, as is provided in San Francisco's HOME-SF and "Analyzed" programs, provide ultimate clarity and allow the community more control over how density bonus projects are integrated architecturally into neighborhoods.

However, relying solely on pre-vetted concessions and preventing other modifications to development standards can be exceedingly restrictive. Therefore, a hybrid approach is recommended for Santa Rosa. Pre-approved concessions in Santa Rosa provide transparency and predictability; but applicants should have the option to request other concessions or incentives and submit the requests for review. Table 20 outlines four concessions that Santa Rosa could consider as pre-approved; these concessions or incentives are based on requests granted for completed density bonus projects (Appendix A), as well as an analysis of Santa Rosa design guidelines and development standards.

CONCESSION	AMOUNT
Setback Areas	Reduction of up to 25%, but not to be less than 20% below the average of the developed lots on the same block face.
Automobile Parking	Up to 50% reduction where SDBL reduced parking ratios are not already applied; does not apply on rights-of-way with narrow travel lane widths where on-street parking could impair emergency access at the determination of the Planning and Economic Development Director in consultation with emergency services providers.
Coverage	Increase in allowable lot coverage by up to 10% of lot area
Height	Increase of the larger of up to 12 feet or 10% beyond current maximum permitted; all floors above two stories shall be stepped back a minimum of 6 feet.

Table 20 - Recommended Pre-Approved Concessions for Supplemental Density Bonus Projects



- 5. Adopt expanded definitions or procedural clarifications to ambiguous or narrowly-defined policy language in the SDBL, including:
 - Clarifying what constitutes a significant, adverse impact when reviewing concession and waiver requests. Recommendations include:
 - The development project is proposed within a Preservation District and the proposed concession would irreparably alter a historic resource, either individual or district, in a manner that is inconsistent with the Secretary of The Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings.
 - The development project is proposed on land which does not currently have adequate water or wastewater facilities to service the development, or the provision of such services infeasible at the level of residential density proposed in the development.
 - Pursuant to the SDBL amendments adopted in SB-2501, the City is prohibited from conditioning the submission, review, or approval of a density bonus application on additional reports or studies not described in the SDBL. Santa Rosa may require "reasonable documentation" to *establish eligibility* for incentives or concessions, waivers or reductions, or reduced parking ratios. To clarify application requirements, the City of Santa Rosa should not require a pro forma in conjunction with applications for concessions and incentives unless the City furnishes—in writing—a rationale for questioning the financial support that the concession or incentive will provide toward the production of affordable housing.



APPENDICES

Project #	Application Name	Bonus Total Units Units No.		No.	Street Name	Opened
PRJ16-018	Farmers Lane Senior Housing	5 26		201	FARMERS LANE	07/19/2016
PRJ16-003	Oak Park Village	1	7	1550	RIDLEY AVENUE	07/13/2016
PRJ16-015	The Farmstead	3 20		1315	LIA LANE	06/13/2016
PRJ16-012	DeTurk Winery Village	48	48 185 8 W 9 TH STREET		05/24/2016	
PRJ15-004	Benton Veteran's Village	/eteran's Village 2 7 1055 BENTON STREET		09/08/2015		
MNP10-001	Kawana Springs Family Apts	mily Apts 6 42 786 KAWANA SPRINGS RD		01/06/2010		
MNP09-019	Acacia Lane Senior Apts	4	43	657	ACACIA LANE	07/20/2009
MJP08-065	Lantana Place	28	96	2975	DUTTON MEADOW	06/27/2008
MJP06-017	DeTurk Winery Village	19	73	806 DONAHUE STREET		04/04/2006
MNP05-054	Colgan Meadows	13	84	3000 DUTTON MEADOW		12/08/2005
MJP04-028	Jennings Avenue Burbank Housing	2	162	1080	JENNINGS AVENUE	06/28/2004
MJP03-031	Olive Grove	47 128 1789 MARLOW ROAD		11/04/2003		
MNP02-014	Transitional Housing	3	3 10 623 ASTON AVENUE		03/01/2002	
MJP00-020	McBride Apartments	NA	NA 80 2350 MCBRIDE LANE		07/11/2000	
MNP99-046	Rossi Apartments	6	24	1503	RANGE AVENUE	08/04/1999
MJP99-022	La Esplanada	8	120	275	COLGAN AVENUE	06/03/1999

Appendix A - Summary of Density Bonus Projects and Applicable Concessions in Santa Rosa

Issues or concessions identified for each project:

- Farmers Lane Senior Housing: Includes rezoning to Senior Housing and tentative map

 Concessions for parking reduction.
- Oak Park Village: Approved with a small lot subdivision
 - Concessions for setbacks, site coverage, lot size, building height requirements.
- DeTurk Winery Village: Concession for reduced setback to 0 feet to match adjacent historic building.
- Benton Veteran's Village at Firehouse 2: Concessions for parking and setback reductions.
 - **Kawana Springs Family Apartments**: Concessions for setback and parking reductions. Issues identified included noise and aesthetic impacts.
- Acacia Lane Senior Apartments: Concession for parking reduction.
- Lantana Place: Concessions for setback, parking reductions, and density increase of 39%.
- DeTurk Winery Village: Included a rezoning to Residential. Concessions for setbacks.
- Colgan Meadows: Concessions for parking and setbacks.
- Jennings Avenue Burbank Housing: Concessions for setbacks and parking.
- Olive Grove: Concessions for setbacks, height limit, lot coverage, and parking.
- Transitional Housing: Included rezoning to PD district. Concessions for parking

 Health risk study required to address soil contamination.
- McBride Apartments: Required annexation and a rezone to PD. Concessions for parking.
- Rossi Apartments: Included rezone to PD district with reduced setbacks.
- La Esplanada: No issues or concessions identified.



Appendix B - Interview Questions for Comparable Cities

Interviews conducted with local jurisdictions on their density bonus programs were discussion-based. Beyond confirming basic information about local ordinances and policies the interviews addressed the following specific questions:

- 1. Provide feedback on the local density bonus program:
 - a. How many density bonus applications have been received since the density bonus provisions were adopted in your jurisdiction?
 - b. How many affordable units have been created through the density bonus program?
 - c. What affordability levels are typically provided in base projects to qualify for density bonuses in your jurisdiction?
 - d. What types of development applications are taking advantage of density bonuses (i.e. subdivisions, multi-family residential, mixed-use, etc.)?
 - e. Where are density bonus projects typically locating? Are the majority in areas where base density is highest?
 - f. What revisions to the density bonus program are developers seeking?
 - g. If your ordinance has not been updated to comply with January 1, 2017 changes, has the jurisdiction received requests from developers to do so?
- 2. If the ordinance does not allow a bonus above the state-mandated 35%:
 - h. Has the community started exploring policies that allow more than 35% density bonus? Under what conditions is the extra bonus being considered?
 - i. Under what conditions is the extra bonus considered?
- 3. If the ordinance allows a bonus above the state-mandated 35%:
 - j. Have projects been taking advantage of the additional bonus provisions?
 - k. How have projects been qualifying for the additional bonus if there is more than one option to do so?
- 4. What improvements or modifications to your local density bonus program has the jurisdiction considered to address local needs or concerns?



Appendix C - Basis for Establishing Supplemental Density Bonus Area Designations

- Priority Development Areas (PDAs) and Service Capacity: The City has adopted six PDAs where increased residential development is expected around existing or planned transit infrastructure. All else being equal, properties within PDA boundaries should include greater supplemental density bonus opportunities. PDAs also signify areas where municipal services can accommodate increase demand. See *Map 1*
- **Land Use Designations**. The Santa General Plans includes a variety of land use designations. Supplemental density bonussing should be concentrated in areas with land use designations that support multi-family and mixed-use development. This includes the following designations:
 - Medium-Low Density Residential
 - Medium Density Residential
 - Medium-High Density Residential
 - Transit Village Medium
 - Transit Village Mixed-Use
 - Retail/Medium Density Residential
 - Office/High Residential
 - Office/Medium Residential
 - Public Institutional/Medium Residential
 - Light Industrial/Medium Residential
 - Retail and Business Services

See Map 1

Proximity to single-family neighborhoods. Supplemental density bonuses should be scaled down in closer proximity to predominantly single-family neighborhoods. See *Map 1*

- Existing conditions, infrastructure and development patterns. Areas in the city that provide natural or man-made buffers between high-density development and single-family residential areas can typically support greater density bonuses because of the buffering effects of physical features in the area (wide separation, screening, etc.). For this reason, Santa Rosa properties along major corridors are more suitable for greater density bonuses; these are reflected in mixed land use and higher density residential land use designations in the City's General Plan. See Map 1
- Redevelopment Impediments. Areas that are otherwise appropriate for increased residential density but that would require greater investment to be redeveloped into attractive residential or mixed-use environments should be provided with greater supplemental density bonuses to incentivize investment. Areas within the City's PDAs as well as properties in mixed-use and Retail and Business Service land use designations outside of PDAs, are allocated higher supplemental density bonus potential. See *Map 1*
- Access to Transit: Based on past density bonus projects (see Appendix A) in the City, parking is a common impediment to development and a frequently-requested concession. AB 744 (2015) introduced reduced parking standards for eligible density bonus projects by-right. Higher density bonuses should be available in areas that are within transit service areas as outlined in AB 744 and Density Bonus Law §65915(p). This reinforces the City's goal of focusing development near transit infrastructure. There are two broad distinctions that can be made regarding transit access:



- Proximity to bus routes with service at least 8 times daily. This is relevant to density bonus
 projects targeted to seniors or specialized housing (see Table 4).
- Proximity to major transit stations (SMART stations, and intersections of bus routes providing at least 15-minute service). This is relevant to projects with 100% affordable units and that are eligible for the maximum density bonus per the SDBL for providing very low- and low-income housing. If properties are located outside of PDAs, but within ½-mile of a major transit stations, the supplemental density bonus could be increased.

See Map 2

Proximity to Schools. Supplemental density bonuses should be encouraged in areas located within a half-mile distance of the city's schools. See *Map 2*

Preservation Districts. The character and prevailing development pattern in Santa Rosa's preservation districts, which are clustered near the city's densest areas, should be protected. A comfortable transition from higher-density development (through reduced supplemental density bonuses) should be encouraged to limit out of scale development near predominantly single-family residential sections of the City's preservation districts. Properties on the peripheries of preservation districts, that front on major rights-of-way, or that abut larger development could be appropriate for modest supplemental density bonuses. See *Map 3*







MAP 3 - HISTORIC DISTRICTS

- 📋 City of Santa Rosa
- General Plan Land Use Designation
 - Med-Low Residential
 - Med Residential
- Med-High Residential Retail/Med Residential
- Office/Med Residential
- Office/High Residential
- Public Institutional/Med Residential
- Light Industrial/Med Residential
- 👘 Transit Village Medium
- Transit Village Mixed Use
- Retail and Business Service
- Historic Districts: Ridgeway Historic District McDonald Historic District St. Rose Historic District Cherry Street Historic District West End Historic District Railroad Square Historic District Olive Park Historic District Burbank Gardens Historic District

Getting it Right:

Examining the Local Land Use Entitlement Process in California to Inform Policy and Process





Center for Law, Energy & the Environment



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EXECUTIVE SUMMARY

California's housing affordability crisis has rightly received a great deal of attention by state lawmakers, the press, academics, and ordinary Californians. Important questions raised in this discussion are: What laws or regulations might impede housing construction in high-cost areas? What solutions might help reduce those barriers with a minimum impact on other important values, such as environmental protection, public participation, and equitable treatment of low-income communities of color? More specifically, does state environmental law (the California Environmental Quality Act, CEQA), or local land-use regulations, constrain housing development?

To help answer that last question, we collected data on all residential development projects (of more than five units) over a three-year period in five Bay Area cities (San Francisco, Oakland, San Jose, Redwood City, and Palo Alto). We analyzed the law applicable to these residential development projects, including the local zoning ordinances, and interviewed important actors in the residential development process in each of these five cities.

We found that these local governments are imposing discretionary review processes on all residential development projects of five or more units within their borders. That means even if these developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit. This triggers CEQA review of these projects. In other words, what drives whether and how environmental review occurs for residential projects is local land-use law. Our data shows that in many cases, these cities appear to impose redundant or multiple layers of discretionary review on projects.

We also found that the processes by which local governments review residential development projects under their zoning ordinances and under CEQA varies from city to city. As a result, developers seeking to construct residential projects often must learn to navigate very different and complicated land-use systems, even if they work in the same region. This appears to particularly burden smaller development projects. Our data also shows that these cities rely on streamlined CEQA procedures for the majority of their residential projects, including many large projects. The effectiveness, however, of those streamlined procedures in terms of reducing timeframes for project approval varies greatly from city to city, indicating that a range of non-legal factors (such as practices in planning departments, or the amount of resources dedicated to planning) may impact development timelines.

Finally, our own research process also revealed that the kind of project level data that we collected, while essential to crafting effective solutions to the California housing crisis, is not easily available. We therefore recommend that the legislature develop a consistent and uniform data reporting program for this data, which will benefit policymakers, developers, and the public as a whole.

WHAT IS AT STAKE?

Housing costs throughout California continue to rise—particularly in metro areas. As the state legislature responded last fall with the passage and signing of housing bills¹ meant to address escalating housing costs, legislators and others acknowledged that more is needed to address California's housing crisis.² One recurring theme in the ongoing coverage and discussion of the housing crisis is an argument that state-mandated environmental review under the California Environmental Quality Act (CEQA) is a significant contributor to the housing crisis because it adds time and money to the development process.³ Local land-use regulations might also play a significant role. Existing research correlates the overall stringency of a jurisdiction's land use regulations with high housing costs.⁴ While this research recognizes that multiple components contribute to increased costs, it does not identify which specific elements of local land use regulation or state environmental review contribute disproportionately to housing costs. As economists have observed, the "heterogeneity in land use restrictions across localities is so extensive that it is almost impossible to describe the full complexity of the local regulatory environment."⁵ Despite these limitations, the impact of this research and similar work has been far reaching, surfacing in statewide policy briefs.⁶

We assume that regulation of land-use development in California contributes to the state's housing crisis by increasing development approval timelines, which in turn drives up the cost of development. But that still leaves the question of which aspects of state and local regulation are the primary barriers to additional residential development. Answering that question is essential to developing effective legal reforms, and it requires careful analysis of how individual land-use regulations operate within local contexts. CEQA is only one part of the overall regulation of California's land-use development. In general, constructing a major housing development requires local government approval at multiple stages. The approval process to obtain a building permit is referred to as the entitlement process, and CEQA applies to a development if the local government's entitlement process is discretionary. If the development is "as of right"—meaning a development meets certain zoning and planning requirements and does not need any additional scrutiny by the local government to get a building permit—as a general matter, no CEQA compliance is required. In addition, CEQA can take a range of forms and impose different levels of burden on the developer. Local governments often have significant ability to shape the kinds of CEQA compliance that individual developments must satisfy.

If CEQA poses a significant obstacle to housing development, then legal reform that minimizes the loss in environmental protection while allowing for increased housing production might be the right approach. But because CEQA comes into play where a local government has the discretion to approve/disapprove a proposed project, targeting a state environmental review statute may do little to address the housing supply crisis if local regulation of land-use development through planning and zoning is the real issue. Misguided CEQA reform could undermine environmental protection throughout the state without providing meaningful improvements to our housing situation.



WHAT ARE WE STUDYING?

Determining whether a state law like CEQA drives delays in entitlements within local jurisdictions requires answering two important questions: (1) How much development is actually occurring as of right, and how much development is subject to discretionary government review within local jurisdictions? (2) If CEQA environmental review is occurring, in what form does it take?

To answer these questions, we used case studies⁷ to better understand a local problem with regional and statewide implications. For our first set of case studies, we selected charter cities^{*} of various sizes within the same strong market region—the Bay Area in Northern California.

All five cities, Oakland, Palo Alto, Redwood City, San Francisco, and San Jose, are located within the same regional economy characterized by robust economic growth, high housing demand that outstrips supply and acute affordability issues.⁸ All of the cities have the capacity for Transit Oriented Development (TOD).⁹ Housing development within this region would therefore promote sustainable growth goals.

We also chose our first cities from the Bay Area because the California Legislative Analyst's Office has attributed high housing costs statewide in large part to the lack of housing supply in California's coastal communities.¹⁰ That report specifically identified the San Francisco Metropolitan Division (MD) and the San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area (MSA) as having the first and second highest housing costs in the state in 2015, with the Oakland-Hayward-Berkeley MD having fourth highest housing costs statewide. And all five cities have complex local land use ordinances that typify the type of stringent regulation called out by existing research. These five cities therefore offered an excellent starting point for this research.

Each of our case studies began with a review of local ordinances¹¹ that contain planning and zoning rules, followed by careful analysis of how each residential development of five or more units navigated the entitlement process in 2014, 2015, and 2016.¹² Next, we completed a total of 29 in depth interviews with city planners, market rate and affordable housing developers, consultants, private counsel, city attorneys, and representatives from community-based organizations, across these five cities.¹³ These interviews uncovered local perceptions of the approvals process, the role of community in the public approvals process, and important project context (including the local political climate and community tensions at play) not immediately obvious in the specific project data. While we are continuing our research and adding jurisdictions to our data set, we present initial findings from our research on these five cities below. This is only the first in a series of reports that will detail our findings, and these findings are limited to data pulled from our first set of cities. We are collecting additional data from other cities throughout the state.

* Charter cities within California enjoy some freedom to legislate at the local level over "municipal affairs" even if a conflict with State law may exist under Article XI, section 5 of the California Constitution. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code unless the city's charter indicates otherwise. See e.g., CAL. GOV'T CODE §§ 65803, 65860(d); *City of Irvine v. Irvine Citizens Against Overdevelopment*, 25 Cal. App. 4th 868, 874 (1994).



WHAT HAVE WE LEARNED SO FAR?

Key Finding #1: All residential development over five units is discretionary in each jurisdiction.

All of the jurisdictions we examined require discretionary review for residential developments of five or more units. In fact, in four of our five Bay Area jurisdictions, residential developments of two or more units require discretionary approval. That means even if these developments comply with the underlying base zoning district's use and density requirements, they require additional scrutiny from the local government before obtaining a building permit. The table in Figure 1, below, provides an overview.

Jurisdiction	Primary Discretionary Review Mechanism	Residential Developments Exempt from Discretionary Review None			
San Francisco	Building Permits				
San Jose	Site Development Permit	Single-family homes in limited circumstances ¹⁴			
Redwood City	Architectural Permit	One-story single family homes and duplexes			
Palo Alto	Architectural Review	Up to two single-family homes and two duplexes ¹⁵			
Oakland	Design Review	Secondary units			

Figure 1. Discretionary Review of Developments Consistent with Base Zoning

Key Finding #2: The mechanisms by which cities require discretionary review are extremely different, and usually redundant.

California land use law offers cities a range of tools to review and approve housing development. Cities typically choose among these tools to ensure discretionary review of residential development. These five cities demonstrate how varied those choices are. Though cities generally draw on land-use law tools to ensure discretionary review, San Francisco's city charter imposes discretionary review on all new developments.16



The first column lists tools that impose discretionary review that are applied even where a proposed project is consistent with the underlying base zoning district's use and density requirements. The second column lists requirements for discretionary review for categories of projects that are built within the framework of the zoning ordinance—in other words, the zoning ordinance itself contemplates that some projects must obtain one of these types of permits. The third column provides categories of discretionary review that attach to a project when the proposed project would not comply with the zoning ordinance; this includes when the developer is seeking an exemption from the zoning ordinance (variance), or asking the city to zone the project site differently (rezoning), or change or update the General Plan to allow for the proposed project.

	Design / Site Plan Review	Historic Preservation	CUP	Specific Plan Permit	PUD	Variance	Rezoning	General Plan Amendment	Total Number of Projects
San Francisco	N/A	N/A	26	46	2	29	1.	1 and a date	85
San Jose	13	3	0	N/A	52	0	48	5	67
Oakland	66	0	31	N/A	1	26	2	0	67
Palo Alto	5	4 4 22	0	N/A	0	3	0	0	5
Redwood City	9	4	0	4	4	2	0	0	13

Figure 3. Instances of Discretionary Review across Jurisdictions

As the table in Figure 3 shows above, the total numbers of land use/planning approvals (such as rezonings, conditional use permits, or General Plan amendments) are greater than the number of overall development projects in each jurisdiction. This suggests there are significant redundancies in the way these jurisdictions map discretionary review to residential developments. A single project might need to obtain Design Review approval and a Minor Variance from the Director of the Planning Department and a rezoning from the City Council.¹⁷ This requires navigating multiple levels of local government where only one approval process would be sufficient to pull the project within the scope of local discretion. It should also be noted that if the development requires the subdivision of land into smaller parcels, additional discretionary review by local governments generally applies as well.
Key Finding #3: How these jurisdictions apply environmental review under the California Environmental Quality Act varies.

These cities take a diverse range of approaches to comply with CEQA requirements. As Figures 5 and 6 show, relatively few projects within these five cities require a full Environmental Impact Report process (or EIR). Many of these jurisdictions appear to be making good faith efforts to increase their supply of housing by engaging in specific planning strategies that link housing and jobs to transportation and facilitate environmental review for developers. This means that the city is tapping into state-level sustainable development initiatives and doing the bulk of the work to comply with state environmental review requirements, rather than imposing additional time and costs on to developers to comply with CEQA. Like the discretionary review mechanisms discussed above, many projects are receiving multiple CEQA exemptions, which leaves open the question of exploring why planners take these additional measures.

Analyzing project size as a function of CEQA, our data shows that projects with EIRs in these cities generally tend to be larger than projects that undergo other types of CEQA review (see Figure 7). Nevertheless three jurisdictions—San Francisco, Oakland, and Redwood City—did not prepare an EIR for their single largest project in our dataset years. Significant variations in other categories also persist. Project and Tiering-Based Exempt* projects in San Jose tend to be larger on average than EIR projects in Oakland. Projects with (Mitigated) Negative Declarations** in San Jose are smaller than Exempt projects in all jurisdictions but Palo Alto.

Because so many projects complete CEQA review via mechanisms other than EIRs, a large majority of all approved units did not require an EIR for project-level CEQA review. Our data indicates that compliance routes other than EIRs are not reserved for extremely minor projects, and are a key component of infill residential development in California.

* Tiering is way to streamline environmental review under CEQA by allowing environmental review of a proposed project to focus on a narrow set of issues that have not already been evaluated in a prior EIR. It necessarily requires a prior EIR that is usually connected to a prior and large-scale planning approval (for a community plan or specific plan, for example).

** A Mitigated Negative Declaration is a CEQA document where a developer recognizes that a project as originally proposed would have had significant environmental impacts, so the developer proposes modifications that instead will take certain steps to eliminate the risk of significant environmental impacts.

Project-Based Exemption	Tiering-Based Exemption	(Mitigated) Negative Declaration	Environmental Impact Report
Exemptions based on location and project characteristics	Exemptions or reduced review because there has been prior CEQA review	Reduced review require- ments because of the minimal environmental impacts of the project	Full review requirements pursuant to CEQA
§ 15332 Infill Housing	§ 15183 Community Plan Exemptions	§ 21064 Negative Declaration	
§ 15303 New Construction of Small Structures	§ 15164 EIR Addendum or § 15168 Program EIR	§ 21064.5 Mitigated Negative Declaration	§ 21061 EIR

Figure 5. Instances of CEQA Review across Jurisdictions

	Project- Based Exemptions	Tiering-Based Exemptions	Mitigated Negative Declaration	Negative Declaration	EIR	Total Number of Projects
San Francisco	4	68	7	2	6	85
San Jose	h	30	23	4	13	67
Oakland	56	66	0	0	2	67
Palo Alto	2	1	1	0	1	5
Redwood City	2	9	1	4	1	13

	Project-Based and Tiering Exemptions	MND/ND	EIR	
San Francisco	82%	11%	7%	
San Jose	44%	38%	18%	
Oakland	98%	0%	2%	
Redwood City	65%	29%	6%	
Palo Alto	60%	20%	20%	

Figure 6. Percentages of CEQA Review Type by Project

Figure 7. Mean Project Size (Units) by CEQA Review Type

	Project-Based and Tiering Exemptions	MND/ND	EIR
San Francisco	92	140	229
San Jose	186	66	382
Oakland	78	0	172
Redwood City	96	105	8
Palo Alto	30	8	18018

Figure 8. Total Number of Units Per CEQA Review Type¹⁹

	Project- Based Exemptions	Tiering-Based Exemptions	MND/ND	EIR	Total Number of Units
San Francisco	269	5,885	1,260	1,121	8,534
San Jose	15	5,310	1,778	4,473	11,575
Oakland	1,797	4,071	0	284	6,152
Redwood City	102	696	268	8	1,074
Palo Alto	19	70	8	180	277
Total	2,202	16,031	3,314	6,065	27,612

Key Finding #4: There are significant variations in timeframes for entitlements across jurisdictions and across project sizes within the same jurisdiction.

Figures 9 and 10 show the mean and median approval timelines for projects of varying sizes in each jurisdiction. Projects that experienced unusually slow or fast approval timeframes heavily influence the mean approval timeline. Median time frames more accurately reflect the time frames a typical project would experience.



Figure 9. Mean Approval Time by Project Size



Figure 10. Median Approval Time by Project Size

Key Finding #5: Even when jurisdictions use similar state law provisions to facilitate environmental review, the timeframes can vary.

These cities apply the same environmental review provisions in different ways—with significant variations in the timelines for entitlement. For example, the City of Oakland and the City of San Francisco both use the § 15183 Community Plan Exemptions (CPE) to reduce CEQA compliance obligations for proposed projects within plan areas* that have a relatively recent full EIR that the respective city completed. But Oakland's CPE process moves much faster than San Francisco's. The median CPE entitlement in Oakland is 7 months. In San Francisco, a CPE takes 23 months (nearly two years). In contrast, a full EIR in San Jose, for which no prior study has occurred, takes 24 months. ²⁰

Key Finding #6: There is significant variability across jurisdictions in terms of total projects entitled, total number of units entitled, total number of units entitled per capita, and density of dwellings entitled per acre.

Measuring the time it takes to entitle a project is one way to understand how entitlement processes enable development in a jurisdiction. Counts of actual projects and units are another. The table below provides a summary of how many projects and how many units these five cities entitled in 2014, 2015, and 2016. Project and unit count alone cannot convey a complete picture of how entitlement processes operate within each city. By calculating how many units each city is entitling per capita,²¹ we can get a better sense of how many units each city is entitling relative to their respective sizes measured by population. Examining the data this way, we see that Oakland entitles the most units given its population size, followed by Redwood City, then San Jose, San Francisco, and Palo Alto (see Figure 11).

Calculating both the mean and median number of dwelling units per acre in each jurisdiction can also allow us to compare projects entitled in each jurisdiction in terms of density, which has important implications for state level sustainability goals.²² Our data indicates that projects entitled in San Francisco, generally, during this three year period are of a higher density than the other jurisdictions we examined (see Figure 12); however, high mean density values observed in jurisdictions like Oakland suggests that there are a small number of very dense projects being approved, despite lower overall density. San Jose—which on average entitles the largest projects of our case study jurisdictions—has relatively low density even when compared to smaller jurisdictions like Redwood City.

^{*} Plan Area terminology varies according to jurisdiction and the size of the plan area. Redwood City refers to these plans as "Precise Plans," San Jose and Oakland both use the terms "Area Plans" and "Specific Plans," and San Francisco calls them "Area Plans."

	Total Projects	Total Units	Units Per 1,000 People
Oakland	67	6,152	15
Redwood City	13	1,074	13
San Jose	67	11,575	Here and
San Francisco	85	8,534	10
Palo Alto	5	277	4

Figure 11. Project and Units Entitled Per Capita

Figure 12. Dwelling Units Per Acre





WHAT ARE THE IMPLICATIONS?

In these cities, the pace of housing development appears to be driven by the amount and sequence of discretionary review, not the CEQA process. These five local governments are choosing to opt into CEQA through their choice to embed discretionary review into the entitlement process. The problem (and potential costs) associated with environmental review do not appear to originate with state environmental regulation. Also, some of our interview participants discussed the necessity of "bullet-proof EIRs"* to forestall CEQA litigation from neighborhood groups. But we have not observed many of these EIRs in these five cities, suggesting that the variation in entitlement process timelines between these five cities may not be easily attributed to neighborhood groups abusing state regulation in response to proposed project characteristics. While op-eds, research, and reform proposals often focus on EIRs and CEQA litigation,²³ the data from these five cities indicates that some of the largest projects, those that are the most likely to have significant environmental impacts, did not require EIRs (although EIR projects do tend on average to be larger than non-EIR projects).

This data also shows how these cities, while preserving their discretionary review, are often employing tools to facilitate CEQA compliance. As Figures 9 and 10 above show, large projects do not always take longer to entitle than small projects, which suggests local practices in a given jurisdiction—rather than project-specific characteristics—are driving the entitlement timeline. These practices vary, but they tend to be outside the control of the developer-applicant. Examples we observed in our cities range from staff-level variations in performing application intake and departmental pre-selection of environmental consultants, to higher-level decisions about the amount of commercial development that must occur before a developer-applicant can even propose residential development. These choices in practice might also be a response to political and fiscal pressures that also prompt cities to embed discretionary review into the entitlement process. We are pursuing additional research now to better understand this issue, and to explore what is occurring in other jurisdictions throughout the state.

