YIMBY LAW

September 2026

Builder's Remedy in 2026: Enforcement, Exclusion & Progress

A review of 221 projects and nearly 44,000 units reveals how California's wealthiest cities are slow to follow the law and approve housing.

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Table of Contents

Table of Contents **2**
Introduction **3**
Builder's Remedy Basics **4**
Methodology & Data Collection **7**
Data Analysis – Expense & Exclusion **10**
Characteristics of Approved Projects **14**
Common Obstruction Tactics **14**
Disputing Compliance Status 15
Case Studies: Los Angeles, Sausalito, Santa Cruz County, Gilroy, La Cañada Flintridge, Los Altos Hills 15
Disallowing Application Completeness & Illegal Standards 16
Case Studies: Beverly Hills, Redondo Beach, Los Gatos, Cupertino, Sunnyvale 17
Denying Necessary Utilities 18
Case Study: Santa Clara County 18
Abuse of CEQA 18
Case Study: Mountain View 18
Conclusion **19**

Introduction

The Builder's Remedy exists as a backstop to California's Housing Element process. Many cities and counties have wielded their land use authority not to meet the needs of their communities, but to exclude affordable housing and preserve the exclusivity that benefits existing residents at the expense of everyone else. Despite many obstacles, the Builder's Remedy is a critical tool to reassert the rights of individuals and meet the housing needs of the broader community. Under California's Housing Accountability Act, a jurisdiction loses much of its power to deny qualifying mixed-income housing projects when it falls out of compliance with Housing Element law. The Builder's Remedy is the mechanism that makes that consequence real. Since the wave of noncompliance that followed the 6th Housing Element cycle deadlines beginning in 2021, YIMBY Law and YIMBY Action have tracked 221 Builder's Remedy projects across California, representing nearly 44,000 proposed housing units. That dataset, the largest of its kind, forms the basis of this report.

What the data reveals is both encouraging and damning. These projects are concentrated overwhelmingly in California's wealthiest, most expensive, and most exclusionary communities: 91.85% are in areas with incomes above the California median, and nearly half are in Silicon Valley alone. This trend reveals that the Builder's Remedy is doing exactly what it was designed to do: disrupting patterns of exclusion that local governments have deliberately entrenched.

Despite challenges, many proposed housing projects are successfully navigating the approval process. Twenty-five of the projects we tracked have been approved, representing 2,423 units of housing. However, the data also shows local governments creating barriers to approvals. The majority of projects, making up 57.01% of the data we are tracking, remain in review. Obstruction tactics are widespread and varied: cities dispute their own Housing Element compliance status, apply illegal local standards to applications, try to run out the clock with procedural delays, and even attempt to weaponize the utility approval processes. Nevertheless, litigation is common and these cases are winnable. With changes in the law and attitudes around the state, local governments are beginning to understand that being wealthy no longer gets you around state housing law.

Builder’s Remedy Basics

The Builder's Remedy is potentially California’s most powerful tool to ensure cities and counties fulfill their state-mandated housing planning obligations. Drawing inspiration from landmark housing laws in other states, such as New Jersey's Mount Laurel doctrine and Massachusetts' Chapter 40B, the California Legislature included the Builder's Remedy in the Housing Accountability Act (HAA) in 1990 to prevent municipalities from using their land use authority to exclude housing, particularly for low- and moderate-income households. When a jurisdiction falls out of compliance with Housing Element law, it temporarily loses much of its authority to deny affordable housing projects based on local zoning rules. This creates a window where developers can propose projects that would otherwise be prohibited by the local general plan or zoning ordinance.

For a development project to be eligible for protection under the Builder's Remedy, it must meet specific criteria at the time the application is submitted:

- Because the remedy is part of the HAA, the project must be either entirely residential, or a mixed-use development where at least two-thirds of the square footage is designated for residential use.
- In addition, a project must include a significant affordability component. To qualify, a project must dedicate:
    - 20% of its units to lower-income households, OR
    - 100% of its units to moderate-income households.[1]
- A complete preliminary application for the project must be submitted while the jurisdiction's housing element is out of compliance with state law.

Once a jurisdiction adopts a compliant element that is certified by the California Department of Housing and Community Development (HCD), the window for submitting new Builder's Remedy applications closes. However, projects that submitted a preliminary

[1] A recent legislative update (AB 1893, effective January 2025) has created additional, more nuanced affordability thresholds for certain projects, allowing for 7% ELI, 10% VLI, 13% Low Income, 100% Moderate Income or below, or not more than ten total units.

application under SB 330 while the jurisdiction was noncompliant generally have a vested right to proceed.

