

The Issue:

Does state or local law constrain dense infill residential development?

Why does infill dense residential development matter?

California is faced with a persistent and severe housing crisis with major implications for both equity and the environment. High housing costs are the leading cause of poverty in California, and exceptionally high housing costs within the state's urban areas of its coastal regions have created a crisis that ripples throughout communities statewide.¹ Within our high cost coastal cities working adults and families with children are rent burdened, and some are homeless and living within vehicles.² Scholars and advocates have concluded that high housing costs and inadequate supply within our coastal urban core cities have displaced lower income households,³ and with this displacement comes the development of "megaregions" with low income workers living in one lower cost metropolitan region and commuting long distances into another metropolitan region, often by car, to return to work.⁴ Thus, addressing the housing crisis requires targeted efforts to increase housing supply, generally, but meeting the state's environmental goals (to reduce greenhouse gas emissions) also requires increasing affordable housing within the state's urban core, specifically. The latter strategy demands infill dense residential development.

How does land use law affect infill dense residential development?

Scholars, legislators and others often argue that land use law in California contributes to the state's housing crisis by increasing housing development approval timelines, which in turn drives up the cost of development.⁵ Some practitioners and policymakers have argued that state mandated environmental review under the California Environmental Quality Act (CEQA) is a primary driver of delay in residential development while others have focused attention on local land use regulations as a constraint on housing supply.⁶ To date, no recent research has identified which laws or regulations might constrain housing supply in California. But identifying which law or regulation might delay development timelines is important in California; otherwise, legal reform might fail to address the issue (time lags in housing development timelines) while sacrificing other important policy goals embedded in current law (public notice, participation, and mitigation of significant environmental impacts).

In addition, the approval process to obtain a building permit—referred to as the entitlement process—is a complex process developed at the local level in California. Thus, whether CEQA

applies to proposed development depends on whether a local government's entitlement process is discretionary or "as of right." If the proposed development is "as of right"—meaning a development meets certain zoning and planning requirements and does not need any additional scrutiny to get a building permit—as a general matter, CEQA does not apply to the proposed development. Local governments can use a variety of local regulatory tools to maintain discretionary review over proposed development, some of which apply even when the proposed development is otherwise consistent with the city's zoning. In Figure 1, we illustrate some of the common ways that cities in California impose discretionary review over proposed development.