The lack of consistency in the entitlement process across these jurisdictions makes it difficult to navigate development within each of these cities unless you have substantial local knowledge. Though entitlement processes remain fairly consistent within a given jurisdiction, the variation across these jurisdictions presents informational barriers for newcomers to the market—even for some working within the same region. This complexity and variation may also impact the capacity of planning staff to help developers understand the entitlement process. Our interview data also confirms that well-capitalized developers with existing relationships and experience in specific jurisdictions are the best situated to navigate these complex local contexts, providing them a competitive advantage. Also, as noted, larger projects do not necessarily take more time, and often take less time, than smaller projects. If environmental review were the issue, this is not intuitive. This suggests that larger projects—to the extent that they benefit from expertise and better capitalization—can navigate the process in these cities in less time than smaller-scale developments. This could raise concerns about monopolization as the cost of acquiring local knowledge keeps new market participants out. The difficulty in accessing this data for our research purposes, described below, also lends support to this proposition.

" "Bullet-proof" refers to an EIR document that has sufficient analysis of environmental impacts and technical information to withstand judicial review should the project be challenged in court.

Dealing with process is a necessary but insufficient approach to reform. There is variability in outcomes across jurisdictions because of different local processes and local planning practices. The data shows that even where two cities use identical state law provisions to facilitate the environmental review process, the approval timelines still vary considerably. The example provided above, comparing San Francisco and Oakland, illustrates this. Oakland's code, while similar to San Francisco's, appears more inflexible.* And yet the entitlement process employed in Oakland still takes considerably less time. Interview data also suggests that local politics informs local interpretation and application of state law and local land-use ordinances. This suggests that proposed reforms should contemplate standardizing more planning practices across jurisdictions.

In other cases, local process and planning practice are not even the issue. San Francisco, for example, is unique in that it does not impose design or site development review on all projects. Absent its city charter that renders building permits discretionary, San Francisco would have permitted as of right eight projects — each ranging from 8 to 22 units. As Figure 1 shows, no other planning code in our other four case studies would permit this level of development without a discretionary approval. This is an example of how a charter city can impose discretionary review through a mechanism outside of the formalized planning process.

The variation in processes at the local level is substantial enough that without good data, there is a risk of unintended negative consequences when attempting to reform local process at the state level. Extracting project-level data is time and resource intensive. We know from our ongoing research that few jurisdictions statewide have development approval data in one centralized repository. Requiring jurisdictions to provide access to project-specific data on land use approvals, CEQA compliance, and overall time frames will help inform top down policy making in critical ways.

For example, recently enacted legislation such as SB-35²⁴ attempts to lift the Conditional Use Permit (CUP) requirement for certain projects consistent with zoning, but the complexity of the entitlement processes may prevent this legislation from accomplishing what is needed in these five cities. One such example is the myriad of specific plan approvals imposed on zoning compliant projects that happen to be located within a specific plan area.²⁵ Though these approvals are functionally similar to CUPs, on paper they are different processes. San Jose provides another example. Most projects in San Jose go through the Planned Unit Development (PUD) process, which requires a rezoning and renders a project ineligible for SB-35. Yet the same PUD process in San Francisco and Oakland can occur without a rezoning. Even though the PUD process is accomplishing the same goals in these jurisdictions, the application is markedly different. Without knowledge of these nuances, lawmakers cannot draft legislation that accurately targets the problem and provides clear guidance to local stakeholders. Moreover, without an understanding of the distribution of non-zoning compliant projects entitled each year, lawmakers might find their legislative tools are not solving the right problems. Also, our data shows that local governments want to retain discretion over new development. SB-35 may not be able to avoid cities downzoning or enacting more inflexible design criteria to force all approvals through a rezoning or variance process that is not subject to state streamlining.

^{*} Flexibility refers the degree to which developers must obtain relief from the zoning use and design controls to build their projects. The high occurrence of variances and CUPs in Oakland — both of which provide relief from design controls — are indicative of an inflexible code in that developers must frequently obtain relief from its requirements.

The risks of policymaking without access to data also implicate broader concerns than a simple housing production metric. The recently proposed SB-82726 targets all local land use discretion for certain kinds of infill development near transit. Though this is arguably the most effective approach to address the constraints that local land use regulation imposes on housing production, our data also highlights potential shortcomings. Here, we identify two. First, there is a potential impact on environmental protections. A significant number of projects are subject to CEQA processes that impose mitigation measures.* In some instances, this environmental review and mitigation process is much more than a formality. The classic example of this is the Mitigated Negative Declaration (MND) process. Jurisdictions like San Francisco and San Jose use tiering or community plan exemptions to impose project-level mitigations; this suggests that infill developments are having impacts on air, water, and traffic significant enough for jurisdictions to require mitigation. Unless there are environmental protections already embedded in local ordinances or state law to address the environmental impacts requiring these mitigations, eliminating discretionary review might allow for environmental impacts that these mitigations would have prevented. If discretionary review goes away, lawmakers should contemplate how to replicate these protections at a state level or mandate that local governments address these issues through non-discretionary local regulatory standards.

Second, there is a risk of harming the least empowered and most vulnerable within cities. Eliminating discretionary review impacts community voice. Discretionary review typically requires a public hearing, which enables community participation. Existing research shows that updating the General Plan or enacting specific plans are costly endeavors typically funded from a city's general fund.²⁷ For jurisdictions that do not regularly engage in these macro-level planning processes, project-level approvals provide one of the few mechanisms for the community to participate in the development of their city. And even in jurisdictions that do use these planning processes, not all community members are equally empowered to participate in the planning process. So long as issues of inequity in the planning process persist because some residents and neighborhoods have substantially more political power than others, any proposed reform that targets discretionary review without a clear focus on equity risks disproportionately harming vulnerable populations with the least amount of political power.

To be clear, our interview data suggests that contemplating equity in a proposed reform does not mean that retaining all current local discretion over development is the best path forward. Our interview data suggests that in some instances, taking away a measure of local control can offer a shield to local officials that have demonstrated a willingness to approve sustainable affordable housing development despite substantial pushback from affluent and powerful neighborhood groups unwilling to contemplate any development within their community. But not all of our five cities are situated similarly. They are diverse in not just in terms of population size, but in terms of land values, public resources, and demographics. Just as some cities cannot afford to engage community in the same way as others, some cities must pursue cost-sharing with developers to promote affordable housing development and infrastructure improvements. Thus, legal reform should not be blunt; it should be carefully tailored to address the imbalance of power that exists within cities and within the region (between cities).

* Mitigation is a feature of a proposed project design that reduces what would have been a significant environmental impact by avoiding, minimizing, or compensating for a potential adverse effect that would have otherwise created a significant environmental impact.



WHAT DO WE RECOMMEND RIGHT NOW?

The value of improving access to good data cannot be overstated. Although top-down state reform of environmental regulations (or local regulation over land use) may encounter substantial difficulties, something the state could do now would be to provide guidance to jurisdictions on how to provide better access to accurate project-specific data on land use approvals, and require all jurisdictions to maintain relevant data in a central repository. Improving the quality of data and access to data would help researchers and policymakers identify how long these processes take, and identify inefficiencies and redundancies that exist in local processes. Being able to determine how long each process takes could in turn immediately help affordable housing developers determine what necessary funding is required for the entitlement process.

Each jurisdiction we studied readily provided any requested data to the extent they had it (without a public records request), and it was clear that each jurisdiction works to make data publicly accessible. Still, we discovered in our own research process that our findings are limited both by the availability and accuracy of data in the various planning databases of any given jurisdiction. In Oakland for example, some projects elect to go through a pre-application process prior to formally submitting their application for review, which could influence approval timelines.²⁸

In other jurisdictions, the complexity of the planning process is not fully reflected in the data that is publicly accessible. San Francisco employs a streamlined application process that integrates processes that constitute distinct approval pathways in other jurisdictions, like design review and historic resources review. Just because there are no formal design review or historic resources approvals in San Francisco does not mean these processes are not happening. San Francisco's various specific plan permits also combine what is essentially a CUP and variance process into one, which reduces the number of CUPs and variances in that jurisdiction. More projects are receiving variances than these numbers suggest. Jurisdictions like San Jose, on the other hand, employ very distinct approval processes, which also influences timeline. The majority of developments in San Jose go through the PUD process, which involves a rezoning and a permit approval that happen sequentially rather than in tandem. Our interviews suggest that often developers complete the rezoning and sell the land to a different developer who then secures the permit phase of the approval. The time lag between the two milestones might slightly exaggerate approval timelines in San Jose for PUD projects.

Though all our five cities make efforts to provide access to project approval data, this access could be greatly improved by providing the information in a centralized repository that uses consistent terminology across jurisdictions. To the extent that processes are so dissimilar that they cannot be analogized, this centralized repository should contain explanations. Smaller steps would also be welcome. Linking existing geographic information systems (GIS) or zoning data with assessor parcel information and building permit systems, for example, would be a great first step, particularly because housing element law at the time only required annual reporting based on building permits issued not numbers of units entitled. In our experience, it is not always easy to cross-check housing element reporting obligations with building entitlements because not everything that gets entitled is immediately built. Linking these systems to provide this data could make housing element reporting more robust.

ENDNOTES

Governor Brown Signs Comprehensive Legislative Package to Increase State's Housing Supply and Affordability. (Sept. 29, 2017). Retrieved February 10, 2018, from https://www.gov.ca.gov/2017/09/29/news19979/.

² Liam Dillon, Gov. Brown Just Signed 15 Housing Bills. Here's How They're Supposed to Help the Affordability Crisis, L.A. TIMES (Sep. 29, 2017), http://www. latimes.com/politics/la-pol-ca-housing-legislation-signed-20170929-htmlstory.html; Angela Hart, Jerry Brown Signs New California Affordable Housing Laws, SACRAMENTO BEE. (Sep. 29, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article176152771.html; Liam Dillon. The Housing Package Passed by California Lawmakers is the Biggest Thing They've Done in Years. But it Won't Lower your Rent. L.A. TIMES, (Sep. 15, 2017), http:// www.latimes.com/politics/la-pol-ca-housing-legislation-deal-impact-20170915-story.html.

³ See Jennifer Hernandez, David Friedman & Stephanie Deherrera. In the Name of the Environment, Holland & Knight (2015); Carolina Reid & Hayley Raetz, Perspectives: Practitioners Weigh in on Driver of Rising Housing Construction Costs in San Francisco (2018). For a contrary position, see Janet Smith-Heimer et al., CEQA in the 21ST Century, Rose Foundation for Communities and the Environment (2016). For discussion, see Chang-Tai Hsieh & Enrico Moretti, *How Local Housing Regulations Smother the U.S. Economy*, N.Y.TIMES (Sep. 6, 2017), https://www. nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html; Liam Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, it Depends on the Project*, L.A.TIMES (Sep. 25, 2017), http://www.latimes.com/politics/la-pol-ca-enviromental-law-breaks-20170925-story,amp.html; Angela Hart, *Here's Why California's Historic Housing Legislation Won't Bring Down Costs Anytime Soon, Sacramento Bee* (Sep. 27, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article175541676.html.

⁴ See e.g., Edward L. Glaeser & Joseph Gyourko, *The Impact of Zoning on Housing Affordability 17* (National Bureau of Economic Research Working Paper No. 8835, 2002); John Quigley, Steven Raphael & Larry A. Rosenthal, *Measuring Land Use Regulations and Their Effects in the Housing Market, in Housing Markets and the Economy 282* (Lincoln Institute of Land and Policy ed., 2009).

⁵ Joseph Gyourko, Raven Molloy. Regulation and Housing Supply 13 (National Bureau of Economic Research Working Paper 20536, 2014).

⁶ Chas Alamo, Brian Uhler & Marianne O'Malley, California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015).

⁷ Robert Yin, Case Study Research: Design and Methods (5 ed. 2014).

⁸ Malo Hutson, The Urban Struggle for Economic, Environmental and Social Justice: Deepining Their Roots (2016); Paul Knox & Linda McCarthy, Urbanization: An Introduction to Urban Geography (2012).

⁹ Peter Calthorpe, Urbanism in the Age of Climate Change (2010).

¹⁰ Chas Alamo, Brian Uhler & Marianne O'Malley, California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015).

¹¹ These ordinances include the San Francisco Planning Code, the Oakland Planning Code, the Redwood City Zoning Ordinance, the San Jose Zoning Ordinance, and the Palo Alto Zoning Ordinance.

¹² Because residential development larger than 5 units in Palo Alto rarely occurs, our findings for this jurisdiction are based on an extremely limited sample size.

¹³ In some instances, individuals we interviewed worked in, or for, two or more of the cities within our group of five.

¹⁴To be exempt from site development permit, single family homes must meet height, FAR, and lot size requirements and cannot be located in riparian areas. San Jose Municipal Code § 20.100.1030(A)-(C).

¹⁵ To qualify for design review exemption, the proposed development cannot be located in a conservation zone. Palo Alto Municipal Code § 18.76.020(b)(2)(D).

¹⁶ A city charter is the constitution for that local government. The provision of San Francisco's charter rendering all permits discretionary can be found in the San Francisco Business and Tax Regulations Code § 26(a).

¹⁷ Although in many jurisdictions. Zoning Administrators and Planning Directors can allow the Planning Commission to issue variances for certain projects.

¹⁸ The MND/ND and EIR processes in Palo Alto only have one project each, so we are unsure of how representative these projects are generally of the process. The 180-unit EIR development, for example, which will provide faculty housing for Stanford as part of the larger Mayfield Development Agreement, is out of scale with the typical development pattern in Palo Alto.

¹⁹ Because many projects undergo more than one CEQA review type, we weighted units across the total number of CEQA review types. For example, a 100-unit project that received both a Community Plan Exemption (CPE) and an EIR was weighted 50 units in each category.

²⁰ Some jurisdictions apply different types of CEQA review to a single project. A CPE in Oakland is often combined with a § 15332 exemption. EIRs in San Jose are often paired with later addendums or supplemental EIRs. A CPE in San Francisco can be paired with a Focused EIR. The numbers above do not control for these multiple types of CEQA review due to the small sample sizes that would result. Even controlling for types of CEQA review, the general trends holds true. Projects that only received a CPE in Oakland took 7 months; projects in San Francisco that only received a CPE still take 23 months; projects that only received an EIR in San Jose took 14 months.

²¹ Population data is from ACS 2016 5-Year Estimates.

²² See S.B. 375, 2007–08 Leg., Reg. Sess. (Cal. 2008).

²³ See Jennifer Hernandez, David Friedman & Stephanie Deherrera, In the Name of the Environment, Holland & Knight (2015).

24 See S.B. 35, 2017-18 Leg., Reg. Sess. (Cal. 2018).

²⁵ Examples of this include the Large Project Authorization in certain use districts of San Francisco's Eastern Neighborhoods plan area or the Planned Community Permit in Redwood City's Downtown Precise Plan. San Francisco Planning Code § 329; Redwood City Zoning Code § 47.1-47.5.

26 See S.B. 827, 2017-18 Leg., Reg. Sess. (Cal. 2018).

²⁷ Robert B. Olshansky, The California Environmental Quality Act and Local Planning, 62 J.AM, PLAN, ASS'N 313, 319-320 (1996).

²⁸ Oakland's pre-application dates were not consistently available in the system. This means that what appears to be relatively fast approval times in Oakland might be influenced by these incomplete database entries. Similarly, in Oakland, some projects had the same approval date as initial application date. Where possible, we found the underlying approval documents to correct for this inaccuracy in the system. But the approval documents for three projects were unavailable, so we removed them from our data set, which slightly decreased the total unit and project numbers for Oakland.



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Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates

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Introduction

Reducing vehicle miles traveled through increasing the use of public transit and improving transit access is critical to reduce greenhouse gas ("GHG") emissions in California. Housing development properly focused in infill areas with transit accessibility (transit-oriented development or "TOD") may significantly reduce greenhouse gas emissions if it increases transit usage and results in reducing vehicle miles traveled. Senate Bill 375⁴ recognizes that meeting GHG reduction targets through increased transit use requires the adoption of sustainable, integrated regional transportation and community planning strategies to promote TOD.

But housing costs in the coastal communities of California near major regional economic centers and transit are too high for many families. Low-income families that cannot afford housing near their work commute ten percent further than commuters elsewhere5 which may directly undermine the goals of recent legislation intended to address climate change. Research also links high housing costs within coastal communities, like the Bay Area, to the resegregation of the region,6 a crisis with major implications for public welfare and public health outcomes.7 Infill development in transit accessible neighborhoods within these coastal communities must therefore occur equitably to avoid the risk of displacing low-income populations from these neighborhoods or exacerbating current cost barriers to entry for low-income populations into highly desirable neighborhoods with substantial transit accessibility or transit investment.⁸ The goals of reducing GHG emissions and equity are thus linked; emissions reductions cannot occur if commute times are increasing because low- and middle-income communities are pushed to farther rings of the suburbs and forced to drive to access economic centers of opportunity.

Even as California's state legislature responded in 2017 with the passage and signing of housing bills⁹ meant to address escalating housing costs, legislators and

^{4.} See S.B. 375, 2007-2008 Leg., Reg. Sess. (Cal. 2008).

^{5.} CHAS ALAMO, BRIAN UHLER & MARIANNE O'MALLEY, LEGIS. ANALYST'S OFF., CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES (2015) ("LAO REPORT").

^{6.} See Rising Housing Costs and Re-segregation, URB. DISPLACEMENT PROJECT (Oct. 26, 2018), https://perma.cc/8N88-F3CV.

^{7.} For a general discussion of the relationship between racial residential segregation and health outcomes, *see* David R. Williams & Charles O. Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH REP. 404, 404–16 (2001). For an analysis on the impact of racial residential segregation on life outcomes in Oakland. California, *see* Matt Beyers et al., *Life and Death from Unnatural Causes: Health and Social Inequity in Alameda County*, ALAMEDA CTY, PUB. HEALTH DEP'T i, i–142 (2008).

^{8.} Throughout this article we use the term "equitable infill development" to describe TOD or infill development that considers equity through affordability components or other mechanisms that would address the risk of displacement of low-income populations or exclusion of low-income populations.

^{9.} Governor Brown Signs Comprehensive Legislative Package to Increase State's Housing Supply and Affordability, OFF. OF GOVERNOR EDMUND G. BROWN JR. (Sep. 29, 2017), https://perma.cc/6R5X-VHGD.

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others acknowledged that more is needed to address California's housing crisis.¹⁰ One recurring theme in the ongoing coverage and discussion of the housing crisis is an argument that state-mandated environmental review under the California Environmental Quality Act ("CEQA") is a significant contributor to the housing crisis because it adds time and money to the development process, and that given the persistent housing crisis, CEQA merits legal reform.¹¹ Others advance that local land use regulations significantly constrain housing development¹² and have proposed legislation to narrow local authority over infill development near transit.¹³

Existing urban planning and urban economics research correlates the overall stringency of a jurisdiction's land use regulations with high housing costs and income segregation.¹⁴ But this research, though important, cannot answer the question of which specific elements of local land use regulation or state environmental review contribute disproportionately to either the cost of housing or the exclusion of low-income communities from these metro areas. Despite these limitations, the impact of this research and similar work has been far reaching, surfacing in statewide policy briefs¹⁵ and political debates about proposed legislation.¹⁶

11. Chang-Tai Hsieh & Enrico Moretti, *How Local Housing Regulations Smother* the U.S. Economy, N.Y. TIMES (Sep. 6, 2017), https://perma.cc/9DBQ-28JF; Liam Dillon. Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes. It Depends on the Project, L.A. TIMES (Sep. 25, 2017), https://perma.cc/Y4BS-FBZQ; Angela Hart, *Here's Why California's Historic Housing Legislation Won't Bring* Down Costs Anytime Soon, SACRAMENTO BEE (Sep. 27, 2017), https://perma.cc/P8FT-8T2P.

12. See Hsieh & Moretti, *supra* note 11; THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 2 (Sep. 2016), https://perma.cc/P4YM-LYPK.

13. See S.B. 827, 2017–2018 Leg., Reg. Sess. (Cal. 2018); Scott Wiener, My Transit Density Bill (SB 827): Answering Common Questions and Debunking Misinformation, MEDIUM (Jan. 16, 2018), https://perma.cc/GN94-NFAK.

14. Edward L. Glaeser & Joseph Gyourko. *The Impact of Zoning on Housing Affordability* 17 (Nat'l Bureau of Econ. Research, Working Paper No. 8835, 2002); John Quigley, Steven Raphael & Larry A. Rosenthal, *Measuring Land Use Regulations and Their Effects in the Housing Market. in* HOUSING MARKETS AND THE ECONOMY 282 (Lincoln Inst. of Land and Policy ed., 2009).

15. See LAO REPORT, supra note 5.

16. See Letter from Sheryll D. Cashin et al. to Mike McGuire & Jim Beall (Apr. 5, 2018), https://perma.cc/4DPJ-UCWP (letter from fair housing experts endorsing SB 827 as "a major step towards promoting integration and reducing racial residential segregation"); Letter from Amanda Eaken et al. to Scott Wiener (Mar. 23, 2018), https://perma.cc/S84A-8YTX (endorsing SB-827 as "a key element in achieving California's climate goals" on behalf of the Natural Resources Defense Council, Climate Resolve, and Environment

^{10.} Liam Dillon. Gov. Brown Just Signed 15 Housing Bills. Here's How They're Supposed to Help the Affordability Crisis, L.A. TIMES (Sep. 29, 2017), https://perma.cc /9Y9V-C2AX; Angela Hart, Jerry Brown Signs New California Affordable Housing Laws, SACRAMENTO BEE (Sep. 29, 2017), https://perma.cc/9XXU-A4Q2; Liam Dillon, The Housing Package Passed by California Lawmakers is the Biggest Thing They've Done in Years. But it Won't Lower Your Rent, L.A. TIMES (Sep. 15, 2017), https://perma.cc/4WL9-4L6R.

Recognizing the limits of existing data sets and past research applicable to California, and the importance of the current policy debate, we began a case study of land use development within specific cities in California. We undertook this study to better understand what specific regulations of land use development in California may contribute to the state's housing crisis by increasing development approval timelines.¹⁷ We also examined the specific impact of local and state mandated processes on all housing development, including affordable housing development, supply, and access.

This article proceeds in four parts. Part I of our article will cover the elements of land use law we identify as having the closest relationship to the ongoing policy reform debate, and then will explain the findings and limitations of existing research in relationship to current California policy reform proposals. Part II of this article provides details about our methods and research approach to respond to this gap in the research. Part III of our article presents detailed findings from our research on the first set of cities within our study. Part IV of our article places our findings within the context of other research and offers the policy implications of what we have learned so far, and the research still necessary.

Part I: Background

We first situate our research in a legal and scholarly context by providing a brief overview of the specific provisions of state and local law that are particularly relevant to infill residential development, and then we provide an overview of the academic literature that explores how land use regulation may have impacts on housing production, housing affordability, and on equity in housing outcomes.

A. Navigating the law applicable to entitlement processes in California¹⁸

State law governs the regulatory landscape for housing construction in California in two important ways. First, state law empowers and mandates local governments to develop their own regulatory processes to control development.

 The approval process to obtain a building permit is referred to as the entitlement process.

California); *cf.* Letter from Kyle Jones to Scott Wiener (Jan. 18, 2018), https://per ma.cc/9HCE-2RS4 (opposing SB-827 on behalf of the Sierra Club California as "a heavyhanded approach . . . that will ultimately lead to less transit being offered and more pollution generated"); Letter from Rich Gross & Jaqueline Waggoner to Scott Wiener (Apr. 9, 2018) (on file with authors) (opposing SB-827 on behalf of Enterprise Community Partners "unless it is amended to explicitly serve the housing needs of low-income Californians"); Letter from Brian August et al. to Scott Wiener (Mar. 20, 2018) (on file with authors) (opposing SB 827 on behalf of California Rural Legal Assistance Foundation, Housing California, and Western Center on Law & Poverty "unless it is amended to address the proposal's impact on gentrification and exclusion").

^{17.} Approval timeframes have generally been connected to higher costs of development. See discussion infra Section I.B.1.

Second, state law imposes additional procedural and substantive requirements on local government regulatory processes—we discuss one of the most important of those state law components, the California Environmental Quality Act.

1. Local law governing infill development

California law permits cities to employ a range of tools to review and approve housing development based on a hierarchical system of land use law.¹⁹ The General Plan—likened to a "constitution" for long-term physical development of the city or county²⁰—sits at the top of "the hierarchy of local government law regulating land use" in California.²¹ State law requires that each jurisdiction have a General Plan, and the General Plan must include comprehensive language that describes the city's long-range vision, policies, and objectives for development. The General Plan codifies the city's planning law, but it may do so with varying degrees of specificity. Also, with one exception, California law does not require that jurisdictions update their General Plan according to a set schedule; the law only suggests "periodic" updates.²²

Although not required by state law, some cities may also incorporate provisions within the General Plan for Specific Plans to address anticipated growth. Particularly relevant for infill development in major cities, Specific Plans may direct development to particular locations. Specific Plans may also be extremely detailed and direct nearly every aspect of development²³ by codifying acceptable land uses²⁴ and requiring review of proposed development for compliance with the Specific Plan.

Next within this hierarchy are zoning ordinances. Zoning ordinances (defined generally) include maps and text that when combined provide specificity as to the type of development (type and intensity of use and form) permissible

^{19.} We focus exclusively on components of California land use law that are specifically implicated in this research study. We do not attempt to discuss the breadth and applicability of the complex body of law that practitioners and academics describe as "land use law" within California. For relevant treatises, *see* CECILY BARCLAY & MATTHEW GRAY, CURTIN'S CALIFORNIA LAND USE & PLANNING LAW (Solano Press 2014); STEPHEN KOSTKA, PRACTICE UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEB 2014). For a guide intended for planning professionals that summarizes California land use law, *see* WILLIAM FULTON & PAUL SHIGLEY, A GUIDE TO CALIFORNIA PLANNING, (Solano Press 5th ed. 2018).

^{20.} CAL. GOV'T CODE §§ 65300, 65302(g)(7) (2010): see also MILLER & STARR CALIFORNIA REAL ESTATE DIGEST, Zoning and Planning § 10 (3d ed. 2018); see DeVita v. Cty. of Napa, 889 P.2d 1019, 1023–25 (Cal. 1995) (citing Lesher Comme'ns, Inc. v. City of Walnut Creek, 802 P.2d 317, 321–22 (Cal. 1990)).

^{21.} DeVita, 889 P.2d at 1023–25 (citing Neighborhood Action Grp. v. Cty. of Calaveras, 203 Cal. Rptr. 401, 406–07 (Ct. App. 1984)).

^{22.} The General Plan is comprised of seven elements: land use, open space, noise, circulation, housing, conservation, and safety. *See* CAL. GOV'T CODE § 65302. The Housing Element, which details how the jurisdiction will satisfy its allocation of the regional housing need, is the only element that must be updated according to a planning schedule.

^{23.} See KOSTKA, supra note 19, § 4.2.

^{24.} See CAL. GOV'T CODE § 65451(a); see also Hafen v. County of Orange, 26 Cal. Rptr. 3d 584, 591 (Ct. App. 2005).

within specific neighborhoods.²⁵ Zoning in California operates to restrict development while also incentivizing development proposed in the General Plan²⁶ or mandating exactions.²⁷

State law also carves out some local government land-use authority through specific mechanisms that are directly related to housing development.²⁸ Notable examples include Density Bonuses²⁹ intended to incentivize and increase affordable housing production and an Accessory Dwelling Unit³⁰ law intended to increase housing production in otherwise low-density residential neighborhoods.

But how each city employs these tools is varied. In some cities, the General Plan may contain very specific language that not only guides development policy, it may also closely regulate the form of land use designations.³¹ Likewise,

28. For a list of state laws limiting local authority in zoning, *see* KOSTKA, *supra* note 19, § 4.28.

29. See CAL. GOV'T CODE §§ 65915–65918. Density bonuses are incentives to encourage developers to propose new development providing for specific types of senior housing or affordable housing; the incentive operates by allowing the developer a "density increase over the maximum allowable gross residential density" where the proposed new development provides for senior or affordable housing. See id. § 65915(f). It also operates to provide waivers from specific development standards (detailed within the local or state law—often referred to as "on menu") in exchange for the developer providing specific types (and percentages) of senior housing or affordable housing.

30. Accessory Dwelling Units, otherwise known as ADUs, are "an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons" that is an accessory to an existing residential use on the parcel. *See* CAL. GOV'T CODE § 65852.2. State law grants local governments authority to enact local laws to permit ADUs that comply with a set of criteria (addressing form) even within zoning districts that are limited to single-family dwellings. More significantly, it imposes a requirement on local governments to provide a streamlined development process for proposed ADUs that meet specified criteria. *See id.* § 65852.2(a)(3).

31. The General Plan of the City of San Jose is illustrative. *See e.g.*. City of San Jose, *Envision San Jose 2040 General Plan* Chapter 5 at 9, http://www.sanjoseca.gov/DocumentCenter/View/474 (prescribing use districts, density and Floor Area Ratio (FAR) ranges, and height limits).

^{25.} For a definition of zoning, *see* KOSTKA, *supra* note 19, § 4.1. *See infra* Sections II–IV for a discussion of "base zoning." By "base zoning" we mean the underlying zoning district and use (residential, commercial, or industrial) provided for in the text of the ordinance and zoning map.

^{26.} See id. § 4.

