

Getting it Right:

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

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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.

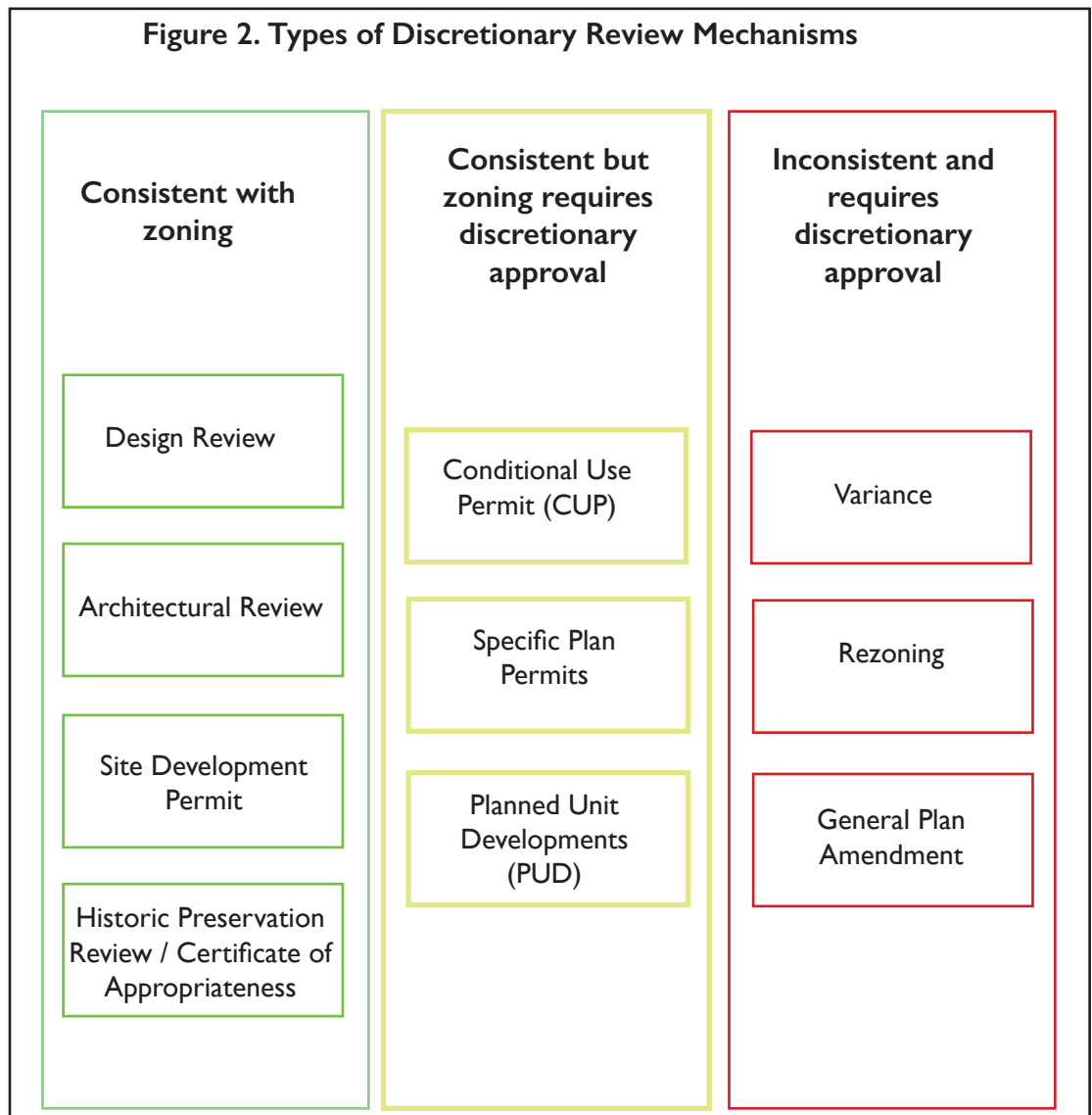
All of the jurisdictions we examined require discretionary review for residential developments of five or more units. In fact, in four of our five Bay Area jurisdictions, residential developments of two or more units require discretionary approval. That means even if these developments comply with the 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.

Figure 1. Discretionary Review of Developments Consistent with Base Zoning

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 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

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.

Figure 3. Instances of Discretionary Review across Jurisdictions

	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	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	1	0	N/A	0	3	0	0	5
Redwood City	9	4	0	4	4	2	0	0	13

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 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.