Projects meeting these criteria do not have to comply with the jurisdiction's general plan or zoning code in effect at the project location. Instead, the project can use the objective written development standards in effect in the zone that allows projects at the density the project proposes, or if they were submitted before January 1, 2025 they need not comply with any local zoning. A city cannot require a Builder's Remedy project to go through a general plan or zoning amendment process.

Enacted in 2024, AB 1893 changed the Builders Remedy standards significantly, and projects within this dataset represent both those submitted before and after its enactment. Prior to AB 1893, projects did not have to comply with any local zoning standards or size limits. They were subject to a few specific limitations. A local agency could only deny a qualifying project if it can make specific written findings supported by substantial evidence that the project would have a specific, adverse impact on public health or safety with no feasible mitigation, that the denial is necessary to comply with state or federal law, or that the project is proposed on land zoned for agriculture or resource preservation that lacks adequate water or wastewater facilities. In addition, a local agency could impose conditions on the project, as long as the conditions did not reduce the density of the project or render it infeasible.

While a Builder's Remedy project can now bypass local zoning, its size is still limited. Under AB 1893, maximum densities may be set at 1.5 times Mullin density standards;[2] three times the density allowed by the general plan, zoning, or state law like AB 2011; or the density attributed to the site in the Housing Element. Minimum densities are set at 50% greater than the density typically allowed under the jurisdiction's Mullin density standards, or the minimum densities available in the jurisdiction. Furthermore, recent updates like AB 1893 have established maximum density limits (e.g., up to 65 units per acre depending on location). Importantly, a developer can combine the Builder's Remedy with the state's

[2] Mullin densities are determined by statute and characteristics of the local jurisdiction. They allow 30 units per acre in metropolitan areas; Twenty units per acre in suburban areas, which includes Bay Area cities with populations under 25,000; Fifteen units per acre in incorporated cities in rural areas and ten units per acre in unincorporated rural areas.

Density Bonus Law to receive even more units and additional concessions or incentives beyond the base project.

AB 1893 explicitly encoded Builder's Remedy projects' powers to circumvent obstruction. The law contains a catchall provision to cover methods of obstruction that are not explicitly named in the law, "for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action."

The Builder's Remedy strengthens California housing law with a meaningful consequence for failing to complete the Housing Elements process. Cities are incentivized to maintain compliant Housing Elements to avoid the Builder's Remedy, while terminally non-compliant municipalities lose their ability to obstruct crucial housing production.

Methodology & Data Collection

This report relies on data maintained by YIMBY staff and gathered from multiple sources. This living database of housing projects facilitates ongoing work tracking legal compliance, enforcing housing laws, researching the efficacy of new laws, and supporting individual projects. We receive information about new developments through the YIMBY Law project submission form, research conducted by staff, YIMBY Action leads and volunteers, project applicants who seek our support, and tech tools that directly review California agendas. Organizing and legal staff conduct weekly reviews of all new projects, coordinate with applicants to provide ongoing monitoring and support, and continue to update projects after important milestones.

For a project to be included in this dataset, the applicant must have formally cited the Builder's Remedy in application materials, including a retroactive declaration via AB 1893. To better track obstacles to development, we include projects that fell through before final construction.

The 221 projects in this report constitute the largest dataset in California for Builder's Remedy Projects, but does not provide a complete census. There is no centralized database of housing proposals in California. California's Department of Housing and Community Development (HCD) maintains no such resource and each locality tracks housing proposals differently. Some even avoid public project tracking to discourage bad faith lawsuits. There is no mechanism to unify over 500 disparate tracking systems in each locality. In addition, cities and project sponsors often have differences of opinion over whether a proposal qualifies for the builders remedy.

A Builder's Remedy project is only possible while a jurisdiction is non-compliant with Housing Element Law. One of the first defenses a locality will raise to process a builders remedy project is that their housing element was compliant at the time the project application was filed. A municipality is clearly out of compliance when it has not adopted a compliant, certified Housing Element by the statutory deadline, or when HCD has declared them out of compliance. However, HCD is not the only source that can determine compliance status: as a legal question, courts are empowered to review and determine Housing Element status, and may even overrule HCD determinations.

For just one example, the California Court of Appeals recently overruled HCD advice and ruled that Redondo Beach was out of compliance because its housing overlay in commercial zones permitted minimum densities that were insufficiently low to meet Housing Element standards.[3] Now many cities who used similar overlays may or may not be subject to the Builder's Remedy, despite lacking a formal declaration from HCD.