^{27.} See generally CAL. GOV'T. CODE §§ 66000–66025; Williams Comme'ns, LLC v. City of Riverside, 8 Cal. Rptr. 3d 96, 107–08 (Ct. App. 2003). California law broadly defines exactions as a monetary fee or dedication of land to the public that local governments require of developers as a condition of development approval. The value of the exaction cannot exceed "the estimated reasonable cost of providing the service or facility for which the fee or exaction is imposed" if it is a condition of development approval. See CAL. GOV'T. CODE § 66005(a): KOSTKA. supra note 19, §§ 18.7, 18.51. The definition of "public facilities" is also broad, encompassing "public improvements, public services and community amenities." See CAL. GOV'T. CODE § 66000(d). In short, exactions are a response to the limits on a California city's ability to generate revenue and offer a "nontax" way for local governments to get money or land from developers to support needed infrastructure and services. See KOSTKA, supra note 19, § 18.7.

a Specific Plan may be very general in some cities—and in other instances it may closely regulate development. To complicate things even more, California treats charter cities and general law cities differently on the issue of whether the city's zoning ordinances must be consistent with the city's General Plan.³² This sometimes results in inconsistency between a charter city's zoning and its General Plan, or more specifically, the continued presence of outdated zoning ordinances even as the city's policy on specific types of development changes.³³

State law also grants California cities substantial latitude in how they approve residential development within the framework of the relevant plans and zoning ordinances. We group the land use tools into four general categories. First, cities can allow for an objective ministerial process (or "by-right" process) when proposed development conforms to the underlying base zoning district's use and density requirements.³⁴ Cities can also impose requirements for subjective discretionary review for categories of projects that are still built within the framework of the zoning ordinance—in other words, the zoning ordinance itself contemplates that at least some property owners would propose these projects, but they must meet a certain set of conditions to obtain one of these types of permits. Examples include conditional use permits or specific plan permits.³⁵ Cities also impose discretionary review when the proposed project would not comply with the

^{32.} Zoning ordinances within general law cities must be consistent with the general plan, but these same consistency requirements do not apply to charter cities unless the city's charter requires consistency with the general plan. See CAL. GOV'T. CODE §§ 65803; 65860(d). Charter cities within California enjoy freedom to legislate at the local level over "municipal affairs" even if a conflict with State law may exist under Article XI, section 5 of the California Constitution. This directly impacts zoning in California charter cities. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code, unless the city's charter indicates otherwise. See City of Irvine v. Irvine Citizens Against Overdevelopment, 30 Cal. Rptr. 2d 797, 799–800 (Ct. App. 1994). But the provisions of a general plan within every city must be internally consistent. See CAL. GOV'T. CODE §§ 65302, 65300.5.

^{33.} The City of San Jose is illustrative. Of the forty-six rezonings in the City of San Jose, fifteen involved wholesale changes in use district—for example from Light Industrial to a residential designation—and many others involved more intensive escalations in residential density. Only one of these fifteen rezonings required a General Plan Amendment; only three of the remaining thirty-one rezonings required a General Plan Amendment. The fact that General Plan Amendments were not necessary shows that the General Plan permitted the desired use and intensity of the development. This suggests that the base zoning in some locations had not been updated after the most recent General Plan enactment.

^{34.} Ministerial approvals are approvals in which a government agency simply applies law to fact without using subjective judgment. In Friends of Westwood Inc. v. City of Los Angeles, 235 Cal. Rptr. 788, 793 (Ct. App. 1987), the Court of Appeal held that "the touchstone" of the discretionary-ministerial distinction "is whether the approval process involved allows the government to shape the project in any way which could respond to any of the concerns which might be identified in an environmental impact report."

^{35.} See e.g., S.F. MUNI. CODE § 329 (describing Large Project Authorizations for Eastern Neighborhoods Plan Area); S.F. MUNI. CODE § 303 (describing Conditional Use Authorization requirements applicable across all zones); REDWOOD CITY MUNI. CODE § 47.1–47.5 (describing Planned Community permits for areas with a Precise Plan in place).

applicable zoning ordinance; this includes when the developer is seeking an exemption from the zoning ordinance (variance) or asking the city to zone the project site differently (rezoning), or to change or update the General Plan to allow for the proposed project.

Finally, cities in California can also impose discretionary review even when a proposed project is consistent with the underlying base zoning district's use and development controls; in other words, cities can provide for development standards (including density and use), while also imposing aesthetic controls that may impose discretionary review that is particularly subjective in nature.³⁶ Examples of this include design review, architectural review, site development review, and historical preservation review/certificate of appropriateness.³⁷

Another important feature within local law relevant to infill development is the regulation of subdivision, or the process of dividing land into two or more parcels for the purpose of sale, lease, or financing.³⁸ Subdivision can be horizontal—dividing a single parcel of land into two or more units—or vertical dividing the airspace above the land into two or more units.³⁹ Also important for infill development within central cities are Development Agreements, which allow for cities to enter into agreements with developers through a local legislative act that "freezes" the applicable land use regulations (including zoning) for the property to protect the developer from any adverse impacts imposed by changes to the development standards during the development process.⁴⁰ Development Agreements are relevant to large phased development projects.

37. For design review-related provisions, *see* REDWOOD CITY MUNI. CODE § 45.2(A); PALO ALTO MUNI. CODE § 18.76.020(b)(2)(D); OAKLAND MUNI. CODE §§ 17.136.040(3)– (4). For a historic preservation-related provision, *see* S.F. MUNI. CODE § 1006. For site development review, see SAN JOSE MUNI. CODE § 20.100.010.

38. See CAL. GOV'T CODE § 66424.

40. See CAL. GOV'T. CODE § 65867. For a general description, see KARL E. GEIER & SEAN R. MARCINIAK, MILLER AND STARR CALIFORNIA REAL ESTATE § 21:29 (4th ed. 2015).

^{36.} See BRIAN BLAESSER, DISCRETIONARY LAND USE CONTROLS: AVOIDING INVITATIONS TO ABUSE OF DISCRETION XIX, XX, 11 (6th ed. 2003) (noting that many of the discretionary provisions involve "community character" components that are highly subjective, that design codes increasingly involve subjective standards that "emphasize flexibility over precision" and that "[a]rchitectural design review ordinances provide some of the worst examples of vague statements of purpose and overbroad standards that invite abuse. Such ordinances frequently lack sufficiently clear standards and vest too much subjective decision making in the architectural review board officials.").

^{39.} The California Subdivision Map Act regulates the design and improvement of subdivision; however, local governments control these design and improvements through the enactment of a local subdivision ordinance. *Id.* § 66411. The process begins when a developer seeking to create five or more units of land files a Tentative Map application. *Id.* § 66428(b). After the approval of the Tentative Map, the developer must comply with any imposed conditions before filing for Final Map approval. *Id.* § 66457. For the purposes of the California Environmental Quality Act (*see* discussion *infra* Section I.A.2), the Tentative Map is the discretionary trigger—Final Maps are not typically discretionary actions. *Id.* § 66474.1. For this reason, we have tracked Tentative Map approvals, not Final Map approvals. State and local law also governs the consolidation or merger of lots into a single lot, termed a lot line adjustment. *Id.* § 66412(d). Certain lot line adjustments do not require tentative maps. *Id.* § 66412(d).

2. Environmental review under the California Environmental Quality Act

Modeled after the National Environmental Policy Act ("NEPA"), CEQA combines mandatory information disclosure with public participation to "open[] government decision-making to public scrutiny."⁴¹ CEQA is "[o]ne of California's most cherished institutions and one of its most controversial."⁴² CEQA's focus is on government projects and approvals that produce significant environmental impacts.⁴³

a. Local governments often determine CEQA's applicability

CEQA applies to any residential development project that requires a public agency's discretionary approval.⁴⁴ In the context of urban land development, the lead public agency is usually the local Planning Department⁴⁵ and with some exceptions, it is the lead agency that determines whether the required approval is discretionary or ministerial.⁴⁶ Though building permits are presumptively ministerial (or "by right"), local agencies can specify otherwise in their laws.⁴⁷ Conditional or special use permits, variances, Development Agreements, subdivision maps, or zoning changes are typically discretionary approvals⁴⁸ because Planning Departments are not legally obligated to grant these types of

^{41.} Bradley C. Karkkainen, *Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance*, 102 COLUM. L. REV. 903, 913 (2002).

^{42.} See JOHN LANDIS, ROLF PENDALL, ROBERT OLSHANSKY & WILLIAM HUANG, FIXING CEQA: OPTIONS AND OPPORTUNITIES FOR REFORMING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT 1 (Cal. Pol'y Seminar ed., 1995).

^{43.} CAL. PUB. RES. CODE § 21002.

^{44.} CAL. PUB. RES. CODE § 21080.

^{45.} State law requires each city and county to have a planning agency—either an administrative body or a commission—to carry out the state planning laws, which include General Plan laws discussed in this Part. *See* CAL. GOV'T. CODE §§ 65100, 65101. Planning agencies generally enforce the local zoning code and make land use determinations. *See* MILLER & STARR, 7 CAL. REAL EST. § 21:1 (4th ed., 2015).

^{46.} See CEQA GUIDELINES § 15369 (2016) (codified at 14 C.C.R. § 15369 (2016)). "CEQA Guidelines" refers to Title 14 of the California Code of Regulations, which implement PUB. RES. CODE § 21080 et seq. See Friends of Westwood Inc., 235 Cal. Rptr. at 793 (finding building permits to be presumptively ministerial).

^{47.} See CEQA GUIDELINES § 15268(b). San Francisco is one city that makes building permits discretionary through their charter. See discussion *infra* Section IV.

^{48.} See CAL. GOV'T CODE § 65583.2 ("the phrase 'use by right' shall mean that the local government's review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for purposes of [CEQA]"). Another example is provided through the state law that requires that Development Agreements be adopted by a local legislative act, preventing them from being ministerial approvals. See supra note 33.

approvals; instead, they use discretionary judgment to evaluate the project based on subjective criteria.⁴⁹

Discretionary projects may still be exempt from CEQA. The legislature has carved out statutory exemptions in the Public Resources Code, and thirty-three categorical exemptions have been developed in the California Code of Regulations, which are more commonly referred to as the CEQA Guidelines.⁵⁰ In this article, we focus on the exemptions most relevant to infill development. For example, a lead agency can use the Class 32 infill exemption for infill development; if an urban infill project satisfies five conditions, it can bypass CEQA review.⁵¹ Other common forms of exemptions are the Class 3 exemption for new construction or conversion of small structures and the Class 1 exemption for existing facilities.⁵²

Tiering is a way to streamline environmental review under CEQA by allowing environmental review of a proposed project to focus on a narrow set of issues that have not already been evaluated in a prior Environmental Impact Report ("EIR"). If all the issues have been evaluated in a previous EIR, then no further study is necessary. Tiering necessarily requires a prior environmental review document (generally an EIR) that is usually connected to a prior and large-scale planning approval; however, the source of the document can vary. A Community Plan Exemption, for example, is a tiering-based exemption available to projects consistent with a community plan, general plan, or zoning.53 Another form of tiering is the Program EIR, which can exempt future development activity from environmental review, provided that no underlying conditions have changed.54 An EIR Addendum is commonly used for projects that will be built out in phases under a master plan and master EIR where the underlying conditions of approval have not changed.55 If some of these conditions have changed, then the lead agency can prepare a Supplemental EIR, which only needs to contain information necessary to make the original EIR adequate.56

^{49.} See CEQA GUIDELINES §15357.

^{50.} Id. §§ 15300–15333.

^{51.} *Id.* § 15332. These factors are: (1) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (2) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (3) the project site has no value, as habitat for endangered, rare or threatened species; (4) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (5) the site can be adequately served by all required utilities and public services.

^{52.} See id. §§ 15303, 15301.

^{53.} See CEQA GUIDELINES § 15183.

^{54.} See id. § 15168.

^{55.} See id. § 15162.

^{56.} See id. § 15163.

Figure 1: Types of Environmental Review



b. The disclosure requirements under CEQA

For projects that are not categorically exempt or exempt based on prior EIR analysis, the lead agency conducts an Initial Study⁵⁷ to assess whether the project will have a significant effect on the environment. If not, the agency issues a Negative Declaration ("ND").⁵⁸ If the project will have a significant effect on the environment, but the developer can incorporate mitigations that reduce their significance, then the agency issues a Mitigated Negative Declaration ("MND").⁵⁹ A lead agency must prepare an EIR where there is substantial evidence that the project will have a significant effect on the environment⁶⁰ and where it is not clear from the Initial Study that these impacts can be mitigated below a significance threshold.⁶¹

An important debate in the context of CEQA implementation is over the merits of project-specific CEQA review (which focuses on individual projects) and plan- or program-level CEQA review (e.g., review focused on Specific Plans, neighborhoods, or city-wide programs). One issue is the effectiveness of project-specific review. On the one hand, CEQA's information mandate when applied at the project level can force agencies to "identify and confront the environmental consequences of their actions" in that particular project.⁶² CEQA's procedural

^{57.} See CEQA GUIDELINES § 15063(a).

^{58.} Id. § 15070(a).

^{59.} Id. § 15070(b)(2).

^{60.} Id. § 15063(b)(1), § 15060 (indicating a project may also bypass the Initial Study to proceed directly to the EIR)

^{61.} See Cal. PUB. RES. CODE § 21064.5; CEQA GUIDELINES § 15070.

^{62.} Karkkainen, supra note 41. at 904.

requirements can enable cost-effective mitigation, because agencies can take into account "the site-specific circumstances" of the project "in a flexible manner" and propose feasible mitigations in a way that applying blanket regulations would not.⁶³ CEQA also operates to mitigate project-specific environmental problems where there are lapses in regulation because its procedural framework is sufficiently flexible to mitigate environmental problems that other, more general laws are slower to address.⁶⁴ A project-specific EIR, however, cannot inform a long-term perspective or mitigate the regional and cumulative effects of development that are better suited to the general plan process.⁶⁵

The other issue relates to cost. As noted above, plan or program-level EIRs can generally reduce the costs of subsequent CEQA review through tiering: prior research has found the differences between a Categorical Exemption, MND, and EIR, in time and cost, can be great.⁶⁶ Therefore, tiering that allows project-level review to occur at the MND or Categorical Exemption level can reduce project-level costs substantially. However, cities generally pay the costs of plan-or program-level CEQA review, while developers pay for the costs of project-specific CEQA related documents and studies.⁶⁷ For cash-strapped jurisdictions, particularly in the wake of Proposition 13, which reduces the amount of property taxes that stay within local jurisdictions,⁶⁸ the project-specific EIR presents a more economically feasible way of considering environmental effects than an update to

65. See Robert Olshansky, *The California Environmental Quality Act and Local Planning*, 62 J. AM. PLAN. ASS'N. 313, 317 (1996). EIRs are very effective tools to analyze project-specific impacts but many environmental effects are cumulative in that they are not traceable to a single project. Traffic, for example, is a regional issue stemming from historic patterns of land use and disinvestment in public transportation. Unfortunately, instead of promoting long-term planning, CEQA often "burden[s] a single project with all of a region's problems"—a nearly impossible undertaking. *Id.*

66. See Kenneth Bley, Beware of Planners Bearing Gifts, COX CASTLE NICHOLSON (Jan. 20, 2015), https://perma.cc/HD4K-MDNH (noting that "[p]reparing an MND... also requires significant time and money, although, in the short run, less than an EIR). Substantively, EIRs must contain more detail and studies than an MND. EIRs require (1) detailed information about the proposed project's significant effects on the environment; (2) ways in which the significant effects of such a project might be minimized; and (3) alternatives to the project. See CAL. PUB. RES. CODE § 21061. However, in long the run, as Bley notes, if there are legal challenges, MNDs might end up costing more because they are potentially less defensible in court. See Bley, supra note 66 (discussing the standards of review for an MND and EIR).

67. See Olshansky, supra note 65, at 319-20.

68. Passed as a voter initiative in 1978. Proposition 13 is an amendment to the California Constitution that froze property tax values at 1976 assessed value levels and fixed tax increases at a maximum of two percent per annum. CAL. CONST. art. XIIIA, §§ 1(a), 2(a). This has led to a sharp decline in the revenue local governments receive from property tax revenue. *See* LEGISLATIVE ANALYST'S OFFICE, COMMON CLAIMS ABOUT PROPOSITION 13 at 2 (2016).

^{63.} ELISA BARBOUR & MICHAEL TEITZ, CEQA REFORM: ISSUES AND OPTIONS 4 (Pub. Pol'y Inst. of Cal. ed., 2005) (emphasis omitted).

^{64.} See id. for a further discussion of how CEQA fills these regulatory gaps; Giulia Gualco-Nelson, *Reversing Course in California: Moving CEQA Forward*, 44 ECOL, L. Q. 155, 164 (2017).

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the General Plan because it effectively shifts the costs of CEQA compliance to individual developers.⁶⁹ The cost of a project-specific EIR, for example, is significantly lower than the cost of a General Plan update (typically financed from the city's general fund), and the project applicant bears most of the cost.⁷⁰

Critics have also attacked the way agencies unpredictably apply CEQA both within the same jurisdiction and across the state, an inconsistency that critics say increases not only the time and money spent on CEQA review, but also the risk of litigation.⁷¹ And some critics question whether or not CEQA actually leads to meaningful mitigation of harm.⁷² Because CEQA leaves implementation entirely to local control, agencies can weigh environmental harms and social or economic benefits differently.⁷³

c. The public participation requirements of CEQA

Public participation is the democratic cornerstone of CEQA. CEQA has strict notice provisions that enable the public to participate in every major phase of environmental review. The notice requirements are demanding for an EIR. Immediately after determining that an EIR is necessary, the lead agency must issue a Notice of Preparation.⁷⁴ After posting this notice, the agency begins work on the Draft EIR. The agency must then notice and post the Draft EIR for public review for at least thirty days.⁷⁵ During this period, the public submits comments about the agency's findings. The lead agency must review and prepare a written response to all comments received during this period.⁷⁶ The agency incorporates these responses into the Final EIR and then recirculates it to the public.⁷⁷ Within five days of certifying the Final EIR, the agency will file a public Notice of Determination ("NOD") with the county clerk.⁷⁸

The Office of Natural Resources promulgates CEQA guidelines for implementation, but no state agency substantively oversees CEQA.⁷⁹ Citizen suits are the sole enforcement mechanism to ensure a lead agency's compliance. NODs trigger the statute of limitations to bring suit,⁸⁰ and CEQA lawsuits are easy to file. Filing fees are relatively inexpensive, and courts limit proceedings to the administrative record, which obviates the need for a lengthy discovery process.⁸¹

^{69.} See Olshansky, supra note 65, at 320.

^{70.} Id. at 319–20. In 1996, the average cost of an EIR was \$38,214. The average cost of a General Plan was \$208,000.

^{71.} See BARBOUR & TEITZ, supra note 63, at 15.

^{72.} Id. at 25.

^{73.} Id.

^{74.} CEQA GUIDELINES § 15082.

^{75.} Id. § 15105.

^{76.} Id. § 15088.

^{77.} Id. §§ 15088, 15132.

^{78.} Id. § 21152(a).

^{79.} CAL. PUB. RES. CODE § 21083.

^{80.} Id. at § 21167.

See KOSTKA, supra note 19, § 23.48 (discussing admissibility of extra-record evidence).

CEQA also allows plaintiffs to easily satisfy standing requirements.⁸² The ease of CEQA litigation has been a source of significant criticism of the statute, with critics arguing that it increases uncertainty and costs for developers.⁸³

B. What prior research has told us about the impact of California's land use regulations on housing supply and spatial equality

Meeting California's statewide goals to reduce GHG emissions requires equitable infill development. Housing development properly focused in infill TOD areas may significantly reduce emissions in part by increasing transit usage⁸⁴ and reducing vehicle miles traveled.⁸⁵ The state legislature has recognized that meeting GHG reduction targets through increased transit use requires the adoption of sustainable, integrated regional transportation and community planning strategies.⁸⁶ Research suggests, however, that law promoting sustainable urban development without an equity focus may lead to "environmental gentrification"⁸⁷ and may directly undermine intended policy goals of reducing GHG emissions.⁸⁸

85. Arefeh Nasri & Lei Zhang, *The Analysis of Transit-Oriented Development* (TOD) in Washington, DC and Baltimore Metropolitan Areas, 32 TRANSPORT POL'Y 172, 179 (2014).

86. CAL. GOV'T CODE § 65400.

87. See. e.g., MALO HUTSON, THE URBAN STRUGGLE FOR ECONOMIC, ENVIRONMENTAL AND SOCIAL JUSTICE: DEEPENING THEIR ROOTS 20 (Routledge ed., 2016) (citing Melissa Checker, Wiped Out by the "Greenwave": Environmental Gentrification and the Paradoxical Politics of Urban Sustainability, 23 CITY & SOC'Y 210, 210 (2011) ("While it appears as politically-neutral, consensus-based planning that is both ecologically and socially sensitive, in practice, environmental gentrification subordinates equity to profitminded development")): Hamil Pearsall, Moving out or Moving in? Resilience to Environmental Gentrification, 17 LOC, ENV'T 1013, 1013 (2012) ("Sustainability initiatives and environmental improvements that lack adequate attention to the social justice dimension of environmental change produce environmental gentrification").

88. Notably, the characteristics of ridership also suggest that if low-income communities that have historically lived in central city neighborhoods and used transit at the highest rates are displaced from central cities, TOD investment may not achieve its intended policy goals. See Robert Cervero. Transit-Oriented Development's Ridership Bonus: A Product of Self-Selection and Public Policies, 39 ENV'T & PLAN. 2068, 2083–84 (2007). The decline of transit ridership in Los Angeles, despite new investments in public transportation and upzoning around these stations, is an acute example of this issue. See MICHAEL MANVILLE ET AL., FALLING TRANSIT RIDERSHIP: CALIFORNIA AND SOUTHERN CALIFORNIA (S. Cal. Ass'n of Gov'ts ed., 2018). Also, the LAO reported that low-income

^{82.} In Save the Plastic Bag Coalition v. City of Manhattan Beach, the California Supreme Court refused to apply the federal "zone of interests" test for CEQA litigation. 254 P.3d 1005, 1012–13 (Cal. 2011). Limiting standing under CEQA has been proposed as a way to reduce the proliferation of CEQA litigation. *See* Eric Biber, *Could Standing Save CEQA*? LEGAL PLANET (Apr. 9, 2012), https://perma.cc/7CHE-HKR3.

^{83.} See BARBOUR & TEITZ, supra note 63, at iii.

^{84.} NATHANIEL DECKER, CAROL GALANTE, KAREN CHAPPLE & AMY MARTIN, RIGHT TYPE, RIGHT PLACE: ASSESSING THE ENVIRONMENTAL AND ECONOMIC IMPACTS OF INFILL RESIDENTIAL DEVELOPMENT THROUGH 2030 11–12 (Next 10 ed., 2017).

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Multiple studies examine the relationship between land use regulation and its specific impacts on housing supply and housing costs as well as its impacts on spatial equality. We thus discuss and summarize the findings and methods of two research areas: (1) studies that explore the relationship of land use regulation on housing supply and costs (indirect or direct impact on housing costs), and (2) studies that explore the relationship of land use regulation on spatial equality (indirect or direct impact on segregation/exclusion).⁸⁹ Our summary identifies the key conclusions of that literature, and how the current methodological approaches of that literature limit the ability to either generalize from the study findings or identify specific policy solutions.

1. Understanding land use regulation as a constraint on supply

California's home prices and rents are higher than anywhere else in the country; home prices are 2.5 times the national average and rents are fifty percent higher.⁹⁰ Using basic supply and demand economics, urban economists posit that a sharp decline in supply beginning in the 1970s has led to the affordability crises in many of the nation's coastal cities, like those in California, where the labor market is strong and demand for housing is high.⁹¹ Building on the work of William Fischel—who coined the term "homevoter hypothesis" to describe a home owner's

families that work within coastal communities, but cannot afford housing near their work, commute ten percent farther than commuters elsewhere and concluded that high housing costs that result in longer commutes risk undermining the goals of recent legislation intended to address climate change. *See* LAO REPORT, *supra* note 5, at 3.

^{89.} We focus here only on research that directly touches on the debates over housing costs and regulation in California. The relevant literature that engages with the impact of land use regulation (defined broadly to encompass both local land use regulations and state law) on both housing costs and spatial equality is large. For a comprehensive literature review that focuses on an econometric analysis of land use regulation *see* generally, Joseph Gyourko & Raven Molloy, *Regulation and Housing Supply* (Nat'l Bureau of Econ. Research Working Paper No. 20536, 2014). For a summary of studies and writing on how stringency within land use regulation impacts supply, *see* Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENVTL. L. 217, 223 n.24 (2018). For a review of the literature that engages public investment (related to land use) and gentrification and displacement, *see* Miriam Zuk et. al, *Gentrification, Displacement and the Role of Public Investment: A Literature Review*, URBAN DISPLACEMENT (Mar. 3, 2015), https://perma.cc/QER4-XC2H.

^{90.} See LAO REPORT. supra note 5, at 3.

^{91.} See LAO REPORT, supra note 5, at 7 ("Beginning in about 1970, however, home prices throughout the state began to accelerate. Prices were eighty percent above U.S. levels by 1980, and by 2010, the typical California home was twice as expensive as the typical U.S. home"); see also Edward L. Glaeser, Joseph Gyourko & Raven Saks, *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J. L. & ECON. 331, 337 (2005) (beginning in the 1970s, the U.S. experienced a sharp decline in the supply of housing nationwide). Other studies have found a sharp decline in building permits beginning in the 1990s. See CAL. DEPT. HOUSING & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES 6 (2018).

inherent motivation to maximize the value of their property⁹²— much urban economics research attributes the change in housing production to the rise of "historical preservationists in New York City [and] conservationists in California. . . . ^{**93} In this literature, supply constraints are the primary cost of land use regulation. These studies reach this result by measuring the gap between the physical costs of producing the housing unit and the sales price for the housing unit.⁹⁴ If the gap between production costs and sales price is narrow, the market is efficient and affordable; where the gap between sale price and production costs is wider, housing is unaffordable. Large disparities between price and production cost are generally understood as indirect evidence of the costs of land use regulation.⁹⁵ Because of the difficulty of measuring the impact of particular land use policies, ⁹⁶ urban economists use proxies such as declining permitting levels, declining heights and densities, and increasing sale prices, which together provide indirect evidence for a "regulatory tax."⁹⁷

In 2002 Glaeser and Gyourko found that generally home sale prices are within forty percent of hard construction costs nationwide, but California's housing prices were substantially higher than construction costs.⁹⁸ They concluded the gap between hard costs and sale price is not a function of higher land costs,⁹⁹ and found that stringent land use regulation which imposes longer than average¹⁰⁰ lag times between permit application and approval creates an "implicit zoning tax."¹⁰¹ However, for our purposes a key limitation of this research is that it is unable to isolate which land use regulations might impose the lag time in development.¹⁰²

99. Id. at 17. Because the cost of a house on a 10,000 square foot lot versus an identical house on a 15,000 square foot lot is close in value, if high land values were a real driver of cost, the house on the larger lot would be worth more. But high prices were not associated with higher densities. A classic free market land model would suggest that densities would increase as land becomes more expensive due to an exogenous scarcity, but in California the researchers found that high cost areas were associated with lower not higher densities. One notable caveat to this study is that the authors only use data from single-family home sales and exclude all multifamily, cooperative or condominium sales. Thus, their approximation of "density" will likely skew lower. More expensive, but comparatively less dense, housing presents indirect evidence of stringent land use regulation

100. Defined as six months based on the underlying survey. Id. at 19-20.

101. See Glaeser & Gyourko, supra note 14, at 17. Glaeser & Gyourko derive this data from the 1989 Wharton Land Use Control Survey, a precursor to the Wharton Residential Land Use Regulatory Index ("WRLURI"). See discussion infra Section I.B.1(a).

102. These studies also employ national averages to describe very local issues. For example, some studies use RS Means Construction data for hard construction costs, which

^{92.} WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS 5 (Harvard Univ. Press ed., 2001); William A. Fischel, *A Property Rights Approach to Municipal Zoning*, 54 LAND ECON. 64, 68 (1978).

^{93.} Edward L. Glaeser & Joseph Gyourko, *The Economic Implications of Housing Supply* 3 (Zell/Lurie, Working Paper No. 802, 2017).

^{94.} See id. at 5; Glaeser, Gyourko & Saks, supra note 91, at 336.

^{95.} Glaeser, Gyourko & Saks, supra note 91, at 336.

^{96.} Id. at 333.

^{97.} Id. at 335.

^{98.} Glaeser & Gyourko, supra note 14, at 21.

a. Exploring stringency and constraints on housing supply through national surveys

In an effort to understand how regulations might shape housing costs, in the 2000's two groups of researchers completed two national surveys that both contributed to the analysis of the financial cost of land use regulation and produced

reflects national averages of construction costs per square foot rather than actual costs. To adjust these national averages for certain metro regions. RS Means inflates them by a set percentage. This inflation, however, does not consider higher than average labor cost or equipment costs in a particular location. Building in expensive metro areas is spatially constrained and requires higher costs for staging, storage, and transportation. See About RSMeans Data, RSMEANS DATA (Oct. 23, 2018, 4:00 PM), https://perma.cc/A37F-2ANS. Labor markets also tend to be stronger in high cost areas, which increases construction costs. According to the California Legislative Analyst's 2015 report, these factors heavily influence the cost of housing construction in California. See LAO REPORT. supra note 5. at 14. Also, a recent McKinsey study suggests that low construction productivity is a major driver of construction costs and time delays. FILIPE BARBOSA ET AL., REINVENTING CONSTRUCTION: A ROUTE TO HIGHER PRODUCTIVITY 2-3 (McKinsey Global Inst. ed., 2017). (noting that in its sample "over the past ten years less than one-quarter of construction firms have matched the productivity growth achieved in the overall economies in which they work, and there is a long tail of usually smaller players with very poor productivity. Many construction projects suffer from overruns in cost and time.").