Figure 4. Types of CEQA Review Mechanisms

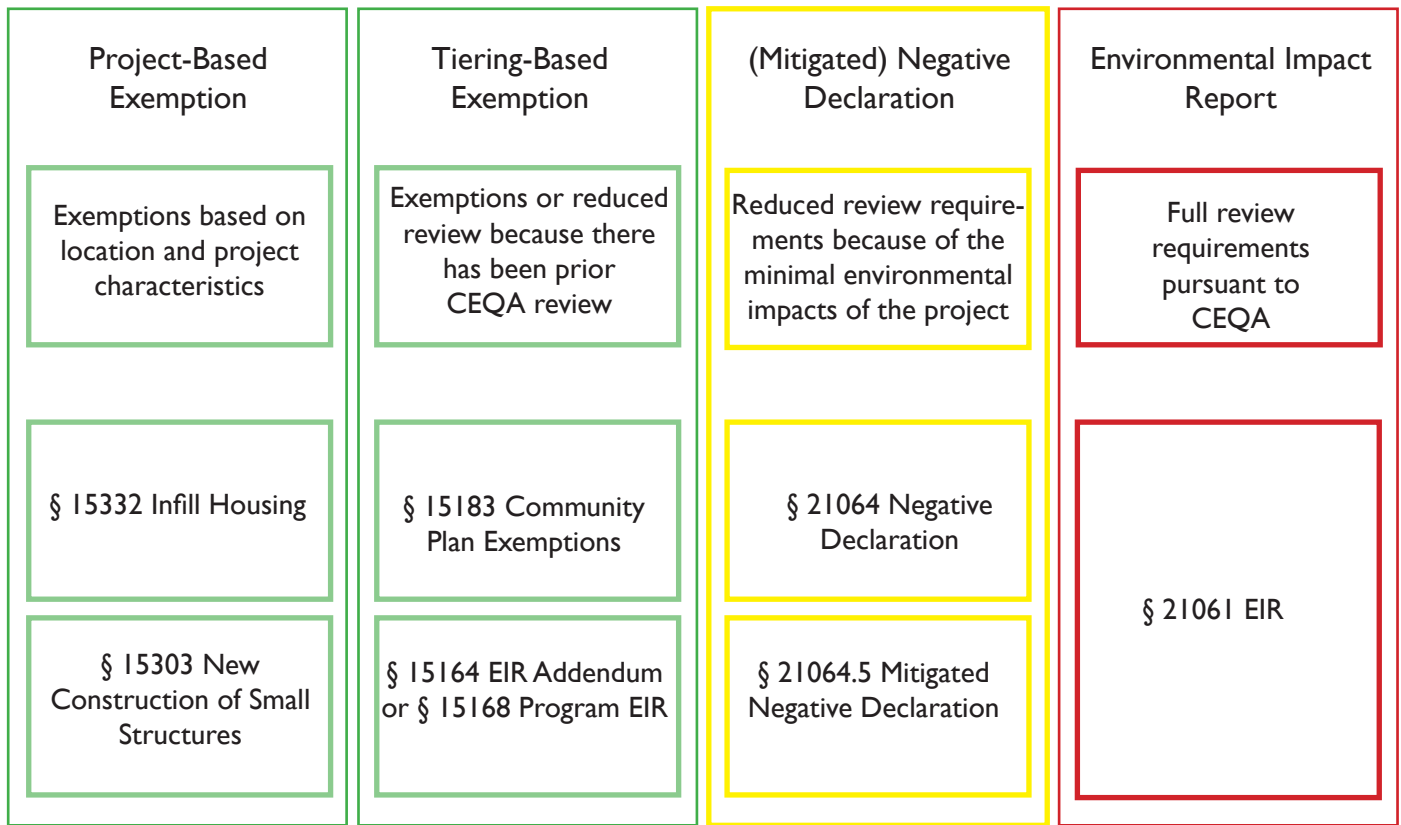


Figure 5. Instances of CEQA Review across Jurisdictions

	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	1	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

Figure 6. Percentages of CEQA Review Type by Project

	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 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	180 ¹⁸