Reviewing compliance may be binary, but often requires individualized questions about the suitability of sites, follow-through on Housing Element programs, specifics of a rezoning obligation, and the timeline of many local procedures. Because of these complexities, whether a given project qualifies under the Builder's Remedy may be unclear to government staff or the applicant themselves, requiring a court's review of the full facts before the parties can say definitively that it is a Builder's Remedy application. Complicating the matter even further, AB 1893 allows applicants for certain vested projects which could qualify under the Remedy to retroactively declare their applications to be Builder's Remedy projects.

Despite the cost and risk of litigation, builders do pursue it and many legal wins are moving the needle. City officials are slowly getting the message that they have to follow California law and make their communities less inaccessible to new residents. AB 1893's explicit provisions to cover methods of obstruction that were not previously not explicitly named in the law — "for an improper purpose, such as to harass or to cause unnecessary delay or needless increases in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action" -—has proven useful for housing approvals. Though AB 1893 is relatively new, litigants are already relying on it to move housing forward; YIMBY Law is aware of petitions relying on this language, and we have observed projects get approved or accelerated in light of this requirement.

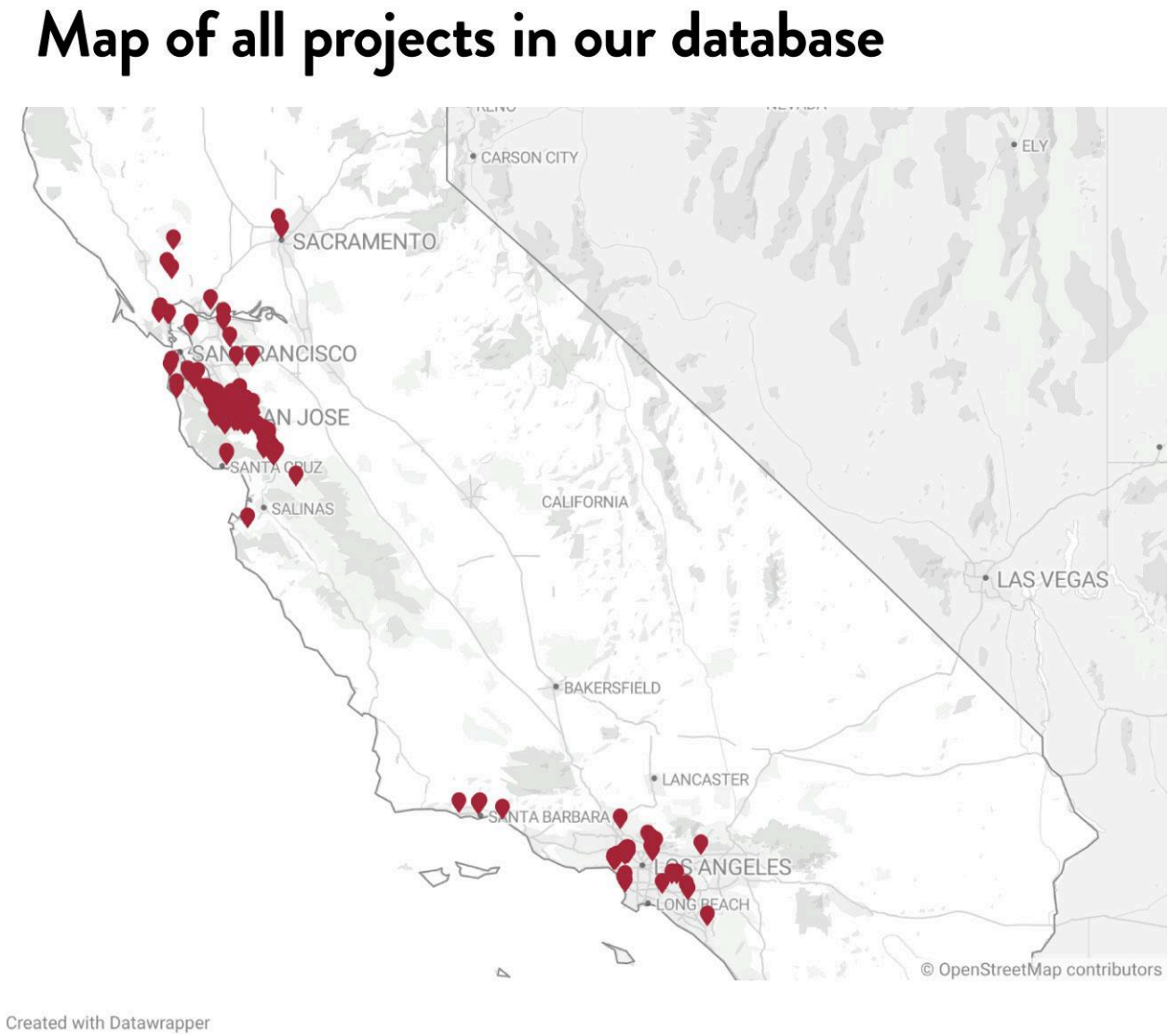
The difficulty in compiling this data is in itself significant. The Builder's Remedy sometimes operates in a space of legal uncertainty. Compliance is not a static condition but a contested legal question. This report underscores the pressing need for greater clarity in