In addition, while the studies assume efficient market conditions, in reality, home sale prices include all the transaction costs that the developer needs to recoup, such as the cost of financing (carrying capital, lender origination fees, issuance fees, insurance), investor ROI (which is typically higher in high cost metro areas), legal fees, taxes, and developer and contractor profit. *See, e.g.*, Memorandum from Keyser Marston Assoc., to Pleasant Hill BART Station Leasing Auth., (Nov. 12, 2014) http://www.co.contra-costa. ca.us/DocumentCenter/View/34410/Condominium-Feasibility-Study (describing a developer's pro forma feasibility analysis for condominiums adjacent to the Pleasant Hill BART station: "The output of the pro forma is the average condo sale price required for project feasibility. The pro forma estimates the costs to build the project including land acquisition, direct construction costs, and indirect and financing costs." These costs must be recouped for the project to be feasible.)

Though land use regulation can certainly increase these costs by prolonging the approvals process, many of these costs exist independent of land use regulation.

In 2005, Glaeser, Gyourko, and Saks made a better case for the regulatory tax formula as applied to the housing market in Manhattan. In Manhattan, where most people live in dense multifamily structures, the cost of adding an additional floor of units is the marginal cost of building up rather than the cost of purchasing additional land. This implies that choosing to add an additional floor would be a function of regulatory approvals rather than the availability of land. The study found that buildings today are on average shorter than they were from the beginning of the century to the 1970s. Moreover, the ratio of sales price to construction costs fluctuated between 1.5 and 1.7 throughout the 1980s and 1990s. This suggests that regulation prevents developers from maximizing density, which would tie the sale price to construction cost. The authors also suggest that the regulatory tax is not solely a product of laws on the books, but rather how these laws are applied and supplemented their data with case studies of wealthy New York constituents that organized to block a 17-story apartment building on the Upper East Side. Though the underlying zoning actually permitted the 17-story height, the wealthy neighborhood constituents used landmark preservation law to reduce the building height to nine stories. See Glaeser. Gyourko & Saks, supra note 91, at 334.
important datasets that other researchers would rely on.¹⁰³ In 2006 Pendall, Puentes, and Martin published the results of their survey of land use in 1,844 jurisdictions from the fifty largest metropolitan areas. The survey asked planning staff about their perceptions of the jurisdiction's use of zoning, comprehensive planning, growth containment measures, impact fees, building permit caps, or affordable housing incentives, and for perceptions of regulation (more or less) from the 1970s to 1990s.¹⁰⁴ The team then coded these results to create "regulatory clusters" (groups of jurisdictions with similar land use typologies) on a spectrum traditional (typically the most exclusionary), reform, and deregulated jurisdictions.¹⁰⁵ To gauge the level of exclusionary land use regulation, the survey asked whether a jurisdiction would allow construction by right or by special permit of a forty-unit two-story apartment building sitting on five acres.¹⁰⁶

In terms of permissive zoning, the most exclusionary jurisdictions were in the Northeast, whereas San Francisco, San Diego, Seattle, and other western metro areas were the least exclusionary.¹⁰⁷ At that time, nearly two-thirds of the Western metro regions surveyed had affordable housing incentive programs and nearly half had dedicated affordable housing funds.¹⁰⁸ Although zoning in Western metro regions might have been the most permissive in terms of density and variety of housing stock (in some cases even rivaling New York), these western jurisdictions used other regulatory tools—like urban growth containment measures, impact fees, and permit caps—that made it more expensive and difficult to develop housing.¹⁰⁹

Pendall's 2006 study does not explain how affordable housing incentives can modify an underlying exclusionary land use system (for example, by exempting affordable housing from certain impact fees), but the study results suggest that some metro regions, though ostensibly committed to constructing affordable housing, are actually employing regulatory tools that decrease supply, or that there could be a mismatch between means and ends. Housing prices were highest in "reform" jurisdictions that have permissive underlying zoning but employ a variety of land use tools that include growth control (e.g., San Francisco and Denver).¹¹⁰ And housing costs in these areas are higher than in the North East where traditional exclusionary zoning is employed.¹¹¹

^{103.} See, e.g., Rothwell & Massey infra FN 196.

^{104.} Rolf Pendall, Robert Puentes & Jonathan Martin, From Traditional to Reformed: A Review of the Land Use Regulations in the Nation's 50 Largest Metropolitan Areas, THE BROOKINGS INSTITUTION 7–8 (2006), https://perma.cc/3CKU-PZAK. The survey tool is also available at https://perma.cc/VG98-SWAM.

^{105.} Id. at 19.

^{106.} Id. at 7.

^{107.} Id. at 13.

^{108.} Since the time of the Pendall study, California has dissolved its Redevelopment Agencies—a primary source of affordable housing funding, which has negatively impacted many of these funds. *See* discussion *infra* Section III.

^{109.} See id. at 14 (containment), 17 (impact fees). 19 (permit caps).

^{110.} Id. at 31.

^{111.} Id. at 30. Unsurprisingly Houston and Dallas-San Antonio, which the study considered nearly unregulated with the exception of impact fees, had the lowest housing

The Pendall study does not examine whether the jurisdiction requires environmental review, which in California impacts the type of housing that can be built regardless of the underlying zoning controls. Because of the national scope, the study also did not focus on how land use regulations are applied. For example, Pendall notes that San Francisco has permit caps, but fails to note that they apply only to certain commercial developments and not residential or mixed-use properties.¹¹² These issues are likely applicable to other jurisdictions as well.

At around the same time as the Pendall survey, Gyourko, Saiz, and Summers conducted another major national survey of land use practices to build the Wharton Residential Land Use Regulatory Index ("WRLURI") with the aim of determining the "average" degree of land use regulation in the nation by focusing on process and outcomes, rather than just the presence of regulatory constraints.¹¹³ The WRULRI distributed a fifteen-question survey to planning officials in 2,649 jurisdictions.114 Participants ranked their perception of the importance of certain factors that influence local government decisions on how to regulate the rate of residential development on a 1-5 scale.¹¹⁵ They also ranked the involvement of certain organizations-including local councils, communities, state legislature, and local courts-in the land use regulation process. The survey asked respondents to (a) identify how much the cost of land development has increased in the last ten years as well as the average length of the entitlement process as compared to ten vears ago; (b) provide the number of board and commission approvals required to approve projects with zoning changes versus projects without zoning changes; (c) identify whether the community has permit caps, minimum lot size requirements, and open space or affordable housing or infrastructure exactions; and (d) identify the number of applications for zoning changes filed and approved in the last year. To assess each state legislature's involvement in the planning process and the involvement of the state courts, Gyourko, Saiz, and Summers used Foster and Summers's fifty state survey¹¹⁶ that determined the features typical of judicial

113. Joseph Gyourko, Albert Saiz & Anita Summers, A New Measure of the Local Regulatory Environment for Housing Markets: The Wharton Residential Land Use Regulatory Index, 45 URB. STUD. 693, 694 (2008).

115. Id. at 719–21. Some of these factors included supply of land, cost of new infrastructure, density restrictions, impact fees, opposition to growth, and school crowding.

116. See DAVID FOSTER & ANITA SUMMERS, CURRENT STATE LEGISLATIVE AND JUDICIAL PROFILES ON LAND-USE REGULATIONS IN THE US 3–8 (2007) (surveying land use laws—such as legal standards for exactions—in all 50 states).

prices. While Pendall 2006 notes that housing prices were once low in Austin, the study notes that the growth of the high-tech sector has increased housing costs above Houston and San Antonio. Housing prices aside, reform jurisdictions and Texas had more in common in terms of social demographics. Both have higher concentration of college graduates in their central city than in their suburbs. Low-income people and people of color were dispersed more evenly throughout the suburbs in reform areas and Texas, whereas they are primarily concentrated in the central city in traditional jurisdictions.

^{112.} See, e.g., S.F. Planning Dep't. Office Development Annual Limitation Program, (Oct. 23, 2018, 4:00 PM), https://perma.cc/DN94-CDKW. In 1985, San Francisco enacted the Annual Office Limit Program which caps the annual permitting of office space on a square foot basis; this square footage limitation does not apply to residential housing.

^{114.} Id. at 696.

review for exactions, fair share development requirements, building moratoria, and spot zoning.¹¹⁷ They also used data on ballot box planning measures from a database that tracks initiatives nationwide.¹¹⁸ The authors then created an index of eleven land use stringency indicators: local political pressure, state political involvement, state court involvement, local zoning approval (includes environmental review), local project approval, local assembly (democracy), supply restrictions, density restrictions, open space, exactions, and approval delay.¹¹⁹

The WRLURI's stringency index provided policymakers a general assessment and comparative analysis of whether a jurisdiction's land use system is more or less "stringent" and whether it imposes more lag time to approvals. In the least regulated community nationally, density restrictions were relatively permissive, open space requirements were unlikely to be imposed, and the lag time between application and issuance of a building permit was approximately three months.120 The average community required two levels of approvals to grant a zoning change and at least one approval for a project without a zoning change, but did not put project approvals to a popular vote by the community, and minimum lot sizes, open space, and exactions were not onerous.121 The typical lag between application and permit issuance was six months.122 The most stringently regulated communities required a local popular vote to approve a project and one more level of approval for a project even without a zoning change; density restrictions and high minimum lot sizes were also more prevalent.¹²³ The average approval timeline in stringently regulated communities was 10.5 months.¹²⁴ Stringently regulated communities tended to have high stringency values for all the land use indicators.125 Stringency was also strongly correlated with community wealth.126 Interestingly, regulations were highly variable even within the same state, highlighting the ubiquity of local rather than state control.127

- 119. Gyourko, Saiz & Summers, supra note 113, at 698-701.
- 120. Gyourko, Saiz & Summers, supra note 113, at 709, 714.
- 121. Id. at 707.
- 122. Id. at 708.
- 123. Id. at 708.
- 124. Id. at 710.
- 125. Gyourko, Saiz & Summers, supra note 113, at 710.
- 126. Id. at 710.

^{117.} Gyourko. Saiz & Summers, *supra* note 113, at 701. See also FOSTER & SUMMERS. *supra* note 116, at 3. The Foster and Summers 50 state survey ranked states on a scale of 1 to 3: states that scored a 1 gave little deference to local municipalities; states that scored a 3 nearly always defer to the municipality. The number of cases consulted per state ranges from one in Alaska to a high of fifteen in California. Foster & Summers also used information on new legislative enactments and governor's actions to rank the state legislative involvement on the same scale.

^{118.} Gyourko, Saiz & Summers, *supra* note 113, at 698 (citing TRUST FOR THE PUBLIC LAND, LANDVOTE DATABASE, https://tpl.quickbase.com/db/bbqna2qct?a =dbpage& pageID=10 (last visited Oct. 24, 2018)).

^{127.} *Id.* at 712 ("For example, in Massachusetts which has a state average that is 1.56 standard deviations above the national mean, 10 per cent of the communities (8 out of 79) still have WRLURI values below zero and thus are more lightly regulated than the average place in the country").

In 2018, the WRLURI continues to remain highly influential. The finding that stringency is associated with higher housing costs is particularly important because it drives much of the policy debate around land use in California.¹²⁸ The index also has been used in subsequent studies¹²⁹ and informs survey design for related research.¹³⁰

For instance, many researchers have used the WRLURI to examine relationships between housing supply and other variables. In 2010, Saiz used the WRLURI and satellite data to establish that the most geographically constrained jurisdictions—meaning the jurisdictions with the least available land to develop¹³¹—also had the highest stringency values on the WRLURI.¹³² Saiz found that regions with the most inelastic supply are also the most geographically constrained in terms of mountainous topography and internal water (e.g., flood plains, wetlands).¹³³ Areas with the most geographic constraints also had the highest stringency values on the WRLURI.¹³⁴ Housing and population growth were also predictive of more stringent regulation.¹³⁵ Though this does not establish causality, Saiz's results evoke the homevoter hypothesis, suggesting that people who invest in expensive high growth areas want more regulation to retain value in their investment.¹³⁶

^{128.} In an effort to drive down housing costs, the California legislature has aimed to reduce the number of local regulations for certain types of residential developments. SB 35 requires local jurisdictions not in compliance with RHNA obligations to approve certain residential developments containing ten to fifty percent affordable housing through a ministerial process. S.B. 35, 2017–2018 Reg., Leg. Sess. (Cal. 2017). SB 827—which would have created a by-right process to approve residential developments exceeding underlying height limitations in transit zones—failed last year; however, the bill will likely be resurrected in some form during the next legislative cycle. *See* Alissa Walker, *Sen. Scott Wiener Will Introduce New Version of Transit Density Bill*, CURBED LA (Oct. 9, 2018), https://perma.cc/R5KK-S4HP.

^{129.} See e.g., Michael C. Lens & Paavo Monkkonen, Do Strict Land Use Regulations Make Metropolitan Areas More Segregated by Income? 82 J. AM. PLAN. ASS'N 11 (2016) (using the WRLURI to analyze levels of spatial segregation): Albert Saiz, The Geographic Determinants of Housing Supply, 125 Q. J. ECON. 1253 (2010) (using the WRLURI to analyze geographic constraints and housing supply restrictions); Matthew A. Turner, Andrew Haughwout & Wilber van der Klaauw, Land Use Regulation and Welfare, 82 ECONOMETRICA 1341 (2014) (using the WRLURI to gauge supply constraints).

^{130.} See e.g., QUIGLEY, RAPHAEL & ROSENTHAL, supra note 14, at 280; Kristoffer Jackson, Regulation, Land Constraints, and California's Boom and Bust, 68 REGIONAL SCI. & URB. ECON. 130 (2018); Terner Center, Terner Residential Land Use Survey (on file with the author).

^{131.} To determine what land is unavailable, Saiz used satellite data to calculate areas lost due to water and mountains (any slope above fifteen percent). Saiz, *supra* note 129, at 1254.

^{132.} Id. at 1282.

^{133.} *Id.* at 1253.

^{134.} Id. at 1261.

^{135.} Id. at 1282.

^{136.} Albert Saiz, *The Geographic Determinants of Housing Supply*, 125 Q, J. ECON. 1253 (2010), at 1255.

A few key limitations of the WRLUI study make reliance on that study problematic. First, the authors assign stringency variables to metropolitan statistical areas ("MSAs").137 This index tells us that San Francisco was more highly regulated than the national average.138 But the stringency level for San Francisco, for example, is composed of thirteen observations drawn from five counties. The stringency value might not necessarily characterize the regulatory process across those five counties. Second, the WRLURI only focuses on the approval process in theory. This approach is ill-suited to understanding and distinguishing drivers of delays that could be related to local variations in planning practice rather than what the law mandates. Third, the WRLURI identifies stringency at a single point in time in 2005. Using the data (or findings) to describe current conditions risks ignoring changes in the regulatory process that occurred after the point in time of the survey or data collection.139 Fourth, the sub-index values derive from inherently subjective survey questions submitted to only one planning official per jurisdiction; the bias or perspective of a single person could substantially skew the stringency measurement.140 Finally, although areas with the most stringent regulation have the highest housing costs, all regulations might not impact that cost in the same way.

b. Exploring stringency and constraints on housing supply through a statewide or regional survey

National surveys provide a big picture of the regulatory environment across the country, but regional and statewide surveys may more effectively identify the regulatory determinants of housing inelasticity,¹⁴¹ and are necessary to understand how land use affects housing supply given the local and heterogeneous nature of land use regulation.¹⁴² Local metropolitan surveys require more resources than a national survey, and "the enormity of [this] effort prevents it from being easily replicated in many ... markets."¹⁴³ California has benefited from at least five regional and state-specific studies.¹⁴⁴

^{137.} Gyourko, Saiz & Summers, supra note 113, at 713.

^{138.} *Id.* at 714 (finding that the least regulated jurisdictions were located within the Midwest, whereas the most regulated jurisdictions were in the coastal metro areas, with the most stringent land use systems located in the North East).

^{139.} See Been, supra note 89, at 227 for a similar argument.

^{140.} The potential for these types of biases is further explained in the context of CEQA in LANDIS, PENDALL, OLSHANKSY & HUANG, *supra* note 42, at 116. The authors note that planners' "livelihoods depend in no small part on administering [CEQA]."

^{141.} Glaeser & Ward 2008, for example, used a highly resource-intensive method that enabled them to disaggregate minimum lot sizes, wetlands, and infrastructure regulation as the major determinants of permitting and costs in the Boston metro area. Edward L. Glaeser & Bryce Ward, *The Causes and Consequences of Land Use Regulation: Evidence from Greater Boston*, 65 J. OF URB. ECON. 265 (2008).

^{142.} GYOURKO & MOLLOY, supra note 89, at 13.

^{143.} Id.

^{144.} We omit discussion of several earlier California focused surveys conducted in 1989 (MADELYN GLICKFELD AND NED LEVINE, REGIONAL GROWTH AND LOCAL REACTION:

Quigley, Raphael & Rosenthal 2009 used a method similar to WRLURI to create a regulatory stringency index for the San Francisco Bay Area. The authors surveyed building officials in eighty-six jurisdictions in 2007, and then supplemented their data with surveys of land use officials conducted between 1992-1999.145 The 2007 survey addressed a variety of factors that affect housing development, including duration, timing, specific regulations, political influence, project approval procedures, delays, inclusionary zoning, and open space.¹⁴⁶ Building officials provided information on the number of approvals required for certain types of projects and the presence of certain types of regulation connected to restricted growth.147 They also conducted online surveys of professional builders and environmental consultants, who provided self-reported data on a total of 37 single-family (121 units) and 25 mixed-use developments (331 units) in 33 land use jurisdictions.148 These questions asked about "perceived level of controversy" associated with certain project types, "regulatory reasonableness," "transparency," and "estimates [of] the 'all-inclusive cost of the entire entitlement process."149 Indexing the results of both surveys, the authors created the Berkeley Land Use Regulation Index ("BLURI").150

The BLURI does not necessarily contradict the findings of the WRLURI, but highlights that local context is important when assessing land use regulation in California. The BLURI indicated that the average approval lag between application and permit was 2 years for a multifamily development and 2.5 years for a single-family home development.¹⁵¹ Within this time frame, environmental approvals took 2.3 years for single-family homes and 1.9 years for multifamily.¹⁵²

Other findings from the BLURI closely track the WRLURI. The numbers of approvals required to build a unit of housing closely correlated with high housing costs.¹⁵³ Regulatory stringency was consistently associated with higher costs for construction, longer delays in completing projects, and greater uncertainty about the elapsed time to completion of residential developments.¹⁵⁴ Political

- 146. Quigley, Raphael & Rosenthal, supra note 14, at 280.
- 147. Id. at 282-85.
- 148. Quigley, Raphael & Rosenthal, supra note 14, at 287-289.
- 149. Id. at 288-89.
- 150. Id. at 289.
- 151. Id. at 292.
- 152. Id. at 292-93.
- 153. Quigley, Raphael & Rosenthal, supra note 14, at 295.
- 154. Id. at 297.

THE ENACTMENT AND EFFECTS OF LOCAL GROWTH CONTROL AND MANAGEMENT MEASURES IN CALIFORNIA (Cambridge, MA: Lincoln Institute of Land Policy ed., 1992)) and 1992 (Ned Levine, Madelyn Glickfeld & William Fulton, *Home Rule: Local Growth Control. Regional Consequences*, (Report to the Metro. Water Dist. of S. Cal. & the S. Cal. Ass'n of Gov'ts 1996) (unpublished)).

^{145.} John Quigley, Steven Raphael & Larry A. Rosenthal, Measuring Land Use Regulations and Their Effects in the Housing Market, HOUSING MARKETS AND THE ECONOMY 272, 280 (Lincoln Institute of Land and Policy ed., 2009). For the 1992–1999 surveys, see Glickfield & Levine, supra note 13; Ned Levine, The effects of local growth controls on regional housing production and population redistribution in California, 36 URB, STUD, 2047 (1999).

influence was another important factor, with jurisdictions in Marin County, the City of Richmond, and the consolidated City and County of San Francisco reporting the strongest political influence.¹⁵⁵ Berkeley and mixed-income cities like San Jose and Vallejo ranked in the middle in terms of political influence.¹⁵⁶

Another more recent California-focused survey includes the California Land Use Regulatory Index ("CaLURI"). The CaLURI provides better insight into the geographic variability of land use stringency across California. Jackson sent surveys to planning staff in 540 cities and counties, and 420 jurisdictions responded.¹⁵⁷ The survey asked questions about the land use process and policies, including specific residential development standards like bulk, height, setback requirements, and floor area ratio restrictions.¹⁵⁸ The survey also asked whether the jurisdiction permitted low-cost housing alternatives, like mobile homes, as well as whether the jurisdiction restricts growth through its General Plan.¹⁵⁹ Other questions asked about affordable housing requirements, average approval times, permit caps, and planners' perceptions of the groups that wield the most political influence, as well as the main drivers of development regulation.¹⁶⁰ Jackson aggregated the sub-indices to create a stringency measure for each responding jurisdiction.¹⁶¹

Jackson found that the San Francisco Bay Area is the most stringently regulated region in California.¹⁶² Whereas Southern California is more likely to restrict the form of new development, the Bay Area tends to prohibit development outright.¹⁶³ Notably, Jackson also found that the variation in regulatory stringency between coastal and inland communities was not statistically significant.¹⁶⁴ One major variation between coastal and inland communities is affordable housing mandates and low-cost housing alternatives. Coastal jurisdictions, where housing is the most expensive, are more likely to have affordable housing mandates and are more likely to permit mobile home parks than inland communities.¹⁶⁵ Jackson also found that contrary to previous studies, regulatory stringency is not a proxy for supply elasticity.¹⁶⁶ Instead geographic constraints are a more appropriate proxy.¹⁶⁷

^{155.} Quigley, Raphael & Rosenthal, supra note 14, at 297.

^{156.} *Id.*

^{157.} Jackson, *supra* note 130, at 131. The responding jurisdictions comprised more than ninety percent of California's population.

^{158.} *Id.* at 133.

^{159.} Id. at 142.

^{160.} Id. at 143.

^{161.} Id. at 132.

^{162.} Jackson, *supra* note 130, at 133.

^{163.} Id.

^{164.} Id. at 134.

^{165.} Id. at 145.

^{166.} Jackson, *supra* note 130, at 141.

^{167.} *Id.* Note that unlike Saiz who used GIS tools to measure geographic constraints. Jackson relies on planner's identification of "land supply" as a primary driver of land use regulation in the survey instrument.

c. Exploring supply constraints through the case study approach

Surveys focused within metropolitan regions or a single state may more effectively pinpoint the actual regulations that might constrain supply than national surveys. But even localized surveys cannot easily evaluate how laws are implemented at a project level. Mixed method case studies offer more insight. John Landis's 2000 report for the Department of Housing and Community Development ("HCD Landis Report") illustrates the value of case studies to explore land use regulations and residential development in California.

The HCD Landis Report is comprised of a case study of 46 housing developments approved between 1995-1997 in 31 cities and counties.¹⁶⁸ The authors selected the jurisdictions based on shared strong demand for housing, policies that were not anti-growth, and extensive experience processing high volumes of development applications.¹⁶⁹ The authors sent surveys to these preselected jurisdictions asking planners to identify a "typical" development in their community.¹⁷⁰ The authors next traveled to the community, reviewed and copied the case file for the typical development, sent the case file to the developer to make any needed corrections, and conducted in-person interviews to supplement any gaps in information.¹⁷¹

Landis found that the average approval time for the 24 single-family home case studies was 11 months, with each project subject to an average of 3.3 reviews.¹⁷² For multifamily units, this timeline shrunk to 6.7 months, with only 2.3 separate reviews.¹⁷³ One of these reviews was typically non-legislative—meaning the approval did not require a rezoning or a General Plan Amendment—such as design review or approval by a neighborhood group.

Notably, this work explored the role of CEQA on lag times.¹⁷⁴ Some results were unsurprising. For example, the type of CEQA review directly coincided with approval timeline, with average delays of three years and twelve continuances for EIRs.¹⁷⁵ But other results were surprising. Of the twenty-two

^{168.} JOHN D. LANDIS ET AL., RAISING THE ROOF: CALIFORNIA HOUSING DEVELOPMENT PROJECTIONS AND CONSTRAINTS 1997–2020, 95–96 (Cal. Dep't of Housing and Cmty, Dev. ed., 2000).

^{169.} Id.

^{170.} LANDIS ET AL., *supra* note 167, at 95. The authors specified a typical project in their survey instrument as: single or multi-family projects larger than 25 units; projects for which the review process had been fully completed; and projects that had experienced a typical approval process.

^{171.} Id. at 96.

^{172.} *Id.* at 101. The authors define 'review' as "the number of separate discretionary actions by the local planning commission, city council (or board of supervisors) or any other ... review body, such as a design review board."

^{173.} Id. at 107.

^{174.} Landis had specifically explored the role of CEQA in earlier work. See LANDIS, PENDALL, OLSHANSKY & HUANG, supra note 42.

^{175.} LANDIS ET AL., supra note 168, at 102. For a discussion of CEQA review, see Part I.A.2 supra.

multi-family case studies, only one project had to conduct an EIR.¹⁷⁶ Eight projects received NDs, six received MNDs, and six projects were processed under a tiered EIR from a prior Specific Plan.¹⁷⁷ In contrast, three single-family home projects conducted an EIR, twelve projects used a tiered EIR, and eight projects were issued NDs and MNDs.¹⁷⁸

This study's CEQA results have interesting implications for the overall planning process. A third of multifamily projects were processed under a Specific Plan, compared to two-thirds of single-family homes that went through the Planned Unit Development ("PUD") process.¹⁷⁹ The difference in approval times suggests that Specific Plans can significantly cut down on approval delays, although single-family home PUDs were approved much faster than re-zones or General Plan Amendments.¹⁸⁰ The case studies also suggested that certain jurisdictions were not complying with the California Permit Streamlining Act (Cal. Gov. Code § 65950 et seq.), which required all jurisdictions—including charter cities¹⁸¹—to approve projects within certain time windows.¹⁸²

Development selection for this case study limits the capacity for generalizations from the findings. First, the authors selected the jurisdictions based on their openness to new development, which likely skews the approval timeline, causing it to appear shorter. Second, the individual project case studies themselves were selected by local planners, who could import certain biases into the projects they recommend for analysis. Third, the study only looked at one project in each jurisdiction, limiting the ability to assess variance around the "typical" project.

Although the data is over twenty years old, and the contemporary development climate has drastically changed in the intervening years, the McKinsey Global Institute recently used the HCD Landis Report to predict the

182. LANDIS ET AL., *supra* note 168, at 108–09. For example, Negative Declarations must be adopted within 180 days from when the project application is accepted as complete, with certain extensions acceptable for applicant delays. CAL. PUB. RES. CODE § 21151.5 (1997); CEQA GUIDELINES § 15107 (2010). A Final EIR must be certified within one year of the project application's acceptance as complete. CAL. GOV'T CODE § 6595 (1985).

^{176.} Id.

^{177.} Id.

^{178.} *Id.*

^{179.} *Id.* Planned Unit Development (PUD) in California refers to a zoning classification and a type of development that is intended to provide cities a degree of flexibility not typical of "conventional" zoning by, for example, permitting development of differing form and uses on a single or associated parcels. The definition and operation of the PUD will vary considerably depending on the city and local ordinance. *See* KOSTKA, *supra* note 19, § 7.40. The cities we studied, discussed in Parts II, III and IV, illustrate its diverse meaning at the local level. A PUD in San Jose, for example, always requires a re-zoning followed by a second permit that solidifies the design requirements. SAN JOSE MUN. CODE § 20.120.110 (2013). PUDs in Palo Alto—called Planned Community Districts—also require a rezoning but not a subsequent permit. *See* PALO ALTO MUN. CODE § 18.38.065 (2014). But a Planned Unit Development in Oakland, San Francisco, and Redwood City operates much more like a conditional use permit. *See* S.F. MUN. CODE § 304; REDWOOD CITY MUN. CODE § 46.1–46.7 (2005); OAKLAND MUN. CODE § 17.142.004.

^{180.} LANDIS ET AL., supra note 168, at 102.

^{181.} CAL GOV'T CODE § 65921 (1977).

costs of current land use approval processes and the monetary benefits of reform.183 Basing these projections on the HCD Landis Report as well as undisclosed expert interviews, McKinsey estimated the current approvals process at six months for simple projects and more than three years for complex projects.¹⁸⁴ The McKinsey study found that shortening the approval process in California could reduce the cost of housing by more than \$12 billion through 2025 and accelerate project approvals by an average of four months.185 The most significant gains of improving land use processes would accrue to projects that require a zoning change or a General Plan Amendment and projects that require an EIR.¹⁸⁶ Savings to projects undergoing streamlining under a Specific Plan are minimal, indirectly suggesting that streamlined approval processes are working efficiently.¹⁸⁷ McKinsey likely drew those last conclusions directly from Landis's study, which found that amongst the case study projects, use of long-term planning like Specific Plans reduces delay.188 These results suggest that jurisdictions should consider investing in Specific Plans that enable streamlined review for discretionary projects and/or ministerial approvals.¹⁸⁹ These results also suggest that land use regulations may be stringent but still efficient in terms of approval times when there is a comprehensive plan for future growth in place.