Figure 1. How Cities Can Impose Discretionary Review

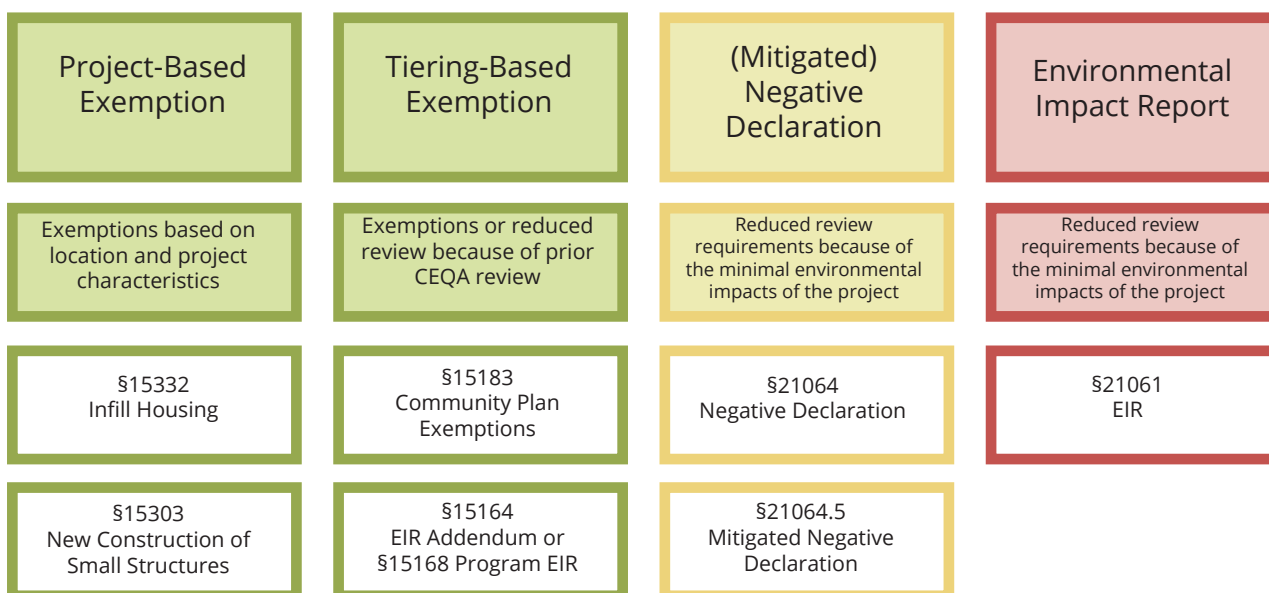


When CEQA does apply to proposed development, compliance can take a range of forms and impose different levels of burden on the developer. Existing law provides local governments significant ability to shape the kinds of CEQA compliance that individual developments must satisfy, including deeming some projects exempt from CEQA, or allowing reduced environmental review.

Thus, understanding how law and regulation impacts

residential development timelines in California requires examining how these processes operate both independently and together to shape the entitlement process.

Figure 2. Pathways to CEQA Compliance



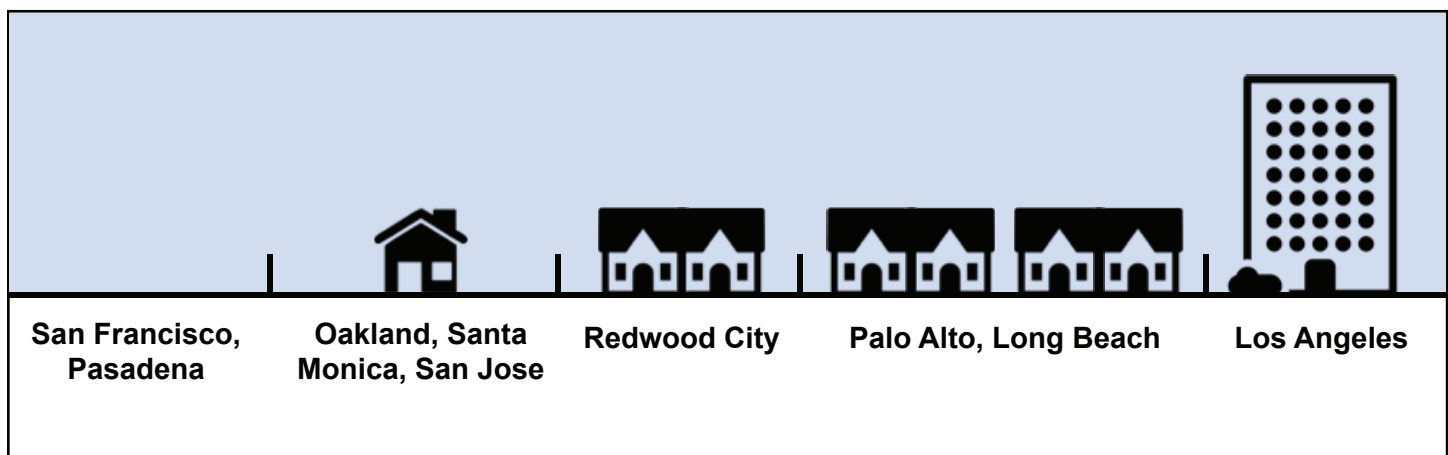
Our Research:

Our research seeks to understand and identify which laws or regulations might impede housing construction in high-cost areas through the imposition of time lags or other hurdles on housing development. We studied the entitlement process within nine selected cities in two of the state's highest cost coastal regions—the Bay Area (Oakland, Palo Alto, Redwood City, San Francisco, and San Jose) and Los Angeles County (Long Beach, Los Angeles, Pasadena, and Santa Monica). We analyzed all of the local and state law applicable to entitling all residential development projects and interviewed important actors in the residential development process in our selected cities. We also collected data on 25 different characteristics of all residential development projects of five or more units that received full entitlements over a three-year period within each city we studied. This allows us to explore what kinds of projects move through different kinds of state and local level processes. In total, we examined how 1,087 proposed residential developments that moved through entitlement processes (including “as of right” projects) within these nine cities.

What did we learn?

Most cities do not allow proposed residential development of 5 or more units to move through the local system as of right. Local regulation triggers the application of state environmental review, and because most of our study cities maintain discretionary review over most proposed dense residential development, nearly all of the proposed residential development we studied is moving through multiple approvals and process.