[3] *New Commune DTLA et al. v. City of Redondo Beach*, (2025) 115 Cal.App.5th 111, 128, 337 Cal.Rptr.3d 782.

the law and greater data collection. We are working on both at YIMBY, and need support from the public for both better policy and consistent project reviews.

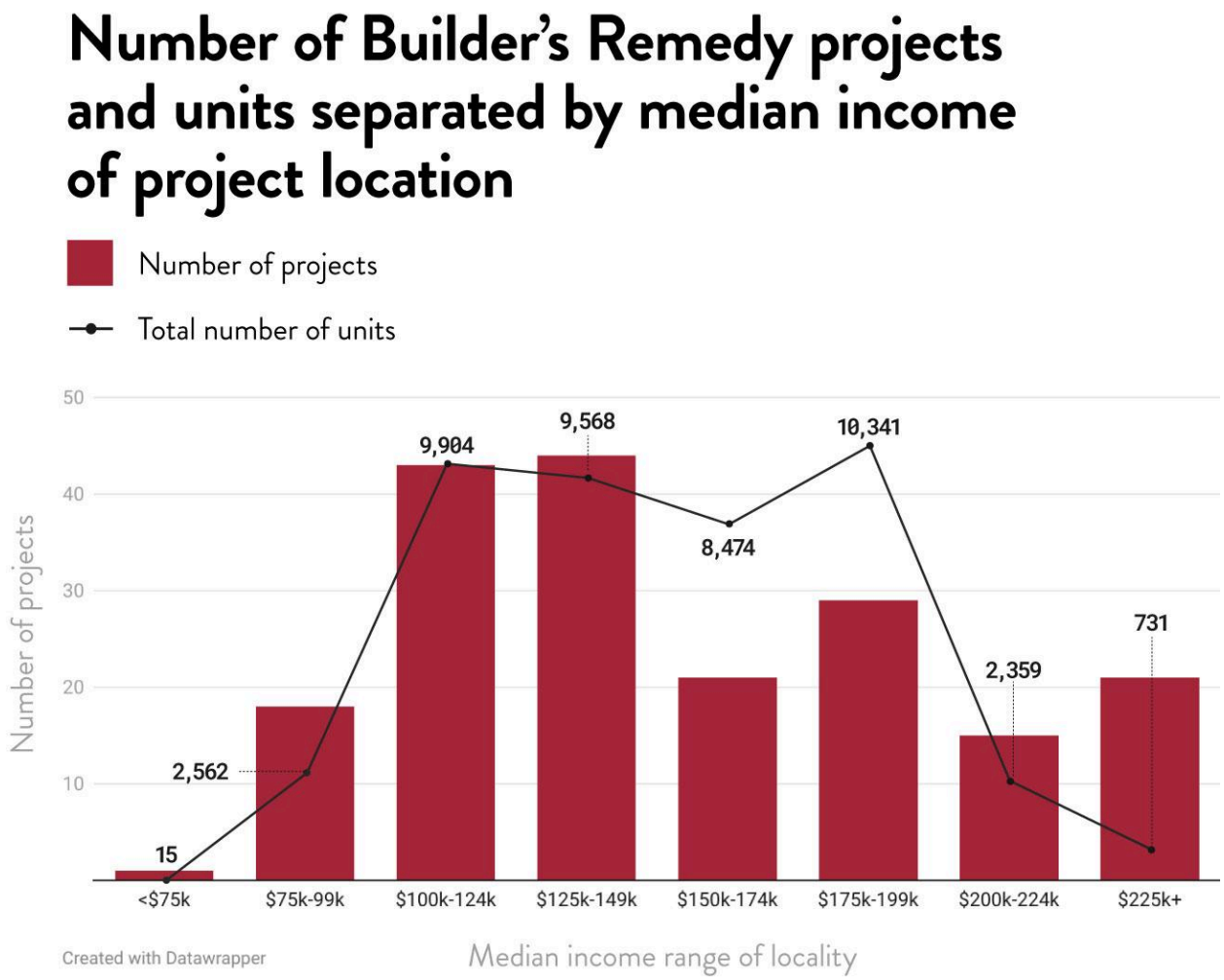
Data Analysis – Expense & Exclusion

The dataset covers nearly 44,000 proposed housing units across California. As a legal advocacy organization, our data skews toward projects meeting resistance. The data shows a clear throughline: the places with the most compliance issues and the most resistance to building are the places already most expensive and inaccessible. Click here to see a map of all projects in our database.