Remarkably, although developers frequently refer to CEQA as "the third rail of California politics,"¹⁹⁰ current empirical research into how CEQA constrains supply continues to be fairly limited. The California Legislative Analyst's Office ("LAO") has identified CEQA as a culprit in delaying or reducing residential construction in the state.¹⁹¹ The LAO conducted an independent review of CEQA documents submitted to the state between 2004-2013 and found that agencies took 2.5 years to approve a project-specific EIR.¹⁹² While this figure includes nonresidential projects that could potentially provoke more controversy, it is not inconsistent with the findings of the BLURI survey. But as noted in the Landis

 MISCHKE ET AL., supra note 183, at 28. The report does not define a simple or complex project.

190. Bill Allen & Maura O'Connor, CEQA: That 70's Law, L.A. TIMES (Mar. 30, 2011), https://perma.cc/9GS9-VVWK.

^{183.} See e.g., Jan Mischke et al., A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025, MCKINSEY & COMPANY 28–29 (Oct. 2016); CAL DEPT. HOUSING & CMTY. DEV., CALIFORNIA'S HOUSING FUTURE: CHALLENGES AND OPPORTUNITIES (2017).

^{185.} Id. at vi.

^{186.} *Id.* at 28–29 (2016) (finding that improving approvals for zoning or general plan amendment projects would reduce the timeline from 9 to 6 months, or about thirty-three percent. Improving the process for EIRs would reduce the timeline from 21 to 15 months, or about thirty percent). McKinsey also used undisclosed expert interviews in reaching these conclusions. *See id.* at 28.

^{187.} Id. at 28-29.

^{188.} LANDIS ET AL., *supra* note 168, at 110 ("[T]wo-thirds of the single-family case studies were processed as part of a pre-approved specific, community, or area plan [F]or many of the reviewed projects, the most onerous, time-consuming, and controversial part of the development approvals process had already been completed.")

^{189.} MISCHKE ET AL., *supra* note 183, at 29–30.

^{191.} See LAO REPORT, supra note 5, at 15.

^{192.} Id. at 18.

study and as discussed below, an EIR is not the only CEQA outcome.¹⁹³ In 2016, BAE Economics published a study that concluded that no evidence supported arguments that CEQA was a barrier to development (defined to include more than housing), examining four development projects involving environmental review and finding that direct environmental review costs ranged from .025 to .05% of total project costs.¹⁹⁴

In summary, the relevant research on the relationship between regulation and housing costs has found a strong connection, but that research has relied on inferences drawn from the gap between construction costs and sales prices or on surveys of planners and other stakeholders about their understanding of the regulatory process. While some research uses mixed method case studies, the methods still limit generalizability. Overall, the research has also found correlations between high-income levels and property values with regulation, significant variation across jurisdictions in terms of regulatory frameworks and stringency, high levels of complexity in the land-use regulatory process, and possible benefits for facilitating approvals through the use of specific or neighborhood-level planning processes.

2. Understanding land use regulation as a tool of exclusion

Another important line of research examines whether stringency in land use regulation is associated with racial and/or economic exclusion, which in turn can contribute to spatial inequality.¹⁹⁵ For example, using income and racial segregation data and the Pendall 2006 land use survey, Rothwell and Massey in 2010 found a strong relationship between density and income segregation.¹⁹⁶ The higher a metropolitan area's density score, the lower the degree of class segregation.¹⁹⁷ These findings support the exclusionary suburb paradigm, in which wealthy suburbs use zoning to maintain low-density development that effectively excludes low-income people and minorities.¹⁹⁸

196. Jonathan T. Rothwell & Douglas S. Massey, *Density Zoning and Class Segregation in U.S. Metropolitan Areas*, 91 Soc. Sci. Q. 1123, 1123 (2010).

^{193.} MISCHKE ET AL., *supra* note 183, at 28–39.

^{194.} Janet Smith-Heimer et al., CEQA in the 21st Century, ROSE FOUND, FOR COMMUNITIES & THE ENV'T (2016).

^{195.} We define spatial inequality to refer to scholarly work that finds that where a person lives may limit a person's access to economic, educational, and quality housing opportunities, and may impact health and life outcomes. This incorporates research that explores racial residential segregation, exclusion, and gentrification.

^{197.} *Id.*

^{198.} See John Mangin, The New Exclusionary Zoning, 25 STAN, L. & POL'Y REV, 91, n.2 (2014). ("Decades of scholarship—legal and sociological—outline how these policies left low-income families stranded in faltering cities whose abandonment by suburban homeowners-to-be at least left behind a large supply of low-cost housing") (citing FISCHEL, supra note 92); Richard Briffault, Our Localism: Part I—The Structure of Local Government Law, 90 COLUM, L. REV. 1 (1990); Robert C. Ellickson, Suburban Growth Controls: An Economic and Legal Analysis, 86 YALE L. J. 385, n.3 (1977); see also S. Burlington Cty. NAACP v. Twp. of Mount Laurel (Mount Laurel II), 456 A.2d 390 (N.J.

Spatial inequality, however, is not limited to exclusive suburbs within metropolitan areas. Gentrification within central cities, for example, is associated with segregation, exclusion, discrimination,199 and the displacement of low-income communities.200 Discussing spatial inequality thus requires consideration of exclusionary strong-market cities201 and the growing suburbanization of the poor.202 One theory (built on prior legal and economic studies) about exclusionary zoning within the strong market central city might explain the persistence of spatial inequality as more affluent populations move into formerly low-income neighborhoods: Demand for development controls increases as cities become denser and richer, evidenced by the tightening of development controls as affluent individuals return to cities, reversing decades of urban flight. 203 Gentrification, under this theory, would stem from the gradual tightening of restrictions that reflect the preferences of newly arrived affluent urban workers who prefer wealthier established neighborhoods that disallow new development and who flock to the lower-income neighborhoods adjacent to these wealthy anti-development areas, driving up the rents and disrupting the normal filtering process.²⁰⁴ This theory of

200. See The Urban Displacement Project, *Executive Summary* (2015) (using statistical analysis of demographic and land use datasets to find that "more than half of low-income households, all over the nine-county region, live in neighborhoods at risk of or already experiencing displacement"); *but see* Lance Freeman, *Displacement or Succession*, 40 URB, AFF, REV. 463, 467 (2005) (using longitudinal survey data to find that "there is relatively little in the way of persuasive empirical evidence that suggests [that displacement] is indeed how gentrifying neighborhoods change")

201. See HUTSON, supra note 87, at 13–14; Been. supra note 89, at 219–23 (discussing the scholarly works exploring exclusionary zoning within cities); MANGIN. supra note 197.

202. Elizbeth Kneebone & Emily Garr, *The Suburbanization of Poverty: Trends in Metropolitan America. 2000 to 2008*, BROOKINGS INST. (2010) (finding that "while poverty has grown on the whole, the most recent data also make clear that American poverty is becoming an increasingly suburban phenomenon").

203. MANGIN, supra note 198, at 92.

204. *Id.* at 95. Filtering is a theory based on supply-side solutions to the inadequate supply of affordable housing stock, in which the construction of middle- to upper-quality housing stock opens up opportunities for lower-quality housing stock as middle to upper-income households occupy better housing. *See* William C. Baer & Christopher B. Williamson, *The Filtering of Households and Housing Units*, 3 J. OF PLAN. LITERATURE 127, 128–29 (1988). However, economists have noted that filtering may be an inefficient tool to support increased housing for low-income households in markets with high development costs. In such contexts, any gains in affordable housing stock might be accompanied by harms associated with downgrading and abandonment of neighborhood environments providing the low-income housing stock. *See* Galster & Rothenberg, *Filtering in Urban*

^{1983):} S. Burlington Cty. NAACP v. Twp. of Mount Laurel (Mount Laurel I), 336 A.2d. 713 (N.J. 1975). *See also* BEEN, *supra* note 89, at 218.

^{199.} See generally john powell, Sprawl. Fragmentation, and the Persistence of Racial Inequality, in URBAN SPRAWL: CAUSES, CONSEQUENCES, AND POLICY RESPONSES, 104–15 (Gregory D. Squires ed., 2002); Elvin K. Wyly & Daniel J. Hammel, Gentrification, Segregation, and Discrimination in the American Urban System, 36 ENV'T AND PLAN, A, 1215–39 (2004) (finding evidence of intensified discrimination in lending and exclusion in gentrified neighborhoods).

exclusionary zoning in central cities influences current legal research in this arena.205

Based on this theoretical framework, by opposing market-rate development in their neighborhoods and rejecting a supply-side solution to the gentrification problem, some anti-gentrification advocates, community development, and affordable housing practitioners may be working against their own interests.²⁰⁶ The author did not propose inclusionary housing incentives as a response to the exclusionary zoning within the central city but suggested reducing regulation incrementally—particularly aesthetic and historical preservation.²⁰⁷ Easing local control over land use and supporting a supply-side solution (even for market-rate development) to gentrification and displacement is a dominant theme in California's public policy debate and public discourse about potential solutions to the housing crisis, but it is not without controversy.²⁰⁸

For some, the term "exclusionary zoning" suggests that the remedy would be more permissive density. But a 2015 study suggests a more complex problem.²⁰⁹ Comparing land use stringency data from the WRLURI survey with a segregation index, Lens and Monkkonen found that the overall WRLURI score—a measurement of local regulatory stringency—did not correlate with income segregation, which suggests that not all land use regulations contribute to class

206. See MANGIN, supra note 198, at 93–94. Others have made similar arguments but acknowledge the methodological challenges of determining whether increasing supply contributes to increased housing costs. See Vicki Been, Ingrid Gould Ellen & Katherine O'Regan, Supply Skepticism: Housing Supply and Affordability, NYU FURMAN CTR (Draft Oct. 26, 2017), https://perma.cc/YDU7-PJNX; see also Been, supra note 89, at 244–45.

207. MANGIN, supra note 198, at 119-20.

The Yes In My Backyard (YIMBY) movement is an example. See Let's End 208. California's Housing Crisis: Support SB 827 – Sen. Wiener's Transit Rich Housing Bonus Bill, CAL, YIMBY (Oct. 27, 2018), https://perma.cc/J5LA-3G6A; see also LAO REPORT, supra note 5 (using data from The Displacement Project to conclude that increasing supply of market-rate housing would curtail displacement of low-income households); but see Miriam Zuk & Karen Chapple, Housing Production, Filtering and Displacement: Untangling the Relationships, BERKELEY IGS RES. BRIEF (May 2016), https://perma.c c/SJX5-YP3S (responding to this report and offering a more nuanced analysis: the data showed market-rate and subsidized housing reduce displacement pressures at the regional level, but not at the block level, at least not in San Francisco, and that market-rate production is associated with higher housing costs for low-income households, but lower median rents, in subsequent decades). See also Miriam Zuk, Ian Carlton, & Anna Cash, SB 827 2.0, What are the implications for communities in the Bay Area? THE URB. DISPLACEMENT PROJECT (Oct. 1, 2018) https://perma.cc/3H9A-AJKT (finding that the SB-827 proposal, to reduce discretionary review of certain types of infill development near transit, would have resulted in a six-fold increase in feasibility of market-rate housing in affluent areas, and a seven-fold increase in inclusionary housing in moderate income areas, but that 60% of the financially feasible development was located in gentrifying or low-income areas, and over 65% of residential demolitions for development would have occurred in these neighborhoods).

Housing: A Graphical Analysis of a Quality-Segmented Market, 11 J. OF PLAN., EDUC. & RES. 37, 48–49 (1991).

^{205.} See e.g., Been, supra note 89. at 222; Wendall Pritchett & Shitong Qiao, Exclusionary Megacities, 91 S. CAL, L. REV. 34 (2018) (forthcoming).

^{209.} LENS & MONKKONEN, supra note 129, at 12.

segregation.²¹⁰ Density restrictions are strongly correlated with income segregation and seclusion of the super elite.²¹¹ But the correlation was equally strong for jurisdictions that mandated high minimum densities as well as those that kept densities low.²¹² Understood within the context of the Rothwell & Massey work, this suggests that other restrictive forces are at play even in areas with permissive density—like central cities. Notably, income segregation is higher where local governments are more involved in entitlement approvals and communities put more pressure on the government to control growth²¹³ and lower in places with a higher degree of state involvement in local planning decisions.²¹⁴ Jurisdictions that require multiple levels of government approvals to build are more segregated.²¹⁵ Finally, the authors observed higher levels of income segregation in MSAs with central cities that regulate land use more stringently than surrounding suburbs.²¹⁶ The authors concluded that inclusionary incentives and reduced local control might be the most effective at reducing segregation.²¹⁷

There is little research that aims to identify *which* land use regulations may be contributing to exclusion within cities generally, and insufficient recent research that focuses specifically on California.²¹⁸ There are two recent reports that explore the role of CEQA litigation as a tool to block infill development, although both examine CEQA's impact on more than housing development. In 2015, the law firm Holland & Knight produced a widely circulated report analyzing all CEQA litigation in the past fifteen-year period and found that eighty percent of CEQA litigation in the past fifteen years targeted infill development.²¹⁹ While scholars have criticized this report for its overly inclusive definition of infill development, ²²⁰ this observation finds some support in earlier studies that found most CEQA litigation to occur in large cities.²²¹ Although it does not focus

218. Anika Singh Lemar, Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics, 90 IND. L. J. 1525. 1563 (2015). Lemar, for example, explored the use of aesthetic regulations within walkable "conservation neighborhoods" with close proximity to the urban center and transit—specifically conservation districts— to constrain supply, but none within California. Lemar posits that urban residents are using conservation districts as a new public law form of private Covenants, Conditions, and Restrictions ("CC&Rs")—a hypothesis she finds support for in factual findings from published state opinions. Unlike CC&Rs, however, which must be adopted unanimously, a vocal minority of the neighborhood can organize to form a conservation district.

219. Jennifer Hernandez, David Friedman & Stephanie DeHerrera, In the Name of the Environment, HOLLAND & KNIGHT (2015).

220. See Sean Hecht, Anti-CEQA Lobbyists Turn to Empirical Analysis, but are Their Conclusions Sound?, LEGAL PLANT (Sept. 28, 2015), https://perma.cc/B7P3-7MB8.

221. See LANDIS, PENDALL, OLSHANSKY & HUANG, supra note 42, at 110-11 (1995).

^{210.} Id. at 11.

^{211.} *Id.*

^{212.} *Id.* at 11–12.

^{213.} LENS & MONKKONEN, supra note 129, at 12.

^{214.} Id.

^{215.} *Id.*

^{216.} *Id.*

^{217.} Id. at 11-12.

exclusively on housing development, it appears consistent with the observations of Mangin 2014 and Lens & Monkkonen 2016 that dense cities are using land use regulation as an exclusionary tactic. The 2016 report from BAE Economics, however, found low rates of litigation and infrequent use of EIRs.²²²

C. How the limits of past research make it challenging to inform proposed legal reform

Past research tells us that stringency in land use regulation is correlated with certain outcomes—be it reduced housing supply and increased housing costs, or increased income segregation and spatial inequality. But it does not establish causation, nor does it identify which land use regulations, specifically, are correlated with these outcomes. It may be that increasing housing supply across multiple income levels or redressing spatial inequality within our urban communities is not as simple as drastically reducing regulation. And yet proposed legal reforms continue to target process, advancing solutions like reducing the number of approvals, more state oversight over local zoning decisions,²²³ and CEQA reform.²²⁴ Each of these elements of process serve important goals, like open government, public participation, and disclosure and mitigation of potential environmental harms. If we are uncertain which element of process increases

^{222.} See JANET SMITH-HEIMER ET AL., supra note 194. A much earlier study used a survey and found that responses indicated CEQA litigation is relatively rare, with fifty-eight percent of the responding communities reporting no CEQA litigation between 1985-1990. See LANDIS, PENDALL, OLSHANSKY & HUANG, supra note 42, at 90. Eighty percent of jurisdictions reported zero or one lawsuits within that five-year timeframe. The authors estimated that across California, there is one lawsuit per 354 CEQA reviews. Attempts to find demographic variables driving the variation across communities were unsuccessful: the only statistically significant correlation showed that CEQA litigation is more common in larger cities, in white-majority cities, and in Democratic-majority cities. But this data predates recent CEQA streamlining initiatives as well as case law that made business, rather than environmental interests, casier to leverage. See e.g. Save the Plastic Bag Coalition 254 P.3d at 1011-12 where the California Supreme Court refused to apply the federal "zone of interests" test for CEQA litigation.

^{223.} For example, decisions at the state-level—although perhaps less biased towards local political power players—could take much longer than decisions at the local level. *See e.g.*, FISCHEL, *supra* note 5, at 276 (regional governance structures in Oregon and Washington have had mixed results, and New Jersey Mt. Laurel Fair Share requirements have failed to yield integrated demographic mixes). Research shows that Massachusetts Chapter 40B has been effective, although it is difficult to disentangle the coercive threat of state action with local incentives to construct affordable housing. *See* Carolina K. Reid, Carol Gallante & Ashley F. Weinstein-Carnes, *Borrowing Innovation, Achieving Affordability: What We Can Learn from Massachusetts Chapter 40B*, TERNER CTR, FOR HOUSING INNOVATION (2016).

^{224.} See Dan Walters, Brown Talks CEQA Reform, but Hasn't Done It, CALMATTERS (Aug. 2, 2018) https://perma.cc/EF2X-VD2Y (discussing Governor Brown's call for comprehensive CEQA reform). Moderate reforms have succeeded in the legislature. See e.g., A.B. 2341 2017–2018 Leg., Reg. Sess. (Cal. 2018) (reducing significance of certain aesthetic impacts); A.B. 2782 2017–2018 Leg., Reg. Sess. (Cal. 2018) (allowing an EIR to discuss non-environmental benefits of a proposed project).

housing costs, or exacerbates or contributes to segregation or gentrification, eliminating or curtailing process may sacrifice one set of policy goals without achieving another.

The research showing that permissive density does not equate with spatial equality is particularly troubling for California. California's signature housing legislation, the Housing Element of the General Plan, requires jurisdictions to plan for and zone for density to accommodate their portion of their regional housing need.²²⁵ In addition to well-noted problems, (for example, Housing Element law places no affirmative production requirement on the jurisdiction beyond rezonings),²²⁶ this model implicitly assumes that density is a proxy for affordability.²²⁷ As the most recent work around exclusionary central cities suggests, zoning for density does not necessarily result in opening up access to cities, as there are likely non-zoning barriers to development within exclusionary central cities.

More inquiry into how the land use approval process plays out within individual cities is therefore necessary to implement effective state-level reform. In essence, we are grappling with a series of local problems that have regional and statewide implications. Unlike surveys that often depend on generalizations across multiple jurisdictions and necessarily depend on perceptions of the regulatory process by the surveyed stakeholders, case studies can effectively unpack the local variation and the potential impacts of specific regulations within these local contexts and ground-truth actual outcomes of land-use regulatory processes. And because land use planning has changed over the past twenty years, current data that reflects these changes is needed to explore these issues.

Part II: Methods

Crafting effective and targeted policy interventions to promote equitable infill development requires understanding what legal barriers to increased housing production exist; what legal tools afford meaningful participation in land use planning; and how current development patterns are affecting affordable housing opportunities within TOD areas or areas receiving substantial transit investment. Our study seeks to address these issues by examining whether local land use law and/or environmental regulations governing infill development individually, or in conjunction, present significant obstacles to equitable infill development. Based on our review of existing research (discussed in Part 1) we hypothesized that:

^{225.} See CAL. GOV'T. CODE § 65583 et seq. The affirmative rezoning obligation only applies, however, if a jurisdiction has failed to meet certain obligations—for example, by failing to zone for sufficient sites to meet its share of the Regional Housing Needs Assessment (RHNA) for the prior planning period.

^{226.} Paul G. Lewis, California's Housing Element Law: The Issue of Local Noncompliance 10, PUB. POL'Y INST. OF CAL. (2003).

^{227.} Id. (finding that "cities with significant housing unit goals are left with ... rezoning existing neighborhoods for higher density housing").

- There are significant legal, planning, and regulatory barriers to advancing equitable infill development within transit-accessible neighborhoods in high cost coastal cities;
- 2. The most significant barriers will emerge in local land use regulations that limit or slow infill development in transit-accessible neighborhoods and *not* in state environmental regulation; and,
- State law aimed at incentivizing infill development in transit-accessible neighborhoods is applied differently (and sometimes ineffectually) within these local contexts.

Based in part on these descriptive hypotheses, we also began with a baseline hypothesis that future policies to advance state-level GHG reduction goals in a way that also promotes equitable infill development will require policy interventions that meet a number of important requirements, including (a) accounting for the heterogeneity of local regulations; (b) accounting for varied application of state streamlining provisions (or varied planning practice) in relationship to the political culture and revenue demands of the specific local context; and (c) either are (i) constructed at the local level to advance equitable infill development in transit-accessible locations; or (ii) are carefully targeted approaches to reducing local discretion over proposed infill development in transit-accessible locations that nonetheless protect the voice of vulnerable communities, minimize or prevent displacement of existing low-income residents, and ensure access to transit for future low-income residents. To test our hypotheses, we employed a case study approach that joins qualitative²²⁸ and legal research methods, employing overlapping phases of data collection and sequenced analysis.²²⁹

A. Choosing study sites: focusing first on the Bay Area

Our first phase of research involved selecting strong market charter cities²³⁰ of various sizes within California major metropolitan areas (specifically, urban core cities and first ring suburban communities) experiencing robust

^{228.} See JOHN W. CRESWELL, RESEARCH DESIGN: QUALITATIVE, QUANTITATIVE, AND MIXED METHODS APPROACHES, 185-204 (Vicki Knight et al. eds., 4th ed. 2014).

^{229.} See ROBERT K. YIN, CASE STUDY RESEARCH: DESIGN AND METHODS (SAGE Publications, Inc. 6th ed. 2014); BRUCE L. BERG & HOWARD LUNE, QUALITATIVE RESEARCH METHODS FOR THE SOCIAL SCIENCES 325 (Pearson ed., 8th ed. 2011).

^{230.} Charter cities within California enjoy some freedom to legislate at the local level over "municipal affairs" even if a conflict with state law may exist under Article XI, section 5 of the California Constitution. Although the California Constitution does not expressly define "municipal affair," land use and zoning are consistently classified as exempt from the planning and zoning provisions of the California Government Code, unless the city's charter indicates otherwise. *See e.g.* CAL. GOV'T CODE §§ 65803, 65860(d); City of Irvine, 30 Cal. Rptr. 2d at 799–800.

economic growth. The cities also needed to have transit accessibility or have capacity for TOD^{231} and be in high demand.²³²

We began our work within the Bay Area, with a focus on San Francisco and San Jose. In 2015, the California Legislative Analyst's Office attributed high housing costs statewide in large part to the lack of housing supply in California's coastal communities.²³³ This report identified the San Francisco-Metropolitan Division ("MD") and the San Jose-Sunnyvale-Santa Clara MSA as having the first and second highest housing costs in the state in 2015, respectively. Using American Community Survey data and California Department of Housing and Community Development's State Income Limits for 2017, we selected additional cities within the San Francisco-Oakland-Hayward MSA and San Jose-Sunnyvale-Santa Clara MSA using multiple criteria, including: demographic criteria, (population size, average household income, percentage of the population living in poverty, and area median income), land area, and population density.²³⁴ To be considered for the study, each city needed a minimum population of 50,000 people and a minimum land area of 7 square miles.²³⁵

We used California's Regional Housing Need Allocation ("RHNA")²³⁶ to steer us towards jurisdictions that have transportation and other infrastructure in place or planned, and can sustainably support increased housing supply²³⁷ including infill development.²³⁸ All of our first five selected cities face acute

232. MALO HUTSON, *supra* note 87, at 20: PAUL KNOX & LINDA MCCARTHY, URBANIZATION: AN INTRODUCTION TO URBAN GEOGRAPHY (Pearson, 3d 2012).

233. LAO REPORT, *supra* note 5, at 3.

234. Area Median Incomes, or AMI, are provided by California's Department of Housing and Community Development State Income Limits, which provides income eligibility criteria for affordable housing programs. *See generally*, Memorandum from Jennifer Seeger, Assistant Deputy Director Division of Housing Policy Development to Interested Parties (June 9, 2017), https://perma.cc/T9EU-AK4E.

235. Cities that are too small (in population or land area) may not provide enough data for any meaningful analysis.

236. RHNA is a goal of housing production that each jurisdiction within the state is mandated to achieve through the local jurisdiction's Housing Element of its General Plan.

237. Senate Bill 375 mandates that each of the state's 18 Metropolitan Planning Organizations develop a Sustainable Communities Strategy that links housing development with transportation investments. The Association of Bay Area Governments' (ABAG) Regional Housing Need Plan: San Francisco Bay Area 2014-2022, states its RHNA allocation methodology complies with SB-375 because it uses factors that "aim to expand housing and transportation options; increase access to jobs, particularly for low-income workers; and promote housing growth in places with high quality services, such as parks and schools... [with] a fair share distribution between large cities and medium cities with high job growth and transit access." *Regional Housing Need Plan for San Francisco Bay Area: 2014-2022*, ASS'N OF BAY AREA GOV'TS at 3, https://perma.cc/B2V6-9UCP.

238. We used the RHNA to identify areas with adequate infrastructure (or planned infrastructure) but are mindful of the potentially disparate racial impact of housing allocation. *See* Press Release, Haas Institute for a Fair and Inclusive Society, New Research Shows Racial Disparities in Bay Area Housing Allocation Methodology (Aug. 23, 2017), https://perma.cc/VRL8-BWED.

^{231.} PETER CALTHORPE, URBANISM IN THE AGE OF CLIMATE CHANGE (Island Press ed., 2d ed. 2010).

affordability issues, and all cities have complex land use approvals processes that typify the type of "stringent" regulation called out by existing research. Our first five cities were San Francisco, San Jose, Oakland, Redwood City, and Palo Alto.²³⁹

B. Analyzing the law: creating planning and development ordinance summaries

We first researched local ordinances and planning code provisions most relevant to residential/mixed use development approvals, starting with the most macro planning tools (the General Plan) and then drilling down to the micro level (use and development controls). We created a summary of planning and development controls in each jurisdiction, including permitted and restricted uses, height limitations within specific neighborhoods, maximum commercial and residential density and lot coverage, minimum parking requirements, exactions, and other dedication requirements. We also identified and cataloged all characteristics of local processes that would appear to increase affordable housing supply within the city, or preserve existing affordable housing, including inclusionary housing ordinances, local referenda to generate affordable housing supply. rent stabilization ordinances, anti-demolition ordinances, and neighborhood planning that taps into state-level streamlining initiatives. This step also identified the extent of a jurisdiction's "as of right" development-meaning development that does not require a discretionary permit from a local approval body. For the vast majority of developments that require a discretionary approval, these code summaries also helped identify general approaches to density and other building form controls that drive the discretionary approval process, the internal process for obtaining a building entitlement, and the extent to which cities use long term planning to expedite environmental review. These summaries informed development data collection, later analysis, and interview questions.

C. Analyzing the projects: building the entitlement database

After completing the planning code summary for a city, we built a database for each selected jurisdiction that allows us to analyze land use and environmental review requirements for residential developments along with important characteristics, such as time to entitlements completion and size. This process required an emergent design, and went through three iterations to address variation in data access across cities and newly available data.

1. Defining five or more residential units

We chose the five-unit threshold in order to capture projects that most impact California's housing and climate goals. The five-unit threshold does not

^{239.} We limit our findings in this article to these five cities, but are currently completing research within Los Angeles, Long Beach, Pasadena, and Santa Monica.

capture scattered site single-family homes, duplexes, or accessory dwelling units that are not developed as part of a larger development project. These scattered developments move through entitlement differently; they do not consistently present the type of dense infill development that can be the subject of the policy or political debate, and likely warrant their own research study.²⁴⁰

We have gathered data on single-family subdivisions or duplexes where they are part of a larger development that produces more than 5 units of housing because on net they are adding substantially more housing and density than what was there before (typically vacant or commercial land in our project years). This in turn, potentially advances housing supply and climate goals. For example, Oakland's mini lot ordinance allows a developer to subdivide a single lot to create "mini" lots that would not otherwise satisfy minimum lot requirements.²⁴¹ Developers in our data years used this process frequently to subdivide a lot that would normally only permit one or two single-family homes to create five or more single-family homes. This is an important process that significantly densifies neighborhoods.

We included all projects that contained an addition of five units to the housing stock. We did not net out demolished units from the new addition of units. Frequently, the exact number of units being demolished was not available, so for consistency, we chose to capture that the project would include demolition but disregard demolished units for the purposes of total unit count. For example, a proposal to demolish a duplex and replace it with a ten-unit building would be counted as ten units, not eight units, although we would also capture that the prior use was residential and involved demolition. If the proposal was to add five or more units to an existing residential development, we would not count the existing units in the total unit count. This would apply where there was a proposal to the convert commercial space to residential units in an existing mixed-use building, or build new units on a vacant portion of a residential site. These types of developments occurred infrequently in our database years.

We defined residential units broadly, encompassing live-work spaces, single room occupancy hotels, deed-restricted affordable housing, and student housing. We did not include facilities for the elderly dedicated to providing medical care or hospice care. We also did not include residential facilities constructed by hospitals to house patients' families.