Figure 3. Illustration of Residential Development Permitted As of Right Within Cities Studied



No two cities look the same in terms of how long approval processes take or how many steps of approval they impose—even when they use processes that read the same on paper. Within these nine cities, local land use regulations are both complex but they are also varied, even between neighboring cities within the same region. For example, although five of our nine cities use design review as their primary tool to impose discretionary review, approval processes of proposed residential development (in terms of time lines or number of approvals required) are different.

A limited number of proposed projects faced litigation under CEQA, although litigation rates are higher when calculated as a percentage of the total units (because larger projects are more likely to be litigated). On the other hand, a much higher rate of projects were subject to an administrative appeal, in which opponents to the project sought additional review through the local land-use regulatory process. We did not see a clear relationship between litigation, administrative appeals, or timeframes for approval of projects.

Table 3. Entitlement Timeframes, Appeals Rates and Litigation Rates

	Average # Approvals	Median Approval Timeframe (Months)	Appeal Rate (% Projects)	Appeal Rate (% Units)	CEQA Litigation Rate (% Projects)	CEQA Litigation Rate (% Units)
Los Angeles	2.84	10	20%	36%	4%	11%
Long Beach	3.10	7	5%	15%	14%	28%
Pasadena	3.11	14	0%	0%	4%	17%
Santa Monica	3.17	39	17%	53%	0%	0%
San Francisco	3.42	26	16%	31%	3%	3%
San Jose	3.43	14	9%	14%	2%	3%
Oakland	3.54	7	14%	22%	1%	1%
Palo Alto	3.60	16	0%	0%	0%	0%
Redwood City	3.85	7	15%	45%	8%	8%

*Administrative Appeals and Litigation May Include CEQA and Non-CEQA Claims

Although CEQA litigation comprises approximately 3% of the projects studied, some forms of CEQA compliance appear to be more heavily litigated than others. Across all cities, it appears that exempt projects are less likely to face litigation than projects that use other forms of CEQA compliance.

Table 4. Distribution of Litigation by CEQA Approval Type

	CatEx	Tiering	ND	MND	EIR	Total CEQA Lawsuits	
Los Angeles		1	0	0	14	5	20
Long Beach		0	2	0	0	1	3
Pasadena		1	0	0	0	0	1
Santa Monica		0	0	0	0	0	0
San Francisco		0	0	0	0	3	3
San Jose		0	0	0	0	1	1
Oakland		0	1	0	0	0	1
Palo Alto		0	0	0	0	0	0
Redwood City		0	1	0	0	0	1
Totals		2	4	0	14	10	30
% Total CEQA Litigation		7%	13%	0%	47%	33%	100%

Entitlement related data is hard to acquire. Cities are inconsistent in how they describe their local land use systems, or how they report out about how they entitle proposed residential development, making data extraction and difficult. When we cross-referenced data sources to confirm entitlement rates, we also found some errors in data reporting.

What did we conclude?

- **Local systems are complex and likely confusing—even for experts.** Local regulatory systems are complex and varied, and most of the data we required to analyze what was occurring at the local level was not readily available.
- **Wide variation in development timeframes appears to be driven more by local process—and likely dictated by local politics—than by state-level environmental review mandates.** The differences in entitlement timelines across cities, even cities using similar regulatory tools and applying similar state environmental review mandates, suggests that local processes (likely influenced by local politics) are more important in driving residential development timelines.
- **Streamlining appears to work.** The fact that some cities appear to move proposed development through environmental review quickly suggests that CEQA streamlining can work, but it requires that cities make an up-front investment in planning.
- **There does not seem to be an obvious relationship between CEQA litigation and development timelines within these cities.** While we cannot say that CEQA litigation is not an issue at all, there does not appear to be an obvious relationship between the rate of litigation within cities and how long proposed development takes to move through entitlement processes and environmental review. We are continuing to collect data and conduct additional research on this question. In addition, our data on litigation of approved projects does not address the question of whether or not the threat of litigation deters the proposal or approval of projects to begin with.
- **CEQA reform, alone, may not increase residential entitlement within these cities.** It is unclear that CEQA reform, alone, would do much to shorten entitlement timelines within our study cities for dense infill residential development, or that it would increase entitlement rates, because most of these cities require development to move through complex local processes.

References

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6. See e.g., 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); 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).