Currently, Santa Clara County (including cities and unincorporated areas) dominates with 108 projects, more than double Los Angeles County's 50, reflecting the wave of builder's

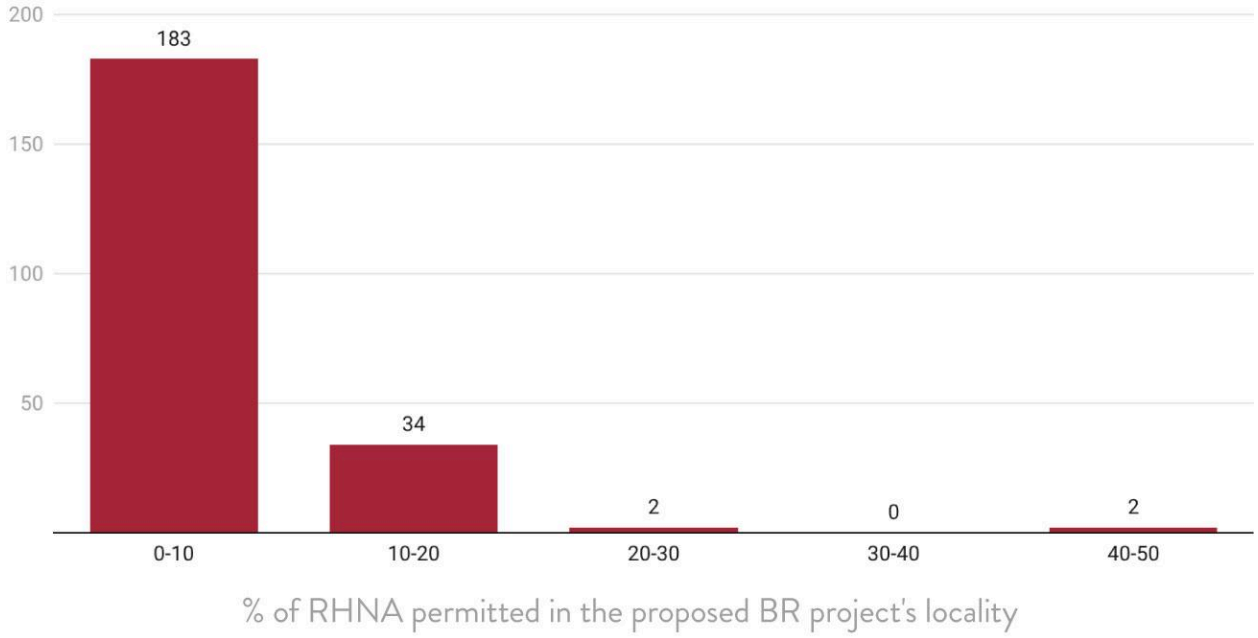
remedy filings triggered by Bay Area cities falling out of Housing Element compliance. San Jose alone has 43 projects, followed by Saratoga (19) and Santa Monica (17).



89% of proposals were in areas with incomes higher than the statewide median of $99,122.[4] 44% of proposals, accounting for over 13,500 units, are located in Silicon Valley, one of the "most unaffordable regions in the world, with a widening economic divide driven by tech growth and the housing crisis."