^{240.} The entitlement processes for individual single-family homes and duplexes are quite different than for larger projects. Individual homes and accessory dwelling units go through more streamlined processes than larger developments, frequently because they don't require the land divisions that a larger single-family subdivision would require. *See infra* Figure 4: *see also* S.B. 1069, 2015-2016 Leg., Reg. Sess. (Cal. 2016); A.B. 2299, 2015-2016 Leg., Reg. Sess. (Cal. 2016) (streamlining approval processes for accessory dwelling units).

^{241.} OAKLAND MUNL CODE § 17.142.010.

2. Defining project years: 2014, 2015, and 2016

We included projects that received all the entitlements necessary to file for a building permit in 2014, 2015, and 2016. Entitlement includes any discretionary planning approval, including subdivision approvals.

We chose our project years in order to minimize impact from the Great Recession years, but many jurisdictions extended pre-Great Recession entitlements during our study years. We did not count entitlements that were extensions of prior approved projects in our database. Post-entitlement developer-initiated modifications present a related issue. Sometimes a developer will receive an entitlement and then seek to modify it months or years later. We do not include the modification in our time frame calculations because it may not be reflective of planning process or law, but instead external factors related to the developer. Some data related to the Great Recession impacts could not be excluded. San Jose frequently uses the PUD Process, which begins with a rezoning later follow by a Planned Development Permit. In some instances, the delay between the rezoning and the permit was many years. This might be related to the Great Recession, but without more data it was impossible to solely attribute the delay to economic circumstances.

For appealed projects, we used the date of the original approval and not the date the project was upheld on appeal. Some jurisdictions have large appeals dockets and appeals are not always heard within a certain statutory timeframe. We wanted to ensure we were measuring the planning process, not how long it takes to schedule and hear an appeal. That being said, we are analyzing timeframes for appeals resolutions that will be forthcoming in future publications.

For jurisdictions that bifurcate more than one project approval-San Jose for example-we use the earliest application date and the latest approval date to bookend the entire process. San Francisco also differs from the other Bay Area jurisdictions in two important respects. The San Francisco Planning Code gives the Planning Commission the power to hear an appeal of a building permit application.242 This process is known as Discretionary Review, and it was initiated for ten projects during our timeframe. Unlike the appeals process, Discretionary Review is internal to the approvals process in that it remains within the purview of the Planning Commission, as opposed to the Board of Supervisors or the Board of Appeals. The Planning Commission did not resolve Discretionary Review for six of these projects during our timeframe, which means none of them could have filed for a building permit in our project years. Thus, we could not include these projects in our final database. These projects are also small, 38 units on average, and highly unlikely to affect our overall data. Subdivision presents an additional issue. Unlike other jurisdictions that typically approve the Tentative Map (for both horizontal subdivision and condominium/airspace subdivision) concurrently with the underlying land use approvals, in San Francisco, we frequently observed Tentative Map approvals for condominiums that occurred months to years after the approval of the underlying entitlements. Unlike other jurisdictions where the Planning

^{242.} S.F. MUNI. CODE §§ 311(d); 312(e).

Department usually manages subdivision review, in San Francisco the Department of Public Works primarily manages the Tentative Map approval process.²⁴³ While Tentative Maps are an important part of the residential development process, we did not want to inflate planning approval timeframes due to factors outside the Planning Department's control. Thus for San Francisco, we only included subdivision approvals necessary to pull a building permit (for example, lot merger or horizontal subdivision) and not condominium maps that can be approved after obtaining a building permit. While projects that obtained condominium maps figure in our total approval counts, they do not factor into our overall approval timeframes.

San Francisco's response to the dissolution of the Redevelopment Agencies in 2011 also creates a distinct entitlement path that differs from the other selected jurisdictions.²⁴⁴ San Francisco designated a successor agency—the Office of Community Investment and Infrastructure ("OCII")—after the dissolution of the Redevelopment Agencies in 2011 to fulfill the former Redevelopment Agency's outstanding obligations.²⁴⁵ These obligations include development in redevelopment areas like Mission Bay, Transbay, and Bayview Hunters Point.²⁴⁶ This entity is legally distinct from the City of San Francisco.²⁴⁷ OCII approves the entitlement of new developments within these plan areas pursuant to protocols

^{243.} See S.F. Department of Public Works, Subdivision Regulations § IV(D)(2015) (describing that once Planning issues the CEQA determination, "the Director of Public Works shall approve, conditionally approve, or deny the application within 50 days ...").

^{244.} The Community Redevelopment Act gave local governments the authority to declare areas as blighted and in need of urban renewal, which enabled the city or county to distribute most of the growth in property tax revenue for the project area to the relevant Redevelopment Agencies as tax-increment revenues. *See* CAL. HEALTH & SAFETY CODE §§ 33020 et seq. In 2011, the California legislature dissolved the Redevelopment Agencies. *See* A.B. X126, 2011-2012 (Cal. 2011). Dissolution has severely constricted local governments' ability to finance affordable housing. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* 7 (Working Paper No. EMAD-2014-01, 2014). https://www.huduser.gov/portal/publications/Redevelopment_WhitePaper.pdf (estimating a statewide average annual loss of 4,500 to 6,500 new affordable units).

^{245.} San Francisco, Cal., Ordinance 11-12 (Jan. 26, 2012) (resolution transferring Redevelopment assets to successor agency); San Francisco, Cal., Ordinance 215-12 (September 25, 2012) (resolution designating Office of Community Investment and Infrastructure as successor agency).

^{246.} See Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* 2, https://sfocii.org/sites/default/files/2017% 20ANNUAL%20REPORT%20-%20FY%2016%20-17%20FINAL.pdf. Outstanding obligations include the major approved developments in Hunters Point Shipyard/Candlestick Point, Mission Bay North and South and Transbay; disposition of former Redevelopment assets; and ensuring the development of affordable housing in the major approved developments.

^{247.} See San Francisco, Cal., Ordinance 215-12 §3 (September 25, 2012).

outlined in each plan area document.²⁴⁸ OCII also utilizes remaining tax increment funds within the plan areas to fund affordable housing development.²⁴⁹

The OCII approval process differs from projects approved through the Planning Department. The process varies depending on the Redevelopment Area, but generally OCII in partnership with a horizontal developer—which can be a public or private entity—selects the vertical developer for each parcel within the plan area.²⁵⁰ Once the developer is selected, the developer submits a Basic Concept Plan that is responsive to the highly prescriptive design standards set forth in the area plan.²⁵¹ After approval of Basic Concept Plan, the developer submits for Schematic Review, which the agency must approve within 45 days of its submission.²⁵² In approving the schematic design, OCII makes CEQA determinations based on the master EIR for each Redevelopment Area.²⁵³

249. See Office of Community Investment and Infrastructure, Affordable Housing Production Report Fiscal Year 2016-2017 2.

^{248.} See generally. San Francisco Office of Community Investment and Infrastructure, Mission Bay North Design Review and Document Approval Procedure. https://sfocii.org/sites/default/files/FileCenter/Documents/771-DRDAP%20MBN.pdf; San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure, https://sfocii.org/sites/default/files /FileCenter/Documents/772-DRDAP%20MBS.PDF.

^{250.} A horizontal developer builds out all the required infrastructure for a development; the vertical developer constructs the improvements. See e.g., Transbay Redevelopment Project Implementation Agreement 3, https://sfocii.org/sites/default/files/FileCenter/Documents/4039-TB%20Implementation%20Agreement_5.2006Fully%20Exe cuted.pdf ("Under the Cooperative Agreement, City and Authority title to the State-Owned Parcels is subject to a deed restriction requiring that any such parcel may be sold for development only when" certain financial conditions are met); First Amendment to Mission Bay South Owner Participation Agreement (Feb. 17, 2004), https://sfocii.org/sites/default/files/FileCenter/Documents/4089-15%20MBS%20OPA%20 Amendments%201%262.pdf (detailing obligations of Redevelopment Agency and Master Developer for Mission Bay South).

^{251.} San Francisco Office of Community Investment and Infrastructure. Mission Bay South Design Review and Document Approval Procedure 7-10; https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF. These prescriptive design standards are known as the "Design for Development."

^{252.} See e.g., San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure 7-9, https://sfocii. org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF.

^{253.} San Francisco Office of Community Investment and Infrastructure, Mission Bay South Design Review and Document Approval Procedure 3, https://sfocii.org/sites/default/files/FileCenter/Documents/772-DRDAP%20MBS.PDF.

OCII is approving a substantial number of units,²⁵⁴ including the majority of San Francisco's affordable housing units.255 Our calculations in this paper do not include this process for several reasons. First, within our selected jurisdictions, no other successor agency is approving residential development entirely outside the jurisdiction's Planning Department. Omitting this pipeline of units enables us to provide a comparison of planning and entitlement processes by type and number of approvals; the OCII process would be a standalone process within our analysis. Second, this process is slowly being discontinued. By law, successor agencies cannot continue beyond the current redevelopment plan areas; redevelopment dissolution law requires obligations to sunset once the outstanding obligations are fulfilled.256 Finally, these projects are not tracked within the Planning Department, and OCII has more limited data tracking than the Planning Department, so the type of data required to attempt analysis (in terms of number of total units entitled, number of approvals and timelines) is unavailable.257 OCII's unique approval process will, however, be discussed in future publications as we continue to gather the required data, as it may be an example of expeditious approvals of affordable housing development that should be contemplated (even as redevelopment is being discontinued).

Phased projects present an additional complexity for measuring project time frames. Most notably Oakland entitles many projects under a single master EIR and Development Agreement that is phased over many years; in some cases phased projects crossed decades. Prior to filing for a building permit for each phase, the developer must obtain final design review from the City. For these projects, we did not measure the entire process from the date of the application for the master EIR and Development Agreement because the project was intentionally designed to be phased. In other words, the delay is not a product of law or planning process but rather market economics. This is consistent with the way we measure

^{254.} See San Francisco Office of Community Investment and Infrastructure, Transbay Neighborhood (Transbay Project Area), https://sfocii.org/sites/default/files/T B%20Project%20Area%20Summary%20Sheet%20010418.pdf (stating that the Transbay redevelopment plan will lead to 4,150 new housing units, 35% of which will be affordable); San Francisco Office of Community Investment and Infrastructure, Bayview Hunters Point Redevelopment Projects and Rezoning FEIR Summary S-3, https://sfocii.org/sites/default/ files/ftp/uploadedfiles/Projects/BVHPFEIRSum.pdf (estimating 3,700 net new units in the Bayview plan area); See San Francisco Office of Community Investment and Infrastructure, Mission Bay, https://sfocii.org/mission-bay (stating Mission Bay redevelopment area will produce 6,404 new housing units, 1,806 of which are affordable).

^{255.} See Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* 4 (noting that 552 funded affordable housing units and 51 inclusionary units were completed in fiscal year 2016-2017).

^{256.} See Cal. Health & Safety Code § 34179.7 (specifying final conditions for completion of enforceable obligations and Redevelopment dissolution).

^{257.} The data is unavailable primarily because the current data tracking system in San Francisco tracks planning entitlements not approvals from OCII. Although overall production counts are available for these redevelopment plan areas, additional work is needed to identify timelines and to disaggregate approvals on annual basis. We note that San Francisco has worked to make all relevant data points available to facilitate future comparative analysis of housing production.

time frames for projects entitled under a Specific Plan—the developer's entitlement application kicks off the entitlement process, not the adoption of the Specific Plan.

Finally, some developers will obtain a project approval and later withdraw it, with the intent of filing for a new application. Despite the fact that this approval was later withdrawn, we still count the entitlement in our database because it successfully completed the planning process, regardless of whether it will ever be built.

3. Extracting the project data

To collect this data, we reviewed a jurisdiction's website to see what information could be readily obtained by reviewing public notices for all environmental review documents, lists of approved developments, parcel information maps, among other relevant information. We also searched property addresses within a jurisdiction's database to gather parcel-level information, such as lot size, census tract, and assessor data. To obtain information on property tax assessment and land transaction records, we searched by street address in Lexis/Nexis Public Records. We tracked any obvious holes in the data to confirm with planning department staff, and in some cases, we requested additional data through public records requests.

To analyze how each residential development of five or more units navigated the entitlement process, we gathered approximately twenty-five characteristics per development, relating to current site usage, proposed project characteristics, types of entitlements and environmental review, and approval timeline, including appeals. Where projects received more than one entitlement, we noted all entitlements, which is why the total land use approvals per jurisdiction are far greater than the number of projects. Similarly, many jurisdictions processed projects under more than one CEQA pathway—combining multiple project-based exemptions or a project-based exemption with review that tiered off a prior document. Depending on the accessibility of public data, these characteristics are drawn from project approval documents, zoning geographic information systems ("GIS"), tax assessor records, and city council and planning commission meeting minutes. This data revealed how local governments apply their planning code and other relevant ordinances at a micro level.

We entered this project specific data into an excel spreadsheet, retaining assigned project identifiers, all original descriptors, dates, and all unit counts. We then assigned a numeric code to specific project characteristics, use of local land use processes, and types of environmental review documents/exemptions to enable analysis of timeframes and frequency of certain approval types. To determine timeframes, we counted days from the application file date through the approval of the last discretionary entitlement, and then converted them into months by dividing by 30.5.

To provide a comprehensive assessment of all litigation against the entitled development projects of five or more units, we searched state and county records to identify all writs filed against each of our selected cities in the timeframe of 2014 through 2017. We then pulled the records associated with litigated projects of five or more residential units entitled during our study period.

To spatially analyze this data, we mapped all city boundaries using data available from the city (San Francisco, Oakland) or Stanford's Digital Repository (San Jose, Redwood City, Palo Alto). Mapping of San Francisco plan areas uses GIS data from the San Francisco Planning Department. Area plan polygons for Redwood City, Oakland, and San Jose use georeferencing planning documentation maps to street centerline data for each municipality. BatchGeo provided geocoding for project addresses.

Figure 2: Project Characteristics



We then conducted initial analysis of our residential development database to identify possible entitlement patterns and inform the scope of interviews. We identified the land use characteristics that appeared to be associated most frequently with protracted development approval timelines, as well as the development characteristics that appeared to be associated with contentious approvals processes. This analysis yielded potential patterns of either accelerated timelines, protracted timelines, or contentious approval processes for residential development within certain areas.

We supplemented gaps in available online data with requests to planning staff officials. After the publication of our first working paper in February 2018,²⁵⁸ San Francisco Planning Department provided us with more data, which enabled us to add ten developments that were not previously in our database. While

^{258.} Moira O'Neill, Giulia Gualco-Nelson & Eric Biber, Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process (Working Paper Feb. 2018), https://perma.cc/P68H-XY5E.

researching appeals, we discovered another large discrepancy with Oakland, which led us to add twenty-three new developments to our database that were not available to us when performing our initial search. Still, for reasons described in Part III, Oakland data access is limited. Of the ninety total developments in Oakland, we were only able to obtain final approval documents for forty-nine of these developments. San Jose also dropped two projects since the time of our prior paper due to duplicate projects that had separate entitlements filed under different addresses. While these new projects influenced the entitlement rates in these jurisdictions, they did not significantly alter our findings.

D. Diving deeper into local context: in-depth interviews with key informants

To explore how law is applied in ways that project-level data could not, alone, reveal, we conducted in-depth interviews with key informants from each jurisdiction we chose to study. Building on our professional expertise in the field of land use, we used purposive sampling²⁵⁹ to generate a list of potential participants across four stakeholder groups across all five cities: (1) public agency staff (including local planning staff, housing and community development staff, and city attorneys), (2) developers (market-rate and non-profit affordable), (3) community-based organizations and advocates, and (4) consultants (design, legal, and entitlement).²⁶⁰ We identified seventy potential interview participants through examination of websites, professional reports, and project-level data. We successfully recruited twenty-nine participants for in depth interviews, with at least one participant within each stakeholder group and within each city. Some participants sat for more than one interview and had more than one role, which is why the totals do not add up to twenty-nine.

^{259.} Although not engaging with a survey tool, we wanted to make sure that the participants were in some way representative of both stakeholders that directly interact with entitlement processes and stakeholders engaged with local-level policy reform that directly influences entitlement processes within these five cities. We therefore considered various forms of "sampling" used in survey methods when constructing our research design. *See Purposive Sampling*, in ENCYCLOPEDIA OF SURVEY RESEARCH METHODS (Paul J. Lavrakas ed., 2008), http://methods.sagepub.com/reference/encyclopedia-of-survey-research-method s/n419.xml.

^{260.} In some cases, a single participant could represent more than one stakeholder group. In some instances, individuals we interviewed worked in, or for, two or more of the cities within our group of five.

	Public Agency Staff	Developers	Community- Based Organizations /Advocates	Consultants	Total
San Francisco	3	4	2	3	12
San Jose	3	2	3	4	12
Oakland	3	3	2	1	9
Redwood City	3	3	3	2	11
Palo Alto	3	3	3	4	13
Total	15	15	13	14	57

Figure 3: Research Interviews by Category

We conducted semi-structured interviews²⁶¹ with open-ended questions to collect perceptions of: the jurisdiction's approvals process, land use taxonomies that contribute most to delays and cost, the role of community in the public approvals process, social-economic-political factors that shape development patterns including important context (such as the local political climate and community tensions at play), and technical details not immediately obvious in the development data. We concluded interviews by sharing preliminary findings from our datasets with participants to gather feedback.

We transcribed our interviews verbatim and used open coding²⁶² to identify themes that emerged from the interviews. We then analyzed the interviews to identify perceptions about both local and state-level obstacles to advancing equitable infill development and whether proposed (and relevant) statewide legislative action might succeed in reducing time lags caused by local regulatory processes and the potential trade-offs (if any) of reducing those time lags. We then triangulated the data from our planning and development code summaries and development database (including identified patterns within the project-level data) with the themes emerging from interviews to test potential explanations of patterns and themes that we extracted from the interviews.

^{261.} See BERG & LUNE, supra note 229, at 112–14.

^{262.} See BERG & LUNE, supra note 229, at 364-72.

Part III: Findings

While our research continues, and we will be adding jurisdictions to our data set, we can provide an overview of completed research within our first Bay Area jurisdictions.

A. All residential development of five or more units is discretionary in these cities, and each city imposes discretionary review at multiple points in the entitlement process

All five jurisdictions we examined require discretionary review for residential developments of five or more units. These discretionary review processes apply even if these developments comply with the underlying zoning code.²⁶³ Four of these cities use aesthetic controls as a primary discretionary review mechanism. Oakland uses Design Review,²⁶⁴ whereas Redwood City and Palo Alto employ Architectural Review.²⁶⁵ San Jose chooses to use a Site Development Permit.²⁶⁶ Among these five cities, San Francisco is unique in that it does not impose design or site development review on all projects. But San Francisco, through its city charter, imposes discretionary review on *all* proposed projects.²⁶⁷ Absent its city charter that renders building permits discretionary, San Francisco would have permitted as of right nine projects — each ranging from eight to sixty-seven units. As Figure 4 shows, no other planning code in our case studies would permit this level of development without a discretionary approval. This is an example of how a charter city can impose discretionary review through a mechanism outside of the formalized planning and zoning process.

^{263.} For a discussion of discretionary review, see Part I supra note 34.

^{264.} OAKLAND MUNI. CODE §§ 17.136.040(3)-(4), 17.136.025(B)(1)(d).

^{265.} REDWOOD CITY MUNI. CODE § 45.2(A); PALO ALTO MUNI. CODE § 18.76.020(b)(2)(B).

^{266.} SAN JOSE MUNI. CODE § 20.100.010.

^{267.} A city charter is the constitution for that local government. The provision of San Francisco's charter rendering all permits discretionary can be found in S.F. BUS. AND TAX REGULATIONS CODE § 26(a).

Jurisdiction	Primary Discretionary Review Mechanism	Residential Developments Exempt from Discretionary Review	
San Francisco	Building Permits	None	
San Jose	Site Development Permit	Single-family homes in limited circumstances. ²⁶⁸	
Redwood City	Architectural Permit	One-story single-family homes and duplexes	
Palo Alto	Design Review	Up to two single-family homes and two duplexes. ²⁶⁹	
Oakland	Design Review	Secondary units	

Figure 4: Discretionary Review of Developments Consistent with Zoning

It is also notable that within these five cities, the total numbers of land use/planning approvals are greater than the number of overall development projects in each jurisdiction. A single project might need to obtain Design Review approval and a Minor Variance from the Director of the Planning Department and a rezoning from the City Council.²⁷⁰ Figure 5 illustrates. This requires a project to navigate multiple levels of local government review, which means that there is more than one step in the approval process that would pull the project within the scope of local discretion and trigger environmental review. It should also be noted that if development requires the subdivision of land into smaller parcels, additional discretionary review by local governments generally applies as well, which is accounted for in these numbers.²⁷¹ As Figure 5 also shows, the number of discretionary reviews per project does not differ dramatically across our jurisdictions, with Redwood City requiring, on average, the highest number of discretionary approvals.²⁷²

^{268.} To be exempt from site development permits, single-family homes must meet height, FAR, and lot size requirements and cannot be located in riparian areas. SAN JOSE MUNI. CODE § 20.100.1030(A)–(C).

^{269.} To qualify for design review exemption, the proposed development cannot be located in a conservation zone. PALO ALTO MUNI. CODE § 18.76.020(b)(2)(D).

^{270.} See S.F. MUNI. CODE § 305 (limiting review of variances to the Zoning Administrator and Board of Appeals). In practice, many jurisdictions do permit concurrent review of entitlement applications. See e.g., SAN JOSE MUNI. CODE § 20,100.140 (permitting concurrent review of multiple entitlement applications); OAKLAND MUNI. CODE § 17, 136.040(D) (permitting the Director to refer design review applications to the Planning Commission when coupled with certain types of variances).

^{271.} For more information on subdivision, see supra notes 38-39.

^{272.} To determine the number of discretionary approvals required per jurisdiction, we calculate total approvals and divide by the number of projects and then add one extra approval for CEQA.

Entitlement Types	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
Site Development Permit/Design Review	13	0	89	5	9
Planned Development Permit	50	5	9	0	4
Conditional Use Permit ("CUP")	0	33	55	0	1
Tentative Map Permit	36	59	33	4	8
Rezoning	46	4	1	0	0
Historic Preservation Permit/Certificate of Appropriateness	3	2	0	1	4
GP Amendment	5	1	0	0	0
State or Local Density Bonus	1	3	2	0	1
Specific Plan Permit	0	50	0	0	4
Specific Plan Exception	0	32	0	0	0
Variance	0	34	39	3	1
Development Agreement	0	0	0	0	4
Other Approval	4	6	1	0	0
Total	158	229	229	13	36
Average Approvals per project	2.43	2.41	2.54	2.60	2.77
Average Approvals with CEQA	3.43	3.41	3.54	3.60	3.77

Figure 5: Types of Discretionary Review per Jurisdiction

B. Four of these cities are all employing state-level statutory provisions to facilitate and expedite environmental review for developers

State law allows cities to take a diverse range of approaches to comply with CEQA requirements.²⁷³ EIRs—the most onerous form of CEQA review—

^{273.} For a discussion of the various environmental review options, see supra Part I.A.2.

occurred infrequently across all jurisdictions.²⁷⁴ Relatively few projects within these five cities require a full EIR process primarily because jurisdictions are taking advantage of project- or tiering-based exemptions.²⁷⁵ The figure below demonstrates that exemptions are the most common type of CEQA review for projects in most jurisdictions, with EIRs and MNDs in second and third place, respectively.²⁷⁶ The most common forms of project-based exemptions included the Class 32 (infill), Class 3 (small structures), and Class 1 (existing facilities) exemptions discussed in Part I supra.

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
Exempt (Tiering)	46%	69%	106%	69%	0%
Exempt (Project Based)	3%	11%	83%	15%	40%
ND	2%	2%	0%	0%	0%
MND	46%	9%	0%	8%	20%
EIR	22%	8%	3%	8%	40%

Figure 6: Percentage of Projects by CEQA Review Type

Even when adjusting by number of units, relatively few units go through EIRs with the exception of Palo Alto; however, more units are going through EIRs than MNDs. Additionally, more units go through tiering than project-based exemptions, with the exception of Oakland.

^{274.} These are similar findings with LANDIS ET AL., supra note 168, at 99, 105.

^{275.} For a discussion of tiering, see supra Part I.A.2.

^{276.} As discussed below, a single project can undergo more than one type of CEQA review. Figures 6 and 7 do not back out these projects that receive multiple exemptions, which is why the percentages exceed 100 percent of the total number of projects and units. Oakland in particular will apply multiple tiering and project-based exemptions to a single project.

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
Exempt (Tiering)	54%	64%	89%	89%	0%
Exempt (Project Based)	0%	3%	52%	9%	7%
ND	0%	3%	0%	0%	0%
MND	14%	11%	0%	1%	3%
EIR	49%	24%	9%	1%	90%

Figure 7: Percentage of Units by CEQA Review Type

Four of these jurisdictions appear to be making good faith efforts to engage in strategies that link housing and jobs to transportation and facilitate environmental review for developers. This means that each of these four cities is tapping into state-level statutory provisions designed to promote sustainable development by doing the bulk of the work to comply with CEQA, rather than imposing additional time and costs on developers. For example, the vast majority of relevant projects entitled within San Francisco and Oakland are also within specific plan areas that rely on these state-level statutory provisions to facilitate environmental review.²⁷⁷

277. For similar findings in the prior literature, see LANDIS ET AL., supra note 168, at 107–08.



Figure 8: San Francisco Project Locations and Prior Uses²⁷⁸

1 mile

^{278.} This map does not include residential development that OCII would be responsible for; however, this development is occurring in the eastern part of San Francisco, which does not alter our analysis that permissive density is not spread across the City evenly.



Figure 9: San Jose Project Locations and Prior Uses

2 miles

Figure 10: Oakland Project Locations and Prior Uses



Prior Parcel Use:

Vacant
Commercial
Residential

2 miles

2 mi



Figure 11: Redwood City Project Locations and Prior Uses

Prior Parcel Use:
Vacant
Ommercial
Residential
Unknown
Downtown Precise Plan

1 mile

Figure 12: Palo Alto Project Locations and Prior Uses



1 mile
C. Use of CEQA exemptions varies across cities

Like the discretionary review mechanisms discussed above, many projects in Oakland are receiving multiple CEQA exemptions, which leaves open the question of why planners take these additional measures. Interview data suggests planners are doubling up on CEQA exemptions to forestall against perceived political challenges to the project. If a project qualifies for more than one CEQA exemption, planners will evaluate the project under each possible exemption. Other jurisdictions, however, rarely make use of exemptions outside of tiering situations. For example, given that most development in these jurisdictions is infill, the fact that so much development receives the Class 32 exemption in Oakland, but not San Francisco or San Jose, is peculiar. Interview data also indicates that within Palo Alto, Redwood City, and San Jose there may be some confusion within planning departments and amongst developers about which types of CEQA documents are the most legally vulnerable on appeal. Perception of legal defensibility may in turn inform decisions on which type of CEQA review to undertake.

Analyzing project size as a function of CEQA, data shows that projects with EIRs in these five cities generally tend to be larger than projects that undergo other types of CEQA review. All jurisdictions with the exception of Redwood City prepared an EIR for their single largest project. Nonetheless, the projects going through the exemption process are not small, averaging over fifty units for four of our five jurisdictions.²⁷⁹

Yet significant inter-jurisdictional variations still persist.²⁸⁰ Projects that received a project-based exemption in Oakland are on average, twice the size as projects that received a project-based exemption in San Francisco. In Redwood City, projects that use tiering are larger than projects that use tiering in both San Francisco and Oakland. Figure 7 shows that even with a larger mean size for EIRs, EIRs are a small fraction of the total capacity being entitled in most jurisdictions.

^{279.} *Cf.* Hernandez. Friedman & DeHerrera, *supra* note 219, at 31 ("the overwhelming majority of CEQA compliance documents, however, involve the use of restricted regulatory exemptions for extremely minor projects, such as repairing single-family homes, acquiring park lands, making minor modifications to existing uses such as modifying signage or repairing piping or other infrastructure, etc.").

^{280.} The variability in environmental review processes is consistent with Gyourko, Saiz & Summers, *supra* note 113, at 694, who found significant variability in local land use regulation.

	San Jose	San Francisco	Oakland	Redwood City	Palo Alto
All Types of Exemption	193	84	93	98	10
Tiering Exemptions	205	94	96	109	0
Project Based Exemptions	8	24	67	51	10
ND	10	125	0	0	0
MND	69	117	0	12	8
EIR	403	291	282	8	125

Figure 13: Mean Project Size By CEQA Type

D. There is substantial variation in entitlement timelines across these five cities that does not appear to correspond with stringency in either environmental regulation or local entitlement processes, or project size

Timeframes for entitlements vary significantly across jurisdictions for similar projects and across different project sizes within the same jurisdiction. Focusing first on environmental review processes, the difference in timeframes does not appear immediately attributable to environmental review legal requirements. Instead, it appears these cities apply the same environmental review provisions to similar projects in different ways—with significant variations in the total timelines for entitlement. For example, both the City of Oakland and the City of San Francisco use the section 15183 Community Plan Exemptions ("CPE") to reduce CEQA compliance obligations for proposed projects within plan areas²⁸¹ that have a relatively recent full EIR that the respective city completed. However, Oakland's CPE process moves much faster than San Francisco, a CPE takes over twenty-four months. In contrast, a full EIR in San Jose, for which there is no prior study, takes nearly thirty months, just six months longer than a CPE in San Francisco.²⁸²

^{281.} Plan Area terminology varies according to jurisdictions and the size of the plan area. Redwood City refers to these plans as "Precise Plans," San Jose and Oakland both use the terms "Area Plans" and "Specific Plans," and San Francisco calls them "Area Plans."