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

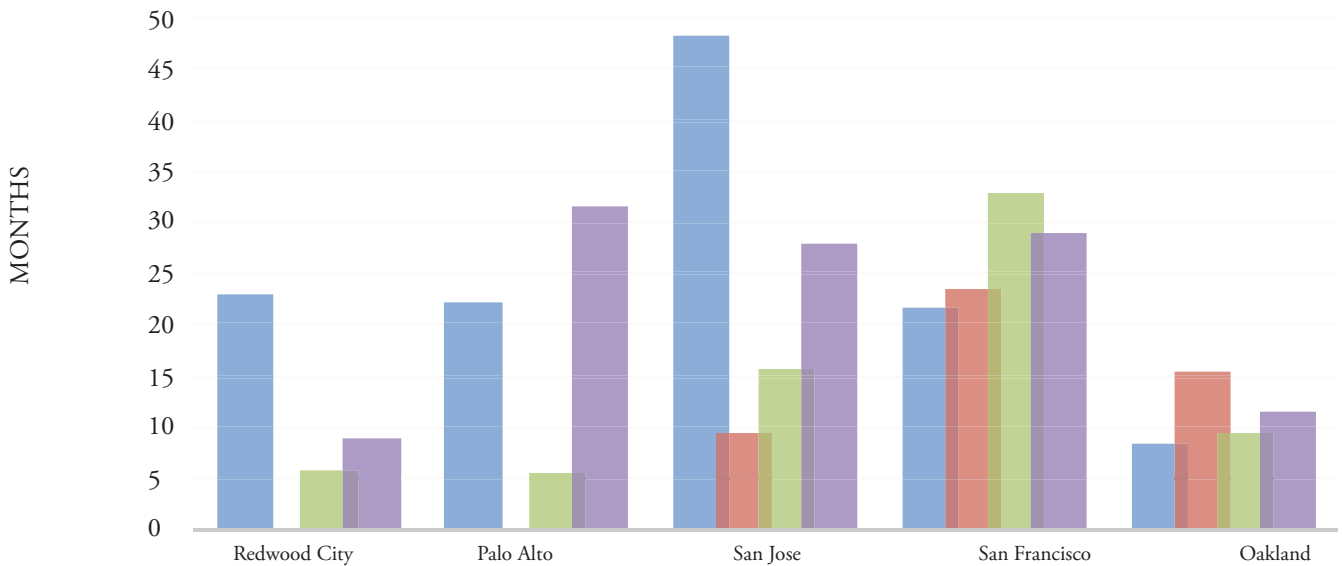
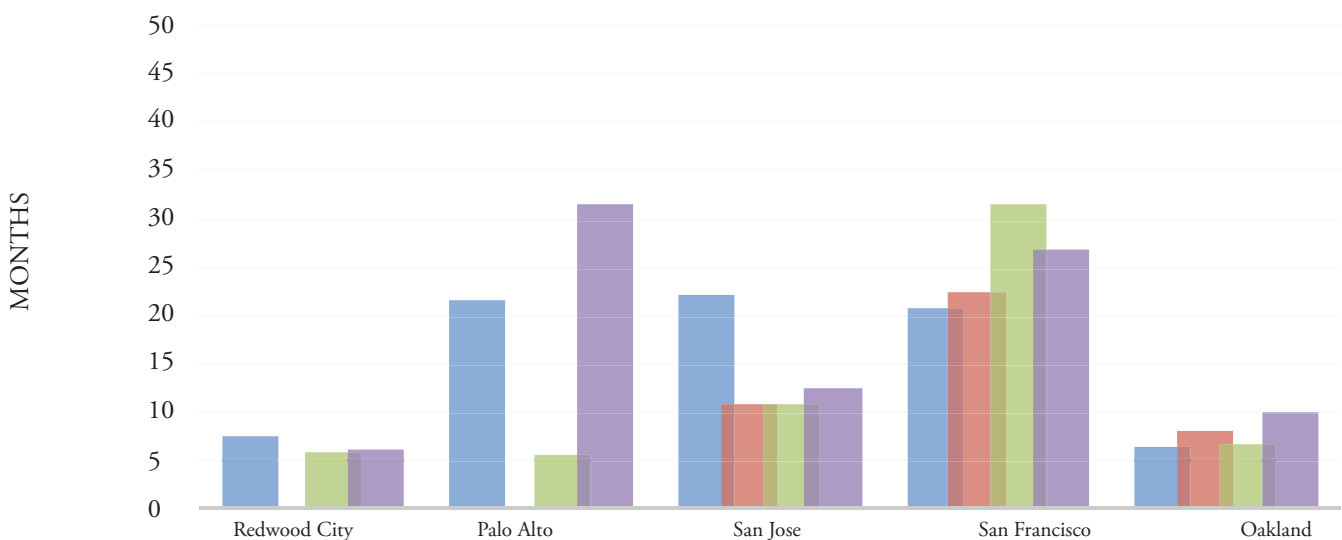


Figure 10. Median Approval Time by Project Size



■ 0-25 Units ■ 26-50 Units ■ 51-100 Units ■ 101+ Units

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).