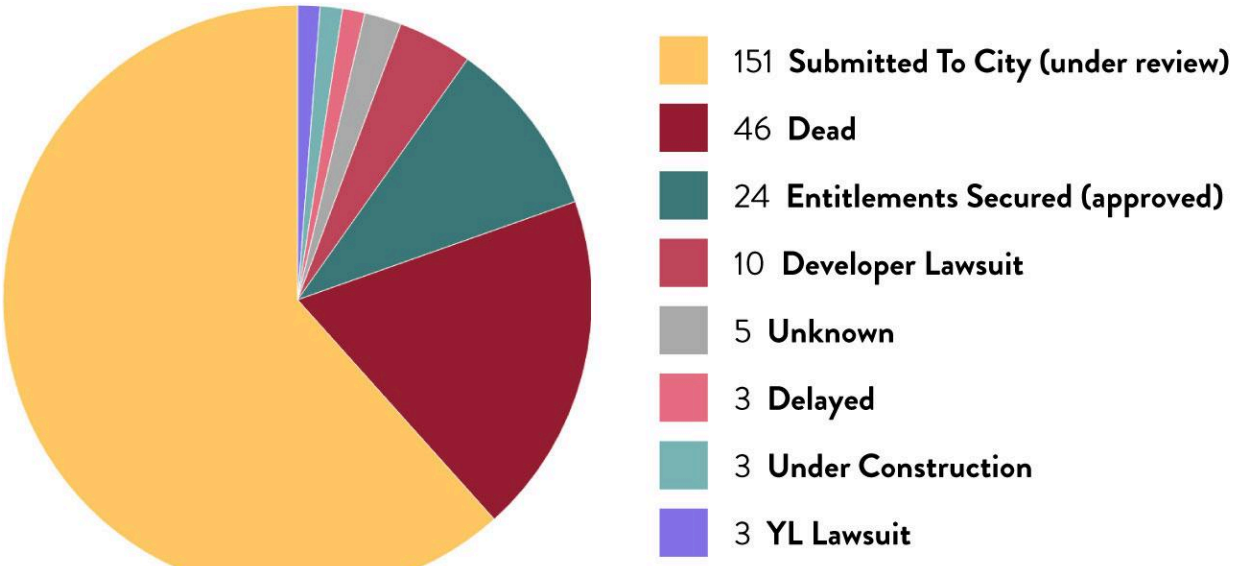
[4] United States Census Bureau, *QuickFacts: California* (2024), https://www.census.gov/quickfacts/fact/table/CA/INC110224.

Number of projects by RHNA progress band



Builders Remedy proposals are overwhelmingly in areas that continue to fail their RHNA obligations to allow new housing. Over 150 of the projects, nearly 70%, are proposed in areas that have made less than 10% progress to their RHNA goal at the time of reporting. These areas defined by entitlement and exclusion have the most restrictive zoning laws, and are most resistant to following the law. As shown by their production numbers, these areas have not produced housing on their own or through the Housing Elements program. Taking away their ability to obstruct housing is a powerful way to make change.

Project breakdown by proposal status



As of February 2026, most projects in our dataset are still in the entitlement process. 151 projects (68%) remain submitted and under review. 24 have secured entitlements, representing about 2,423 units. Thirteen projects are currently in litigation, and many have faced lawsuits from opponents during their lifecycle. The three lawsuits with participation from YIMBY Law account for 2,553 units, including the high-profile 2,500-unit One Redondo power plant site project.

Project status at time of review (as of at least February 2026):

- Submitted To City (under review): 151 (68%)
- Dead: 46 (20.8%)
- Entitlements Secured: 24 (10.8%)
- Developer Lawsuit: 10 (4.5%)
- Delayed: 3 (1.3%)
- YL Lawsuit: 3 (1.3%)
- Unknown: 5 (2.3%)
- Under Construction: 3 (1.3%)
- Projects which have had lawsuits during their life cycles (so far): 21 (10%)
    - These projects fit into multiple categories above.

Characteristics of Approved Projects

Of the 24 projects which have received approval, the vast majority were located in Santa Clara County — eleven proposals totaling 1,499 units. The second highest concentration was Los Angeles County, making up ten proposals of 730 total units, with five projects located in Beverly Hills.

Over 50% of the total approved units are concentrated in just four cities, most in Silicon Valley: **Gilroy**, **Morgan Hill**, **South Pasadena**, and **Beverly Hills**.

- **Gilroy**: Leads with **530 units** from a single large-scale development.
- **Morgan Hill**: Accounts for **314 units** across two projects.
- **South Pasadena**: Contributes **309 units** across one project.
- **Beverly Hills**: Has the highest number of individual projects (five), totaling **265 units**.
- **Hermosa Beach:** Has the **smallest project**, only **four units**. (The average unit count is 100, and no other project goes below 25 units.)

Common Obstruction Tactics

While the Builder's Remedy is a powerful tool for housing production, applicants around the state still have to contend with illegal obstruction. The last decade of California Housing reforms has played out like an expensive, illegal game of Whac-A-Mole. Local governments fight to keep housing unaffordable while state statutes have gotten more firm and explicit. Whether or not these tactics are legitimate, they can be effective. Every delay can help kill a project. NIMBYs fight housing using insurgent tactics, chipping away until projects are dead or redesigned to reduce units and affordability. As legal fees mount and time goes by, financiers lose confidence, and developers lose morale. Often, the legal consequences fail to convince elected officials when weighed against the political consequences: harming their electoral chances is a more personal motivating factor than taxpayer dollars spent on wasteful legal challenges.