^{282.} Some jurisdictions apply different types of CEQA review to a single project. A CPE in Oakland is often combined with a section 15332 exemption. EIRs in San Jose are often paired with later addendums or supplemental EIRs. A CPE in San Francisco can be paired with a Focused EIR. The numbers above do not control for these multiple types of CEQA review due to the small sample sizes that would result. Even controlling for multiple types of CEQA review, the general trends hold true. Projects that only received a CPE in Oakland took 7 months; projects in San Francisco that only received a CPE still take 23

Interview data attributes the delay in environmental review within cities to planning practice and the level of attention put into staff reports, rather than the complexities of particular project proposals. Jurisdictions vary in a developer's ability to manage and communicate with their CEQA consultants during the preparation of the environmental documents. Interview participants shared the perception that the inability to directly select or manage consultants can lead to lower quality environmental documents, as well as time delays.²⁸³ These results also indicate the potential importance of political context in the approval process.²⁸⁴

Figures 14 and 15 together indicate that the number of approvals required (often used as one important metric for stringency) does not necessarily correspond to entitlement timelines.²⁸⁵ All five cities impose discretionary review on all projects through multiple local regulations, and all require, on average, more than three approvals (including environmental review). But, the variability in timelines for similarly sized projects is great. Redwood City had shorter timeframes for entitlement, particularly compared to San Francisco and San Jose. Interview participants highlighted how variability in entitlement timelines tends to be related to local practice. Examples include staff-level variations in performing application intake, to higher-level decisions on the amount of commercial development that must occur before a developer-applicant can even propose residential development in certain neighborhoods.²⁸⁶ These choices in practice may be a response to political and fiscal pressures that prompt cities to embed discretionary review into the entitlement process.

Project size also does not appear to explain delay in approval timelines. Large projects do not always take longer to entitle than small projects. In San Jose,

months; projects that only received an EIR in San Jose took 14 months (measuring by the median).

^{283.} See e.g., SAN FRANCISCO PLANNING DEP'T, Environmental Review Process Summary 5 (2011), https://perma.cc/8BLP-B4T4 ("While the project sponsor pays all costs for preparation of the necessary consultant-prepared documents, the Department scopes, monitors, reviews, and approves all work completed by consultants").

^{284.} See John Quigley, Raphael & Rosenthal, supra note 14, at 281-282.

^{285.} These results are consistent with Jackson, *supra* note 130, at 141, who found that regulatory stringency did not affect supply elasticity, and are in tension with Gyourko. Saiz & Summers, *supra* note 113, at 695, who found that regulatory stringency did correlate with timeframes. *See also, supra* Figure 5.

^{286.} San Jose's Urban Villages, for example, are transit-oriented, mixed-use neighborhoods that aim to balance job and housing growth. San Jose, *Envision San Jose 2040 General Plan*, Chapter I at 18 (2018). To achieve this, Urban Villages utilize "Growth Horizons" that stipulate certain commercial and office targets before residential development can be unlocked (with the exception of 100% affordable housing developments). *Id.* at Chapter 7 at 6, 19. While San Jose has long shouldered much of the region's housing burden without commensurate increases in job growth, these policies can impede residential growth in transit-accessible locations. *See* Memorandum from Harry Freitas and Kim Walesh to Honorable Mayor and City Council (Apr. 3, 2015), https://perma.cc/LM39-GC3T (noting that San Jose is the only major city in the US with more residents leaving San Jose during the day to go to work than non-residents commuting in for work).

projects between five to twenty-five units take nearly seven months longer to entitle than projects with more than 150 units. In Redwood City the difference is about five months, which is significant given Redwood City's entitlement timeframe is seven months across all projects. Figure 14 shows the mean and median entitlement timeframes across jurisdictions by project size.²⁸⁷ The extreme intra-jurisdictional variation skews mean timeframes higher.

Figure 14: Total Entitlement Time Frames by Project Size



Figure 15 below narrows the approval timeframe to sixty months—in the process removing some outlier projects visible in Figure 14—but provides a better representation of means and medians across all jurisdictions.

^{287.} When referencing timeframes in this Article we refer to the median unless otherwise noted.



Figure 15: Entitlement Timelines Within 60 Months by Project Size

Although we are pursuing additional research to better understand issues with project size, multiple explanations for the different outcomes emerged in interviews. One potential explanation is that smaller projects are occurring in areas that do not benefit from prior environmental review and thus cannot tier off a prior environmental document. Another potential theory is that the type of developer building in the twenty-five-unit range lacks the capital and sophistication to navigate the approval process as efficiently as developers undertaking larger projects. In interviews, small developers expressed feelings of being shut out from the Bay Area development boom because of a lack of access to key planning departmental staff or the inability to afford the right consultants with wellestablished relationships in the planning department.

E. Substantial variation in housing project entitlement across these five cities exists despite regulatory stringency

Similarly, housing entitlement—both as a measure of land area and population—varies dramatically. As a measure of land area, San Francisco entitles the most housing despite it having the longest approval timeframe. ²⁸⁸ San Francisco is also the most geographically constrained jurisdiction in our dataset years; when measuring land area as a function of population, San Francisco has the densest existing development. This is not entirely consistent with research in Part I that linked more geographically constrained regions with supply constraints.²⁸⁹

^{288.} As discussed in Part II, entitlement numbers for San Francisco do not include units approved through OCII—the successor to the former Redevelopment Agency—in Redevelopment Plan Areas. This data is still unavailable.

^{289.} See Saiz, supra note 129, at 1254.

Redwood City has the second-fastest approval timeline, but entitles less housing per square mile than San Francisco, Oakland, and San Jose. Redwood City is also one of the least geographically constrained cities. Interview data suggests that market barriers, such as the differential cost of construction and sale or rental prices, do not entirely explain this discrepancy. In low-density communities, developers are also factoring in the political feasibility of proposing a denser product, even where that density is permissible under the base zoning. This suggests that in jurisdictions with overall low-density development patterns, a streamlined approval process may be insufficient to entitle substantial housing, if barriers like lack of appropriately zoned land and/or lack of political will are present.²⁹⁰

	Land Area (mi ²) ²⁹¹	Total Entitled Units	Entitled Units per Square Mile	Population	Population Per Square Mile ²⁹²
San Francisco	47	9,768	208	870,887	18,581
San Jose	177	11,463	65	1,025,000	5,806
Oakland	56	8,958	161	420,005	7,528
Redwood City	19	1,100	57	84,950	4,374
Palo Alto	24	277	12	67,024	2,807

Figure 16: Entitlement Production by Land Area and Population Intensity

Adjusting on a per capita basis, Oakland and Redwood City—the two jurisdictions with the fastest timelines—are on top in terms of output, with Oakland in a distant lead.

^{290.} This appears consistent with Kristoffer Jackson, *supra* note 130, at 141. who found that regulatory stringency did not affect supply elasticity, and is in tension with Gyourko, Saiz & Summers, *supra* note 113, at 695.

^{291.} Land areas taken from the 2010 Census. *See, QuickFacts*, U.S. CENSUS BUREAU, https://perma.cc/L97A-BD8T (last visited Oct. 23, 2018).

^{292.} Population taken from American Communities Survey 2012-2016 estimates. *See American Community Survey Data Profiles*, U.S. CENSUS BUREAU, https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/ [https://perma.cc/3T9K-8RPQ] (last visited Oct. 23, 2018).

	Population	Entitled Units	Units per 1,000 people over 3 years
San Francisco	870,887	9,768	11
San Jose	1,025,000	11,463	11
Oakland	420,005	8,958	21
Redwood City	84,950	1,100	13
Palo Alto	67,024	277	4

Figure 17: Units Entitled Per 1,000 People Over 3 Years

Potential explanations for Oakland's lead may be both local context293 and local government initiatives to accelerate dense infill development.294 The community's response to concerns of gentrification, increasing housing costs, and displacement have included community based organizations advocating and collaborating with the regional transit agency to support dense TOD with major affordability components.295 These combined factors involved major phased developments, some beginning in the 1990s, with phases in the 2014, 2015, 2016 data years contributing to the number of units entitled during our study years. Interview participants also shared perceptions of differing political and community pressure around development outcomes and processes across these cities. Interview participants described Oakland as generally welcoming development, San Francisco as welcoming of affordable development but not as favorable to major market-rate development projects, and Palo Alto as welcoming of very little dense development. Some participants who work in multiple cities also shared the perception that the political and community responses to development in Oakland will begin to mirror their observations in San Francisco.

^{293.} Oakland experienced decades of population decline and disinvestment distinguishable from the other cities and has historically had a lower median household income and higher rate of poverty. *See generally* Robert O. Self, AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND (2005); Chris Rhomberg, No THERE THERE: RACE, CLASS, AND POLITCAL COMMUNITY IN OAKLAND (2007). We draw comparisons of rate of poverty and median household incomes from 2010 census data and American Community Survey estimates. *See QuickFacts*, U.S. CENSUS BUREAU, *supra* note 291.

^{294.} The City of Oakland began its 10K program in the 1990s under former Mayor Jerry Brown, who Professor Rhomberg described as having "offered Oakland as a haven to private developers fleeing overbuilt conditions in San Francisco and promised to expedite approval for market-rate apartments and condominiums built without city subsidies or requirements for affordable housing." Rhomberg, *supra* note 293, at 189. The 10K initiative generated controversy and exacerbated existing concerns about increasing housing costs, gentrification, and the displacement of people of color. Rhomberg, *supra* note 293, at 183–94.

^{295.} For example, the Unity Council in the Fruitvale neighborhood took the lead on several major TOD development projects around the Fruitvale BART station with affordability and community use components—work that began as early as 1992. Rhomberg, *supra* note 293, at 190–92.

F. Most of the projects entitled within these three years involve the development of housing where there was none

Whether proposed development risks displacement through the conversion or elimination of affordable housing—including rent controlled, deed restricted, or naturally affordable housing—presents an important equity consideration. This also implicates important climate concerns if residential demolition is reducing overall density. During these project years, the majority of residential developments of five or more units or more entitled within all cities are on vacant or commercial land,²⁹⁶ rather than land with a prior residential use. These results are summarized below and displayed in Figures 8–12 above.

Prior Parcel Use	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
Residential	23	2	11	1	4
Residential %	35%	2%	12%	20%	31%
Commercial	24	87	45	3	5
Commercial %	37%	92%	50%	60%	38%
Vacant	15	5	34	1	1
Vacant %	23%	5%	38%	20%	8%

Figure 18: Prior Parcel Uses

Redwood City and San Jose have higher occurrences of entitlement where the prior use was residential. Of the four projects that replaced residential uses in Redwood City, at least two were multifamily structures. In San Jose, the vast majority of these residential uses are single-family homes—and the new developments were substantially denser than the single-family homes that were demolished. In San Jose, four of the twenty-three projects that replaced residential uses were multi-family structures that could potentially have been subject to rent control. One of these multi-family buildings was a 216-unit rent-controlled building whose demolition left many long-time residents with few other affordable rental options.²⁹⁷ These rent-controlled units were not replaced in the new development, nor did the new development contain inclusionary housing units.²⁹⁸ From our limited data, it seems this scale of rent-controlled demolition is rare in these cities; however, more research is needed to investigate other potential rent-

^{296.} Vacant land includes lots with no improvements or lots that contain a surface parking lot with no permanent structures. Commercial land includes lots with commercial or industrial uses, such as warehouses, restaurants, storage facilities, or retail. Residential lots include single-family homes, mobile homes, multifamily buildings, single room occupancy hotels, and residential motels.

^{297.} Ramona Giwargis, San Jose council denies appeal to stop Reserve apartment demolition, THE MERCURY NEWS (June 22, 2016), https://perma.cc/EN52-FXDE.

^{298.} Ramona Giwargis, San Jose: Tempers flare over The Reserve displacement, THE MERCURY NEWS (Mar. 16, 2016), https://perma.cc/5HCX-28AL.

controlled demolitions in our jurisdictions. Lastly, we found no deed-restricted affordable housing that was demolished during our project-years.

G. Deed-restricted affordable housing entitlement is low across all jurisdictions; however, deed-restricted affordable housing benefits from faster approval time frames

Entitlement rates (in terms of units) to support affordable housing production across all jurisdictions are low for these years. San Francisco—the only jurisdiction to apply inclusionary housing requirements to both rental and for sale housing during the project years²⁹⁹—has the highest rates of entitlement of affordable housing by units, with 11% of all new units deed-restricted to low and middle income households. 100% of deed-restricted affordable housing in San Francisco is entitled in just over twelve months, which is thirteen months faster than market rate development. In San Jose, an affordable development is entitled nearly ten months faster than market rate development. In Oakland—where the process is compressed relative to San Francisco and San Jose—affordable development.

Unlike other Bay Area jurisdictions, most of the affordable housing units entitled in San Francisco outside of former Redevelopment Areas came through inclusionary obligations imposed on market-rate developers.³⁰⁰ While we do not have complete data on inclusionary housing compliance for all our developments in San Francisco, at least twenty-eight developments—30% of projects—elected to pay the in-lieu fee rather than build the housing on-site. As our interviews highlight, the in-lieu fees are important sources of gap finance for nonprofit affordable housing developers especially after the dissolution of the Redevelopment Agency.³⁰¹ Interestingly, the jurisdictions with the fastest

^{299.} San Jose's inclusionary housing ordinance was on hold during the first two years of our research due to ongoing litigation. See Cal. Bldg. Indus. Ass'n v. City of San Jose, 61 Cal. 4th 435, 443 (2015) (noting that the California Superior Court enjoined implementation of the ordinance). Though the California Supreme Court upheld the inclusionary housing ordinance against a takings challenge, the ordinance only applied to for-sale developments during our project years. See id. at 442, 461. The ordinance currently applies to both for-sale and rental developments. See SAN JOSE MUNI. CODE § 5.08.400.

^{300.} The opposite is likely true in former Redevelopment Areas managed by OCII. See Office of Community Investment and Infrastructure, *Affordable Housing Production Report Fiscal Year 2016-2017* (noting that 552 funded affordable housing units and 51 inclusionary units were completed in fiscal year 2016-2017). Funded projects refer to 100% affordable housing developments as opposed to inclusionary housing units, where the affordable housing units are a smaller percentage of the total units. This also underscores the importance of redevelopment for affordable housing production.

^{301.} The Community Redevelopment Act gave local governments the authority to declare areas as blighted and in need of urban renewal, which enabled the city or county to distribute most of the growth in property tax revenue for the project area to the relevant Redevelopment Agencies as tax-increment revenues. See CAL, HEALTH & SAFETY CODE §§ 33020 et seq. In 2011, the California legislature dissolved the Redevelopment Agencies. See

entitlement time frames—Oakland and Redwood City—also have the lowest rate of entitlement of affordable units, which may suggest affordable housing developers need more than an efficient process to make deals feasible. Interview data also suggests that high land and labor costs, coupled with the loss of funding from Redevelopment Agency tax increment programs³⁰² are primary barriers to developing more affordable units within these cities. The interviews yielded differing accounts as to whether discretionary approval imposed significant challenges to affordable development. Notably, interview data indicated that an increasingly elaborate building permit process also poses barriers to the timely completion of affordable developments. While the scope of this study does not address the length and complexity of the actual building permit process, this is an important area for future study.

	San Jose	San Francisco	Oakland	Palo Alto	Redwood City
# Units	11,463	9,755	9,555	277	1,100
# Affordable Units	613	1,110	333	70	11
Affordable %	5%	11%	4%	25%	1%

Figure 19: Affordable Units by Jurisdiction

Given the three-year timeframe of our study, and because 100% affordable housing developments are so infrequently entitled, the rate of entitlement (in terms of percentage number of units entitled) is by itself insufficient to determine a jurisdiction's policy on affordable housing. Palo Alto is emblematic. While Palo Alto had the lowest rate of entitled units across all our Bay Area cities, it had the highest rate of affordable housing entitlements (25%), because a large affordable development happened to be entitled during our project years. Instead, looking at the planning and development codes for the presence of local ordinances that directly incentivize affordable development, the overall rate of entitlement in terms of units entitled, and entitlement timeframes provides a more accurate assessment of a city's affordable housing policy.

A.B. X126, 2011-2012 (Cal. 2011). https://perma.cc/5FSN-AMNH. Dissolution has severely constricted local governments' ability to finance affordable housing. *See* Casey Blount et al., *Redevelopment Agencies in California: History, Benefits, Excesses, and Closure* (2014), https://perma.cc/3QUD-FPTY (estimating a statewide average annual loss of 4,500 to 6,500 new affordable units).

^{302.} These tax-increment revenues were a large source of affordable housing finance. See Blount, supra note 301.

H. San Francisco, Redwood City, Oakland, and San Jose all provide for density and development incentives to promote transit-oriented development that have caused developers to site most development in these growth incentive zones

Most jurisdictions in our study are easing density and parking restrictions in targeted growth areas near transit and are drawing on Specific Plans to facilitate development in targeted growth areas. Downtown San Jose—with its proximity to Caltrain and light rail—is one example. San Jose's General Plan lifted height limitations in most downtown areas, giving developers more flexibility in design and construction type.³⁰³ The General Plan also allows for up to 800 dwelling units per acre and a 30.0 FAR for mixed-use projects in the downtown area.³⁰⁴ These are high densities relative to San Jose's Mixed-Use Commercial Districts where residential developments max out at six stories and fifty dwelling units per acre.³⁰⁵ Parking reductions of up to fifty percent are also available for certain mixed-use projects in downtown.³⁰⁶ Additionally, San Jose's Diridon Station Area Plan rezoned land including portions of downtown and areas adjacent to the Diridon Caltrain station, to allow for residential use at higher densities than previously allowed, with the goal of connecting transit-accessible housing to jobs.³⁰⁷

While Redwood City's historic pattern of land use development is largely auto-centric, the City's current General Plan focuses growth and development in mixed-use activity centers and along pedestrian-friendly transportation corridors that are connected to the regional transit system. The General Plan allows for more intense development (40 to 60 dwelling units per acre) along major thoroughfares, particularly Veterans Boulevard, Broadway, and El Camino Real.³⁰⁸ Redwood City's Downtown Precise Plan ("DTPP") also seeks to create a "pedestrian friendly, walkable district [with] good transit access.³⁰⁹ Instead of focusing solely on increased development incentives, like reduced parking or open space requirements or more permissive density, Redwood City accomplishes its vision by improving processes that facilitate faster review and approvals for development

^{303.} SAN JOSE MUNI. CODE § 20.70.200. Because of the downtown area's proximity to the airport, no building can be permitted with a height that exceeds the elevation restrictions prescribed under Federal Aviation Regulations Part 77 (14 C.F.R. Part 77) unless certain conditions are met.

^{304.} See City of San Jose, supra note 286, at Chapter 5 at 9.

^{305.} Id. at Chapter 5 at 6.

^{306.} SAN JOSE MUNI. CODE § 20.70.330.

^{307.} See CITY OF SAN JOSE, DIRIDON STATION AREA PLAN, Appendix B (last visited Oct. 26, 2018) https://perma.cc/D9E5-53ZE.

^{308.} See CITY OF REDWOOD CITY, GENERAL PLAN, Urban Form and Land Use at BE-39 (2010), https://www.redwoodcity.org/departments/community-development-department /planning-housing/planning-services/general-plan-precise-plans/general-plan/.

^{309.} See REDWOOD CITY, DOWNTOWN PRECISE PLAN, Introduction at 3, (2011), https://www.redwoodcity.org/departments/community-development-department/planning-housing/planning-services/general-plan-precise-plans/downtown-precise-plan.

projects within the DTPP. Conformance with the DTPP's prescriptive design and development standards is mandatory; however, participants share the perception that conformance with the guidelines ensures swifter approvals, which is also shown in our project data.³¹⁰

Like Redwood City, San Francisco has used specific planning to concentrate growth in key transit-accessible neighborhoods. The City has lifted traditional density limitations by shifting to a form-based code in these areas so that building envelope and bedroom mix are the primary limitation on density.³¹¹ San Francisco has also attempted to facilitate development in infill, transit-accessible neighborhoods outside the boundaries of these specific plan areas through the use of local density bonus programs like HomeSF that can provide up to an additional two stories of height outside of the specific plan neighborhoods.³¹²

Since most development is indeed occurring within these growth areas, we can infer that these efforts have been successful overall—consistent with prior research that found that Specific Plans can facilitate approval processes.³¹³ Much can also be inferred based on where projects are not sited in these jurisdictions, as shown by the maps in *supra* Part III 4. Indeed, cities are not relaxing density and development standards uniformly within their boundaries. Interviews suggest that the political will to allowing dense development only extends to certain geographic areas. Interview participants from Redwood City, San Francisco, and San Jose have characterized this as the "grand bargain," in which constituents consent to increased density in growth in key areas in return for "leav[ing] the low-density residential neighborhoods alone."

In addition to the obvious equity implications of refusing to site dense development in lower-density areas,³¹⁴ the lack of political will also has ramifications in cities like San Francisco, that may undermine efforts to address climate change. San Francisco's western side sees virtually no development, yet is linked to the city's downtown via high quality light rail and bus lines.³¹⁵ Interviews have also raised examples of transitional single-family home neighborhoods where a denser residential product could be possible on paper, but not politically. The lack of development in these areas supports the presence of political—not necessarily planning or zoning—barriers.

I. Very few of these entitled projects were challenged in court

A close examination of the projects entitled during our study period in these five cities suggests litigation rates are quite low. At a basic level, our data

^{310.} Id.at 25.

^{311.} See e.g., County of San Francisco, Eastern Neighborhoods Plan; East Soma Area Plan,

^{312.} S.F. MUNI. CODE § 206.3.

^{313.} See LANDIS ET AL., supra note 168, at 95-96.

^{314.} See Mangin, supra note 198, at 92.

^{315.} See e.g., J.K. Dincen, In a wealthy SF neighborhood, residents fight low-income housing, S.F. CHRONICLE (Nov. 16, 2016), https://perma.cc/YN4X-3YNR.

reveals that lawsuits challenging residential and mixed-use projects over five units is more common than the generic CEQA litigation rates reported in prior studies (all estimated at below 1%).³¹⁶ Nonetheless, the overall litigation rates are low regardless of whether they were measured with respect to number of projects or number of units. This directly conflicts with the perceptions of our interview participants, many of whom perceived CEQA litigation rates to be much higher within each city.

6	Total Projects	Total Units	Litigated Projects	%	Litigated Units	%
All Jurisdictions	268	31,566	7	3%	1,994	6%
San Francisco	95	9,768	3	3%	1,273	13%
San Jose	65	11,463	2	3%	583	5%
Oakland	90	8,958	1	1%	47	0%
Redwood City	13	1,100	1		91	8%
Palo Alto	5	277	0		0	0%

Figure 20: Litigation Rates by Project and Unit Counts

The total number of projects litigated across all five cities is low. We have omitted the litigation rates by projects in Redwood City and Palo Alto because of the limited number of projects within each city (Palo Alto had no litigated projects; it had only a handful of projects.). For example, in Redwood City, one out of thirteen projects lead to a litigation rate of 8%. Comparing San Francisco (95 entitled projects), Oakland (90 entitled projects), and San Jose (65 entitled projects) gives us more information on the potential impact of CEQA litigation.

Notably, the variation in the number of lawsuits within these jurisdiction does not appear to coincide with overall housing entitlement approval timelines, at least not in these project years. San Jose's environmental review process appears faster than San Francisco's, which is one of the slowest among our jurisdictions. Moreover, not a single CPE was litigated in San Francisco nor in Oakland, therefore the litigation rates likely cannot explain the stark differences in CPE timeframes in these two jurisdictions.

It also appears that only two of the nine litigated projects had affordable housing units within them (one with 11% and the other 33%). Both were located in San Francisco. Notably, none of the 100% affordable housing developments entitled during the study period within these five cities were litigated; however,

^{316.} See CAL. OFFICE OF SENATE RESEARCH, POLICY MATTERS (2018), https://perma.cc/34HL-K8SX: Smith-Heimer et al., *supra* note 194; CAL. ST. SENATE ENVTL. QUALITY COMM., CEQA SURVEY (2017), https://perma.cc/9HXP-RFYR.

affordable housing developments have been litigated outside our time frames and remain the subject of substantial press coverage.³¹⁷

Excluding settlement, CEQA defendants have frequently won more cases than plaintiffs.³¹⁸ Settlement could be treated as a partial victory for plaintiffs, in which case success rates are about twice as high than for defendants. Of the ongoing cases, the plaintiff lost in the trial court in all three cases and then appealed. The success rates do not appear to vary substantially by type of claim. Of the six lawsuits including CEQA claims, three settled and defendants won once. Of the five lawsuits including non-CEQA claims, three settled and defendants won one.

CEQA and non-CEQA claims were approximately equally likely to be raised by plaintiffs in the lawsuits. Of the seven lawsuits, six raised CEQA claims, but four of those six also raised planning and zoning claims. One lawsuit also raised planning and zoning related claims but did not raise CEQA claims. This means that six projects raised CEQA claims, five projects raised non-CEQA claims, two lawsuits raised CEQA claims only, and one lawsuit raised non-CEQA claims. There are two potential explanations for this. Once a plaintiff decides to sue a project based on planning and zoning violations, the marginal cost of adding an additional CEQA claim is likely not prohibitive. But the reverse is also true-the marginal cost of adding a planning and zoning claim to a CEQA suit is likely not great either. Regardless, non-CEQA claims (for example, that project approvals violated state or local zoning or planning codes) appear to be just as common as CEOA claims. This suggests that CEOA is not the only driver of litigation in this context. It also suggests that eliminating CEQA might not eliminate legal challenges to most of the projects that were litigated during this study period in these cities.319

^{317.} The lawsuit against Habitat for Humanity in Redwood City is illustrative. Two attorneys filed suit against an approved affordable housing development, alleging that the height of the building would block sunlight in their office windows. The project was only half of the allowable height in the Downtown Precise Plan area. The lawsuit eventually settled. *See* Press Release, Holland & Knight, Holland & Knight Achieves Favorable Settlement for Habitat for Humanity in Legal Battle over Proposed Affordable Housing Development (July 26, 2018), https://perma.cc/ZST9-UG3B; *See also* Zachary Carr, *Settlement reached over height of downtown affordable housing*, THE DAILY J. (Jul. 21, 2018) https://perma.cc/UUD8-W9X3.

^{318.} We note that given the small sample size of our litigation data set (seven lawsuits), any conclusions we draw about the nature and resolution of litigation will be limited. We expect to draw firmer conclusions after collecting additional litigation data from the Los Angeles area.

^{319.} One caveat to this conclusion is that different levels of judicial scrutiny to different kinds of claims may mean that non-CEQA land use lawsuits may be less (or more) likely to succeed in court than CEQA lawsuits. If this is the case, then eliminating one kind of lawsuit may have some impact on litigation outcomes and impacts on development. Again, our limited data set from the Bay Area does not allow us to draw firm conclusions on this point, but we will gather more data on this from the Los Angeles area.

Figure 21: Types of Legal Claims

Lawsuits with CEQA claims	6	
Lawsuits with non-CEQA claims*	4	
Projects that raised only CEQA claims	2	
Projects that raised only non-CEQA claims*	1	

*non-CEQA claims include procedural violations or violations of planning and zoning law.

J. Administrative appeal rates are much higher than CEQA litigation rates within these five cities

We recognize that litigation rates do not tell the entire story of the threat of litigation and how it impacts the residential development process. CEQA critics have discussed how the threat of litigation may deter developers from even filing entitlement applications; this threat can also lead developers to capitulate to a plaintiff's demands even before a lawsuit is filed. While it is difficult to empirically measure the threat of CEQA litigation given existing datasets, project administrative appeals provide a useful proxy in several ways. First, under state law a project appeal is a prerequisite to filing a CEQA lawsuit, since a plaintiff must first exhaust administrative remedies.³²⁰ Second, a project appeal can provide a potential plaintiff with a hook to leverage settlement before filing suit.

We found that appeals rates in Oakland, San Francisco, and San Jose are significantly higher than the litigation rates across all three of these jurisdictions for these study years. Notably, the appeals rates also more closely approximate our interview participants' estimations of the frequency of CEQA litigation—however, in some cases, interview estimations were still significantly higher. When adjusting for appeals as a percentage of total units entitled, the appeals rate increases in every jurisdiction, showing that larger-than-average projects are being challenged. One potential explanation for the higher rate of appeals is that projects expend significant resources in making projects "bulletproof" in anticipation of future litigation. The lower litigation rates might reflect the fruit of those labors, with the higher appeals rates proxying for the threat of that litigation.

The success rates for administrative appeals are more difficult to determine than litigation, due to the limitations in how certain jurisdictions track appeals in the meeting minutes for their appellate bodies. From the high appeals rates relative to litigation rates, it can be inferred that developers are settling with potential plaintiffs before a lawsuit is filed. An alternative explanation is that if appeals usually fail, that failure may discourage some plaintiffs from filing lawsuits. Further data on how these appeals are resolved will help distinguish between these possibilities. We will be collecting that data in our future research, as well as data on the types of claims raised in appeals.