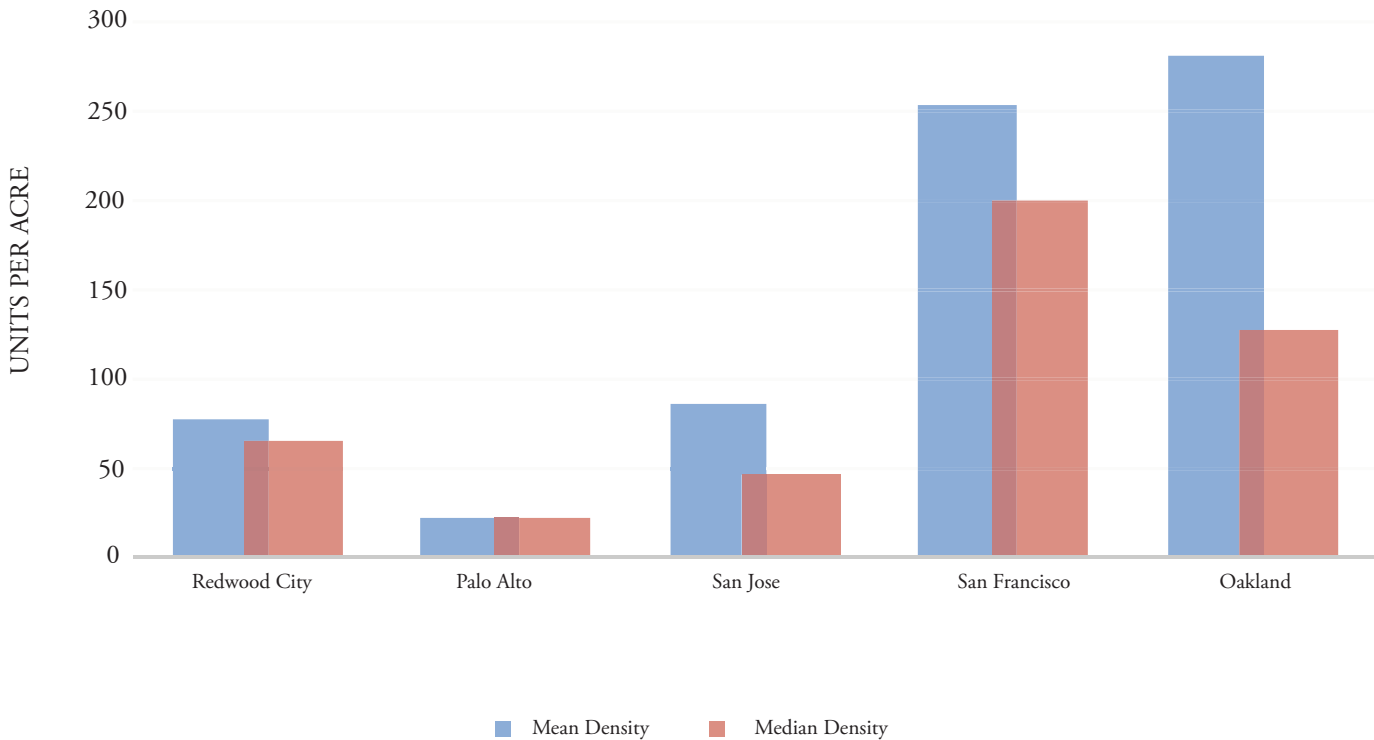
Calculating both the mean and median number of dwelling units per acre in each jurisdiction can also allow us to compare projects entitled in each jurisdiction in terms of density, which has important implications for state level sustainability goals.²² Our data indicates that projects entitled in San 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.”

Figure 11. Project and Units Entitled Per Capita

	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	11
San Francisco	85	8,534	10
Palo Alto	5	277	4

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

¹ 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-htmstory.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-environmental-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: Deepening 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.

¹⁴ To 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.