Even with the odds stacked against builders, the many legal wins are moving the needle. Though they're being dragged into respect for the law kicking and screaming, city officials are slowly getting the message that they have to follow California law and make their communities less inaccessible to new residents. AB 1893's improper purpose clause is relatively new, but litigants are already relying on it to move housing forward; YIMBY Law is aware of petitions relying on this language, and we have observed projects get approved or accelerated in light of this requirement.

Research into these projects reveal a few common tactics that municipalities use to reinforce patterns of exclusion: Disputing Compliance Status, Disallowing Application Completeness & Illegal Standards, Denying Necessary Utilities, and Abuse of CEQA.

Disputing Compliance Status

The first point of conflict with many projects is Housing Element compliance. In some cases, the question of compliance is inarguable; for example, HCD publicly decertified Norwalk after it passed a ban on homeless shelters.[5] Other cases are more nuanced, and require a court determination before an application is considered legitimate.

Los Angeles: What makes a sufficient rezoning program?

Housing Elements are complex documents, and many questions about compliance remain unclear. Currently, YIMBY Law and Californians for Homeownership are engaged in a suit challenging Los Angeles' compliance over the sufficiency of its rezoning program. This ongoing conflict involves complex questions of statistics and law. In addition, the question of whether Housing Element programs are enforceable, or if only the rezoning itself is necessary for substantial compliance.

Sausalito: Does a Housing Element need an EIR?

Sausalito passed a Housing Element without an Environmental Impact Report (EIR). We filed suit, arguing that without an EIR, the Housing Element was not in effect. We also made several other arguments challenging the Housing Element itself. In the time between our filing and finally having a hearing — over a year — Sausalito amended its Element in response to our claims and adopted an EIR. They argued successfully that because they acceded to all our demands, the case was moot. We appealed this ruling, because of Builder's Remedy applications filed in the intervening period of non-compliance. We also are asking the appeals court to address our claim that a housing element requires an EIR. If the appeals court finds in our favor, many dozens of cities will find themselves without effective Housing Elements.

Santa Cruz County: Can HCD ignore the law and change its mind on a certification date?

[5] California Department of Justice, Office of the Attorney General. *Attorney General Bonta, Newsom Administration Reach Settlement with City of Norwalk over Unlawful Housing Ban*. State of California, Sept. 5 2025, oag.ca.gov/news/press-releases/attorney-general-bonta-newsom-administration-reach-settlement-city-norwalk-over. Accessed 12 Mar. 2026.

Santa Cruz County is currently disputing its compliance status, working to obstruct two Builder's Remedy projects, one of which has already been approved. The County argues that its Housing Element should be certified as of the last time HCD conducted "substantive review" of the document. However, statute and case law are clear that certification applies the date that HCD notifies a city that the Element is certified. This is a frivolous waste of time, late in the process, over a matter that HCD had already settled two years ago.

La Canada Flintridge, Gilroy and Los Altos Hills: Can a locality self-certify?

La Cañada Flintridge not only self-certified their housing element but backdated it; it then sent letters claiming projects no longer qualified because the element had been "certified" before the application was submitted. While submitting successive rounds of its Housing Element to HCD, the Department responded with numerous specific compliance issues that prevented certification, specifically including rezoning sections of the city. LCF retroactively certified its Element without HCD's approval and attempted to argue that this maneuver disallowed Builder's Remedy applications. After a lawsuit in which the state Attorney General intervened, the court found their argument unsupported by the law.

Gilroy claimed it was in "substantial compliance" during the compliance gap when a 530-unit project was submitted, despite HCD's explicit letter stating the opposite. This forced the developer into litigation.

Los Altos Hills publicly maintained that its January 2023 housing element was in substantial compliance despite HCD's explicit determination otherwise, refusing to acknowledge that Builder's Remedy applications submitted during non-compliance remained protected. Lawsuits are ongoing now over the legitimacy of this action, and the status of projects applications during the time of non-compliance.

Disputing Application Completeness & Imposing Illegal Standards

Cities work hard to find reasons to reject or delay projects during the long process of applying for entitlements. Sometimes this is based more on ignorance than malice: cities and their staff do not always appreciate the nuances of the Builder's Remedy, or the limitations it places on their review. It's extremely common for cities to reject applications because they do not include criteria that cannot be applied to the project. While this tactic

is illegal, it can cause enough delay that applicants feel pressured into accepting local demands rather than asserting their rights. Staff also try to apply non-objective standards to projects. Cities expand their initial application checklists with additional requirements not found in public documentation. Staff request that developers modify their projects to comply with zoning standards that do not legally apply under the Builder's Remedy.