^{320.} CAL. PUB. RES. CODE § 21177 (2016).

Project Characteristics	San Jose	San Francisco	Oakland	Palo Alto ³²¹	Redwood City
# Projects	65	93	93	5	13
# Appealed Projects	6	15	13		2
% of total projects	9%	16%	14%	22	15%
# Units	11,463	9,768	8,958	277	1,100
# Appealed Units	1,631	2,996	1,941		493
% of total units	14%	31%	22%		45%

Figure 22: Appealed Projects Per Jurisdiction

Part IV: Discussion

Our findings reveal that all the jurisdictions studied provided for dense infill development but retained discretionary control over new residential developments of five or more units, primarily through aesthetic control. All five cities required a similar number of approvals. Despite these similarities, the local processes yielded widely different results in rates of entitlements, length of approval periods, and implications for equity. These findings are both consistent and in conflict with past research and leave open important questions for future exploration. They also directly inform current political and policy debates.³²²

A. In these cities, time lags in entitlement (and associated costs) are most likely driven by local factors and not CEQA or its requirements

CEQA reform continues to hold the attention of politicians and policymakers.³²³ Data collected from these five cities (some of the most expensive cities in the state) suggests that reforming CEQA does little to address time lags in entitlement (and associated costs) within these cities, primarily because the time lag variations across cities does not appear to be driven by CEQA or its

^{321.} We were not able to obtain Palo Alto appeals data at the time of publication.

^{322.} In these conclusions, we emphasize that we will continue to collect data from cities around the state. We limit our conclusions to these five cities and will present comparative analysis across the Bay Area and Los Angeles in future work.

^{323.} Most recently in the 2018 Gubernatorial debate, the Republican candidate (with experience developing housing in the Midwest) attributed the high costs of housing to the law "for slowing project approvals and adding to costs of development" but focused his attention on "overhauling" CEQA as a potential solution to California's persistent housing crisis, noting that the power that cities and counties currently have over land development "is appropriate." See Liam Dillon, Newsom, Cox split on how California governments should respond to the housing affordability crisis, L.A. TIMES, (Oct. 8, 2018), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-may-2018-newsom-cox-split-on-how-california-1539020247-htmlstory.html.

requirements. First, data indicates these cities often employ tools to facilitate CEQA compliance, and that neither entitlement timelines nor production appears to coincide with the type of land-use approval processes or environmental review employed. For example, an exempt project in San Francisco takes twice as long as in Oakland, and nearly as long as a full EIR in San Jose. Thus, local practices and context (such as staffing levels, political dynamics and leadership, or planning department practices that respond to political dynamics and directives), appear to more strongly influence environmental review and entitlement timelines, rather than CEQA requirements.³²⁴

Based on our initial findings, a better focus for the state to improve housing production and reduce delay in approval processes would be changing the local regulatory systems that cities develop for land-use approvals. This might include altering the processes or discretion of local governments to structure and administer local land-use review processes, changing the political and fiscal incentives around housing approval by local governments, and providing stronger and more enforceable legal obligations against cities to use their land use approval processes to facilitate housing entitlements.³²⁵

Second, it is unclear whether CEQA reform would address the impact of litigation on the housing entitlement process. Some of our interview participants discussed the necessity of "bullet-proof EIRs"³²⁶ to forestall CEQA litigation from neighborhood groups. Nonetheless, we have not observed many of these project-level EIRs in the five cities, which suggests that variations in entitlement process timelines between these five cities may not be easily attributable to neighborhood groups abusing state regulation in response to proposed project characteristics. While op-eds, research, and reform proposals often focus on EIRs and CEQA litigation,³²⁷ the data from these five cities indicates that some of the largest projects, those most likely to have significant environmental impacts, do not

^{324.} See Christopher S. Elmendorf, Beyond the Double-Veto: Land Use Plans as Preemptive Intergovernmental Contracts 9 (Draft Oct. 10, 2018) ("the actual intensity of regulation is a function not just of the rules that exist on paper but of the interest groups that have organized to enforce them, and the attitudes and priorities of the local officials who implement them.").

^{325.} In this last category, we particularly have in mind continuing efforts to strengthen the obligations of local governments under state law to provide Housing Elements in their general plans that facilitate issuance of housing entitlements. Here the state legislature could build on its efforts in the housing package it enacted in 2017. *See, e.g.,* CAL, GOV'T CODE §§ 65400, 65883.2, 65884.09; *see also* Elmendorf, *supra* note 324, at 41-8.

^{326.} This refers to our interpretation of statements from interview participants, describing the need for an EIR document that has sufficient analysis of environmental impacts and technical information to withstand judicial review should the project be challenged in court in terms similar to the term "bullet-proof" used by Barbour & Michael Teitz, *supra* note 63, at 15.

^{327.} Hernandez, Friedman & DeHerrera, *supra* note 219, at 8; Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENVTL, L. J. 21, 23 (2018), https://perma.cc/J7GV-TB48; *see also supra* note 11.

require EIRs (although EIR projects are on average larger than non-EIR projects), and that CEQA litigation is infrequent.³²⁸

Finally, comparing our findings to the HCD Landis Report reinforces our conclusion that targeting CEQA may not achieve intended policy goals-at least not in these cities-and shows the importance of the increase in discretionary review as a potential driver of timeframes. Landis found a lower overall instance of EIRs in California—about 4% of multi-family developments or 9% of singlefamily home developments. Our EIR rate is comparatively higher, with around 10% of all projects across all jurisdictions. Our average approval times are also notably longer at 25 months across all cities (with a range of 10 to 34), versus the 11 months for a single-family and 6.7 months for multi-family developments in the Landis study. However, the use of project-based tiering is dissimilar from the rate of 26% in the Landis study; we found a rate of 55% in our project years. Notably, the number of approvals per project is also distinguishable. The Landis study found 2.8 approvals per project on average while our research shows 3.6 on average. Our data suggests that despite more frequent streamlined CEQA review, overall approval time frames within certain cities are increasing as numbers of approvals per project increase. This further illustrates the inability of state CEQA reform to address the issue of time lags in entitlement processes. The local land use regulatory process in general-and the imposition of discretionary review by local governments in particular-is therefore a key issue for policymakers and researchers to consider.

B. Variability and uncertainty in the entitlement process across these jurisdictions may be a more critical factor influencing entitlement timelines than stringency

Our findings generally conform to national surveys like Pendall and WRLURI. These five cities are highly regulated coastal communities that have permissive density, high (and similar) numbers of approvals, and affordable housing incentives. Our findings are also somewhat consistent with the BLURI, in that the BLURI found that the timeframe to complete "permit-review" was about 2 years for multi-family housing and 2.5 years for single-family housing.³²⁹ We found a 25-month review period on average in our jurisdictions across all project types, which is roughly consistent with BLURI's findings, provided their

^{328.} However, we again note the limitations of our current data which can only assess to a limited extent how important the threat of litigation is to whether projects are proposed and how projects are modified in the approval process. We hope to further investigate those questions once we gather additional data on litigation and administrative appeal data from across the state. In particular, one question is whether projects go through EIRs not because of higher environmental risk, but because of higher political risk. Projects that face significant community opposition require EIRs because of the nature of the entitlement process that political opposition creates. Those projects in turn are therefore more likely to be litigated. Again, with additional data from more projects, we hope to explore this question.

^{329.} Quigley, Raphael & Rosenthal, supra note 14, at 289.

timeframes do not include the issuance of building permits,³³⁰ but again, we found that the range is great (10 to 34 months). We also found, similar to the Pendall study, that aesthetic controls can be an important factor in the number of units entitled.

However, these are general consistencies that say little about how local regulation, discretionary review, or local process operates. BLURI found that larger cities have more required approvals, which is not entirely supported by our data, as smaller cities like Palo Alto, Redwood City, and Oakland required more approvals than San Francisco and San Jose, which are larger in size.³³¹ Also, although four of the five cities use aesthetic controls (considered subjective)³³² as the primary mechanism for discretionary review, while also providing for density within the base zoning, and all cities required approximately the same number of approvals, Oakland and Redwood City had comparatively shorter entitlement timelines.³³³ This tells us that stringency, if defined by the type and number of discretionary approvals, appears to operate in Redwood City and Oakland in very different ways than in neighboring cities. This also cautions against generalizing state-level policy reform proposals from how land use processes operate within a single city, or even a single region.³³⁴

In addition, the variation in entitlement processes across these jurisdictions may factor into constraining supply or increasing costs. This variation appears to present informational barriers for newcomers to the market-even for some working within the same region. Variation may impede a developer from navigating the development process within each of these cities without substantial local knowledge. This complexity and variation could also impact the capacity of planning staff to help developers understand the entitlement process. Our interview data confirms that well-capitalized developers with existing relationships and experience in specific jurisdictions are the best situated to navigate these complex local contexts, giving them a competitive advantage. Also, project-level data indicates that larger projects do not necessarily take more time, but often take less time, than smaller projects. If the complexity and requirements of environmental review were the issue, this is not intuitive. This suggests that larger market-rate projects-to the extent that they benefit from expertise and better capitalizationcan navigate the processes in these cities in less time than smaller-scale developments. This raises concerns about monopolization, as the cost of acquiring local knowledge forces new market participants out, which could also contribute

^{330.} The BLURI is unclear about whether it is measuring the entire development process from entitlement application to building permit issuance or just the process to obtain a land use entitlement. Depending on how the survey was itself phrased, the vague terminology might have also influenced participants' responses. If the BLURI is including building permit issuance, our timeframes would be much longer.

^{331.} *Id.* at 282. Note that BLURI might have been measuring approvals to obtain a building permit, which might also skew this response.

^{332.} See Blaesser, supra note 36, at xix.

Oakland and Redwood City also had median timelines on certain size projects that were also closer to the 6 months average.

^{334.} This last point emphasizes the importance of collecting additional data from Los Angeles and other areas in California, which we are in the process of collecting.

to increased housing costs. The difficulty in accessing this data for our research purposes also supports this proposition.

A second related issue is the lack of predictability in the process within specific cities. Interviews suggest that unpredictability, as opposed to stringency, in process imposes costs that may keep developers from advancing a project. As discussed in Part III, Redwood City successfully mitigated this unpredictability issue by its Downtown Precise Plan, which imposes more prescriptive development requirements to help with certainty and reduced timeframes. Although prescriptive design requirements have drawbacks,³³⁵ if a jurisdiction is going to impose aesthetic review, explicit design standards can reduce the inherent subjectivity of aesthetic review.³³⁶ As project-level data across all five cities have stringent local ordinances. This suggests that Redwood City's approach, which maintains local discretion and a high number of approvals (compared to national averages), could potentially reduce approval timeframes and increase production yields.³³⁷

Redwood City therefore provides a compelling case study of how to incorporate improvements in discretionary processes in the planning of a new, dense transit-oriented neighborhood, and how to maintain discretionary review and stringency while also expediting entitlement processes. San Francisco, on the other hand, illustrates how the benefits of specific planning tools that promote infill development might be significantly outweighed by the costs of a protracted approval process. This approval process appears related to either San Francisco's unique charter provision (that renders even building permits discretionary actions) or a political culture that influences (and slows) planning practices.

^{335.} Interview participants have noted that highly prescriptive design standards generally give architects less ability to maneuver around building form. They can also have cost impacts if the regulations prescribe more expensive materials, more open space, or a more expensive construction type.

^{336.} See e.g., Lemar, *supra* note 218, at 1563 (noting that "whether a building is visually appealing is a subjective inquiry. Whether a building is consistent with the existing architectural context is a *supposedly* objective one) (emphasis added); Brian Soucek, *Aesthetic Judgment in Law*, 69 ALA. L. R. 382, 417 (2017) (noting that aesthetic judgment in land use regulation extends beyond the question of "what types of buildings or uses of land are the prettiest" to judgments about an area's identity and social cohesion).

^{337.} Litigation is another potential source of uncertainty for entitlement processes that can increase costs. However, at least in our current data, litigation occurs at relatively low rates, while all projects go through ambiguous and uncertain design review. Thus, at least initially it appears to us that providing certainty in the design review process is more important for improving the entitlement process than reducing litigation (again with the caveat identified in note 311, *supra*, about the threat of litigation). This is the approach taken by the state legislature when it enacted SB 35, which eliminates much discretionary review for certain qualifying affordable housing developments in cities that have not met their housing goals. *See* CAL. GOV'T CODE § 65400 (West 2018).

C. Uneven land use regulation across a city may operate as a tool of exclusion

Lens and Monkkonen's research indicates that stringency in land use regulation correlates with income segregation, but that this correlation still exists in jurisdictions with permissive density.³³⁸ This suggests that other land use controls, beyond base zoning, contribute to income segregation. Our findings may contribute to an understanding of what may be occurring—at least within these five cities.

As discussed in Part III,³³⁹ all these cities move affordable housing development through entitlement much faster than market rate development. None of the 100% affordable housing developments within our data set were the subject of litigation. This suggests that entitlement processes (in terms of timelines) and environmental review (in terms of opportunity for legal challenge) were likely not the constraint on affordable housing supply during these three years. We emphasize, however, that because these cities approved so few 100% affordable housing developments within our dataset years, it is difficult to ascertain too much about timelines. Moreover, it is possible that opposition to affordable housing might shift if these cities approved substantially more 100% affordable housing developments or approved them in different areas.

Planning and zoning analysis indicates that four of our five cities provide for permissive density and employ tools to incentivize dense residential development near transit, but that permissive density and incentives for growth are not evenly distributed in these same cities.³⁴⁰ This can create a scarcity issue (in terms of appropriately zoned land within cities) even though these same cities presumably have permissive density. Interview data suggests that the increasing cost of appropriately zoned land presents a major obstacle to affordable housing supply. This combined with drastic reductions in financing available for affordable housing impacts production, because combined, they create fewer opportunities for affordable housing development within these cities. Study participants across all categories repeatedly emphasized that legislative efforts must target both issues, as they operate together to limit deed-restricted affordable development, particularly after the loss of redevelopment funds.

Project data also confirmed that very few affordable units were entitled in our study years across all cities. San Francisco had the highest rate of affordable units entitled, at 11%, which came primarily through its inclusionary ordinance (outside of the former Redevelopment Areas). The lack of financing and suitable zoning for affordable housing developments, along with the importance of affordable housing mandates on market-rate developments in producing affordable units, lends some support to Lens and Monkkonen's recommendation for inclusionary zoning.³⁴¹ Still, inclusionary housing is insufficient to solve the

^{338.} See Lens and Monkkonen, supra note 129.

^{339.} See supra Part III.7.

^{340.} See supra Part III.8.

^{341.} See Lens and Monkkonen. supra note 129, at 12.

affordable housing crisis for all segments of the population. The formerly homeless, for example, require service-enriched housing,³⁴² as do other special needs populations.³⁴³ Inclusionary housing aside, the fact that San Francisco had essentially no development of 5 or more units outside of specific plan areas and former Redevelopment Areas indicates inadequately zoned land may be a barrier to future dense development, both for affordable and market-rate.

D. More data is needed about the risk of displacement through new development

Supply-side solutions have been proposed repeatedly in both the academic and policy literature, as well as proposed legal reforms, with some research identifying potential displacement as an immediate and direct consequent of development. This poses difficult questions for policymakers at both the local and state level on how to promote dense infill development without displacing existing residents, and whether or how local or state proposals are avoiding a tradeoff of displacement for increased future supply.³⁴⁴ Most of the proposed development in these five cities was on vacant, commercial or industrial land, except San Jose which had one entitled project involving the demolition of a 216 unit rent-controlled building subject to rent stabilization. However, these findings are limited. We only observed five cities in a region, and not all these cities had rent stabilization ordinances. More data across high cost cities with minimal vacant land, particularly those with rent stabilization ordinances, is needed to evaluate the potential impact of any proposed policy that may implicate this issue.

E. State-level reform proposals that would reduce local authority require better data

In these five cities, legal reform to promote equitable infill development may come in the form of state legislative reductions in local discretion over specific types of development; alternatively, legal reform may originate in the electorate or city council of these cities by choosing to reduce the amount of discretionary review for development. State-level action is difficult; there have been successful efforts to reduce local discretion,³⁴⁵ but two major recent proposals for by-right or

^{342.} See e.g.. Kevin Fagan, Solution to SF's homeless problem starts with supportive housing, S.F. CHRONICLE (June 29, 2016), https://perma.cc/9EFH-J4U2.

^{343.} The California Tax Credit Allocation Committee defines these special needs populations as "[i]ndividuals living with physical or sensory disabilities and transitioning from hospitals, nursing homes, development centers, or other care facilities; individuals living with developmental or mental health disabilities; individuals who are survivors of physical abuse; individuals who are homeless ...; individuals with chronic illness, including HIV; homeless youth ...," See 4 C.C.R. § 10325(g)(3) https://perma.cc/J3R4-9SWP.

^{344.} See e.g., Zuk and Chapple, supra note 208.

^{345.} See S.B. 35, 2017 2017-2018 Leg., Reg. Sess. (Cal. 2018).

limited by-right development have failed.³⁴⁶ While our case studies suggest that some political will to increase affordable housing supply exists in at minimum four of these cities, it is unclear how broad that impulse extends across the state or how strong it may be.

Assuming a new proposal limiting local discretion over infill development with affordability is politically feasible, the variation in local processes observed in these five cities in a single region is substantial enough that without good data across multiple cities and regions, there is a high risk that statelevel reform of local process may not advance intended policy goals.

For example, recent legislation such as SB-35347 attempts to eliminate the CUP requirement for certain projects consistent with zoning, but the complexity of the entitlement processes may prevent this legislation from accomplishing what is needed in these five cities. For instance, some cities impose a myriad of specific plan approvals on zoning-compliant projects that happen to be located within a specific plan area.348 Although these approvals are functionally similar to CUPs, on paper they are different processes. HCD has drafted proposed regulations that appear to cover specific plan permits within the ministerial process.³⁴⁹ San Jose provides another example. Most projects in San Jose go through the PUD process, which requires rezoning and thus renders a project ineligible for SB-35. Yet the same PUD process in San Francisco and Oakland can occur without rezoning. Even though the PUD process accomplishes the same goals in these jurisdictions, the application is significantly different. Without knowledge of these nuances, lawmakers cannot draft legislation that accurately addresses the problem and provides clear guidance to local stakeholders. Moreover, without an understanding of the distribution of non-zoning compliant projects entitled each year, lawmakers may find their legislative tools unable to solve the right problems. Even legislation that is effective when enacted may quickly become ineffective due to local government efforts to restore control over new development. For instance, SB-35 may be unable to avoid cities downzoning or enacting more inflexible design criteria to force all approvals through rezoning or variance processes that are not subject to state streamlining. SB 166-California's "no net loss" law-prohibits jurisdictions from reducing residential density to a lower residential density than what was utilized to determine compliance with housing element law.350 While this helps mitigate unintended impacts of SB-35, it is unclear if the provision applies

^{346.} See CAL. DEP'T OF FIN., STREAMLINING AFFORDABLE HOUSING APPROVALS: TRAILER BILL TECHNICAL MODIFICATIONS (6-10-16) (2016), https://perma.cc/GDS6-XVCR, at 5–6; S.B. 827 Reg. Leg. Sess. (2017-2018) (Cal. 2018).

^{347.} See S.B. 35, 2017 Leg., Reg. Sess. (Cal. 2018).

^{348.} Examples of this include the Large Project Authorization in certain use districts of San Francisco's Eastern Neighborhood plan area or the Planned Community Permit in Redwood City's Downtown Precise Plan. See S.F. MUNI. CODE § 329; REDWOOD CITY MUNI. CODE § 47.1-47. 5.

^{349.} See Memorandum from Cal. Dep't. Housing & Community Dev., Draft SB-35 Regulations § 301(a), Sept. 28, 2018. https://perma.cc/J5U7-KDKN (defining the ministerial process as "non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval").

^{350.} See Cal. Gov't Code § 65863 (2018).

to charter cities.³⁵¹ Moreover, SB-35 may be ineffective in jurisdictions where base zoning has not been updated to reflect General Plan updates.³⁵² Finally, jurisdictions are increasingly regulating density based on height and building form. In many places, height—not a limit on dwelling units per acre or FAR—is the major barrier to building more units. Future state legislation should consider these evolving zoning standards.³⁵³

F. The state should not only mandate, but directly support good data reporting

Perhaps the single most important finding explored in this article is also the most obvious-poor data access to project approvals in many jurisdictions. Results are only accurate to the extent that data provided to the public through public portals and commission minutes are accurate. While better-resourced jurisdictions have advanced parcel information tools and sophisticated websites. many rely on outdated online permit systems that are not updated with current data. Oakland is an extreme example of what can result from inadequate resourcestheir online permit system often contains incomplete information and has no link to approval documents. While we supplemented these shortfalls with minutes from Planning Commission and City Council meetings, some projects go through an administrative, department-level review for which complete data was not available. While we erred on the side of caution and included six projects in our database that do not have complete data, we caution that it is possible that these six projects skew the total number of approved projects higher than what it actually is. Additionally, Oakland's pre-application process that some projects utilize prior to submitting a formal application was also inconsistently logged in their online system, which could influence approval timelines. We cannot infer that Oakland's poor data access is either deliberate or a reflection of local policy; the city's continued work to supplement state requirements around open government suggests the opposite.354 It is more likely that Oakland, which faces a uniquely persistent budget

^{351.} Section 65803 exempts charter cities from compliance with §§ 65800 – 65912 of the Planning and Land Use Code unless explicitly stated otherwise. The text of SB 166 does not explicitly apply its requirements to charter cities. All of the jurisdictions studied are charter cities. *See* CAL. GOV'T CODE § 65803 (2018). For a legal interpretation that the new requirements do apply to charter cities, *see* Public Interest Law Project, SB 166 (2017) Memorandum at 6, https://perma.cc/TK7V-AMYD. Without an amendment to the Government Code, determining applicability will likely require litigation.

^{352.} See discussion of San Jose, supra Part I n.33.

^{353.} We note that SB 827, which failed, attempted to do this. *See* S.B. 827, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (the proposed legislation exempted eligible applicants from certain height requirements).

^{354.} In 1997 Oakland passed its own Sunshine Ordinance to supplement Brown Act requirements around open government, developed in partnership with the League of Women Voters and the California First Amendment Coalition. This ordinance covers meeting minutes and agendas relevant to discretionary approvals of residential development. *See* OAKLAND MUNI. CODE §§ 2.20.010 et seq. (Oakland Sunshine Ordinance).

crisis,³⁵⁵ is severely under-resourced given city initiatives to accelerate development and the growing demand for housing.

In contrast, cities like San Francisco have excellent data access that allows us to determine precisely what was approved each year according to our parameters. However, even good publicly accessible data does not fully reflect the complexity of the planning process. San Francisco employs a streamlined application process356 that integrates processes that constitute distinct approval pathways in other jurisdictions, like design review. The fact that there are no formal design review approvals in San Francisco does not mean these processes are not happening. San Francisco's various specific plan permits also combine what is essentially a CUP and variance process into one, reducing the number of CUPs and variances in that jurisdiction. More projects are receiving variances than these numbers suggest. Jurisdictions like San Jose, on the other hand, employ very distinct approval processes, which also influences timeline. The majority of developments in San Jose go through the PUD process, which involves a rezoning and a permit approval that happen sequentially, rather than in tandem. Our interviews suggest that developers often complete the rezoning and then sell the land to different developers who later secure the permit. The time lag between these two milestones may slightly exaggerate approval timelines in San Jose for PUD projects.

Although top-down state reform of environmental regulations (or local regulation over land use) may encounter substantial difficulties, improving data access is an important first step to accurately understand the problem. Extracting project-level data is very time and resource intensive. There are few jurisdictions statewide that have development approval data in one centralized repository. Supporting jurisdictions to provide access to project-specific data on land use approvals, CEQA compliance, and overall time frames will help inform top down policy making in critical ways. Improving the quality of data and access to data can also help researchers and policymakers identify how long processes take and identify inefficiencies and redundancies that exist in local processes. This could also immediately help affordable housing developers determine what funding is required for the entitlement process. Finally, publicly available data about approval timeframes and processes may increase public and political pressure on local governments to make processes more effective and efficient.

SB 35 has somewhat advanced this issue some, in that it requires annual data reporting (which includes reporting total number applications received, projects entitled, building permits issued, and total number of certificates of occupancy issued).³⁵⁷ The state could build on this requirement to support this

357. See CAL. GOV'T CODE § 65400 (2018); see also Elmendorf, supra note 324, at 47.

^{355.} See Daniel Borenstein. Despite booming economy. Oakland finances deteriorate. THE MERCURY NEWS (March 3, 2017), https://perma.cc/8MT4-7X3P.

^{356.} In early 2018, San Francisco overhauled its entitlement application process. While this new process would likely impact data collection for projects applying for entitlements post-2018, this new process does not affect our data years. CITY AND COUNTY OF SAN FRANCISCO, CHANGES TO PRELIMINARY PROJECT ASSESSMENT, Apr. 2, 2018, https://pe.rma.cc/AEE5-LD4T.

work through two additional mechanisms. The first would be funding to support existing data reporting requirements (including those proposed here). As discussed previously, not all jurisdictions are equally resourced, and this appears to have a significant impact on the quality of a city's data. We anticipate that without additional support, at least some city reports will be unreliable. The second would be an enhanced housing element reporting obligation that requires jurisdictions to log information on approval processes and timeframes in a centralized repository with consistent terminology across jurisdictions. To the extent that processes are so dissimilar that they cannot be analogized, this centralized repository could contain explanations. This will aid not only in understanding entitlement processes, but will also help legal organizations to enforce housing element obligations. Housing issues present regional concerns, and current data accessibility and quality presents obstacles to comparative and regional analysis on both trends (rate of entitlement), and processes (which processes may work better).

Smaller steps would also be beneficial. For example, linking existing GIS or zoning data with assessor parcel information and building permit systems is a great first step to understanding how entitlements and building permit processes interact. Linking these systems to provide this data can make housing element reporting obligations more robust. Ideally, improved data access can illuminate more of the internal planning process, by providing detail that is not immediately apparent from approval documents (like the amount of time environmental review adds to the approval process). Interview data suggests that improved entitlement reporting and data can particularly benefit affordable housing developers. Financing affordable housing requires artful layering of state, local, and federal finance-each with their own set of eligibility requirements.358 Funding applications also happen in cycles. For example, in California, the 9% Low Income Housing Tax Credit has two funding rounds per year.359 For most of these programs, the site must already be entitled in order to be eligible for funding.360 Thus, timing entitlements with the funding cycles is very important to affordable housing developers. In an era of limited funding, timing the cycle correctly maybe the difference between a project being funded or not. Improved data can assist developers to improve their predevelopment strategy, especially in areas where they have less experience developing. As discussed above, we observed that these jurisdictions appear to process affordable housing faster than market rate housing.

^{358.} See e.g., Affordable Housing and Sustainable Communities Program, CAL. DEP'T OF HOUSING AND COMMUNITY DEV. (last visited Oct. 26, 2018), https://perma.cc/ TBV2-E759; Low Income Tax Credit Programs. CAL. TAX CREDIT ALLOCATION COMM. (last visited Oct. 26, 2018), https://perma.cc/C6NE-7N2Q; See also Affordable Housing Trust Fund, CITY OF LOS ANGELES AND CMTY. INV. DEP'T. (last visited Oct. 26, 2018), https: //perma.cc/99KB-SK5S.

^{359.} See e.g., Application Information, CAL. TAX CREDIT ALLOCATION COMM. (last visited Oct. 26, 2018), https://perma.cc/D8CS-8S7H (detailing deadlines for two funding rounds).

^{360.} See e.g., 4 C.C.R. § 10325(f)(4) (2018) ("Applicants shall provide evidence, at the time the application is filed, that the project as proposed is zoned for the intended use and has obtained all applicable local land use approvals which allow the discretion of local elected officials to be applied . . . ").

From this, we can infer that some jurisdictions treat affordable housing differently, and nuances in process should be made publicly available. This is especially true in jurisdictions where affordable housing entitlement is slower than comparable market-rate development.

Conclusion: Complex issues require a multi-pronged research approach

Our work continues and we are exploring how entitlement operates within other cities throughout the state. At each turn we are reminded there is no single solution to this perplexing problem. Even within land use regulation, entitlement is not the only issue for housing production in California. Increasingly onerous building safety regulations-ranging from seismic standards to renewable energy mandates-may also impose substantial costs on development. The building permit process itself is highly variable by jurisdiction, and interviews suggest it is another source of time delay. Interview participants also referenced construction and labor costs as a major barrier to feasibility. Labor costs, however, do not stem solely from Project Labor Agreements³⁶¹ or prevailing wage requirements;³⁶² developers have also noted a drop in skilled tradespeople post-Great Recession, which has created labor scarcity and implicates workforce development issues. Further study on these factors is necessary. More information is also required on the demand side of the equation-specifically how income and preferences influence where people live and whether they use transit. In sum, we need a better understanding of both sides of the equation (supply and demand), with a clear focus on equity in order to reduce GHG emissions through equitable infill development.

^{361.} Project Labor Agreements are collective bargaining agreements between building trade unions and contractors that govern terms and conditions of employment for all workers on a construction project. *See Project Labor Agreements*, AFL-CIO, (last visited Oct. 26, 2018), https://perma.cc/C8VX-UC8G.

^{362.} See. e.g., CAL. GOV. CODE § 65913.4(a)(1)-(10) (2004) (defining prevailing wage to be the "general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code").