Redondo Beach: Does the Builder's Remedy Require General Plan changes?

Redondo Beach did not submit a Housing Element draft by its statutory deadline, and rejected a Builder's Remedy application because it was "inconsistent with the general plan land use designation, the Local Coastal Program land use category, and the zoning applicable to the project site." This is irrelevant for a Builder's Remedy lawsuit, but it wasn't until YIMBY Law sued the city that its officials followed the law and deemed the application complete. The project in question will provide more affordable homes than the city had permitted in many years, but the city simply ignored the law in rejecting it for failure to meet standards that did not apply to it.

Los Gatos: Does the application timeline restart for new submissions?

Application issues stem not only from the initial submission, but the many resubmissions that cities require. Once an application is denied as incomplete, developers have 90 days to resubmit. Los Gatos just lost a lawsuit after it tried to assert that applications held a single 90 day period that didn't restart after a denial. They were sternly rebuked by the ruling, which stated that "there is no evidence before the court on this motion of the parade of horribles offered by the Town in the form of developers dragging their feet while infinitely maintaining vesting of their projects or unreasonably extending the process of reaching completeness determinations by manipulation and gaming."

Sunnyvale: Can a city require items that are not mentioned in the local law?

In Sunnyvale, a 318-unit project at 1230 Oakmead Parkway faced requests for items like window insets and external wall dimensions that were never part of the city's public checklist. Responding to these comments, whether legitimate or not, adds months or years of time to the process, sometimes necessitating a lawsuit to resolve but always adding legal costs. In Marin County, a 34-unit development was subjected to extraordinary pre-completeness requirements, including demands to construct story poles on every proposed house and produce 3D photometric walkthroughs from "any vantage point" the city deemed necessary, all before the application could even be deemed complete. Staff regularly request that developers

modify their projects to comply with zoning standards that do not legally apply under the Builder's Remedy.

Denying Necessary Utilities

Residential buildings need access to water, sewer and electricities, opening up an avenue of attack for cities. These delays are not always obvious or deliberate; the many agencies tangled in California's web of feckless bureaucracy have their own interests and procedures, all of which create delay and expense.

Santa Clara County: When is a Housing Element certified?

Santa Clara County has over 3,700 units on hold so that LAFCO can approve annexations for their projects, to put them under the jurisdiction of existing water authorities. This method may be unnecessary, but more to the point may be impossible, as staff and attorneys from local agencies say the annexations will never be completed. Numerous projects around the county are spending years mired in processes that are some mixture of illegal and impossible.

Abuse of CEQA

While the Builder's Remedy may be California's greatest tool for housing production, the California Environment Quality Act (CEQA) has proven its greatest tool for exclusion. The complex, lengthy process of CEQA review opens up innumerable challenges based on minor questions of procedure.

AB 130 presents the most substantial reform for CEQA obstruction, and we are hard at work on many challenges to projects using its protections. Among other provisions, the law exempts qualifying projects from CEQA review. Infill Builder's Remedy projects under four acres qualify.

Mountain View: Does CEQA require review where there is no potential impact?

After Mountain View approved an 80-unit Builder's Remedy project, residents sued on the grounds that it did not conduct a seismic hazard report, despite the city attorney explaining that "the city is not required to obtain a geotechnical study for a project prior to approval of a planning permit if it is determined there is no potential

undue hazard." Mountain View's general plan contained an EIR that covers this issue, but facts are not important to the litigious NIMBY.

Conclusion

The Builder's Remedy is a powerful housing enforcement tool against consistent and well-funded opposition. The threat of the Builder's Remedy alone strengthens other housing laws. City officials in Menlo Park, Redondo Beach, and San Mateo have cited the Remedy as motivation for adopting or following through on pro-housing policies.

Across 221 projects and nearly 44,000 proposed units we observe the Builder's Remedy most at work in jurisdictions most resistant to housing production. In essence, the law is doing exactly what it was designed to do, serving as incentive and punishment, ensuring more housing gets built.

Progress is real but hard-won. Each court ruling that rebukes a frivolous delay or an illegal denial makes the next obstruction attempt slightly harder. City officials are getting the message that California law must be followed, but obstacles remain. More than 60% of projects are still under review, and 46 have already died due to delay, legal attrition, financial pressure, or outright defiance.

The most important thing advocates, developers, courts, and policymakers can do right now is exactly what this report represents: track what is happening, submit projects to our database, and build the evidence base that makes enforcement possible. If you are aware of a Builder's Remedy project not reflected in this report, we want to hear from you. The law is only as strong as the people willing to defend it.