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YES IN MY BACK YARD and
SONJA TRAUSS

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

11/21/2022
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

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SUPERIOR COURT – STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

YES IN MY BACK YARD, a California nonprofit corporation; and SONJA TRAUSS,

Petitioners and Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO BOARD OF SUPERVISORS; and DOES 1-25,

Respondents and Defendants,

NORDSTROM, INC.; 469 STEVENSON INVESTMENT, LLC; YERBA BUENA NEIGHBORHOOD CONSORTIUM, LLC

Real Parties in Interest.

Case Number: CPF-22-517661

VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF AND COMPLAINT FOR DECLARATORY RELIEF

[CCP §§ 1094.5 and 1085; CCP § 1060; Gov. Code § 65589.5; Gov. Code § 65920 et seq., Gov. Code 65905.5.; Pub. Res. Code § 21100 et seq.]

Petitioners and plaintiffs YES IN MY BACK YARD and SONJA TRAUSS (collectively, "Petitioners") by and through their attorneys, Zacks, Freedman & Patterson, PC, file this first amended petition for writ of mandate and complaint for declaratory relief against

respondents and defendants CITY AND COUNTY OF SAN FRANCISCO; SAN FRANCISCO BOARD OF SUPERVISORS; and DOES 1-25 (collectively, "Respondents"), to compel Respondents to comply with their duties under the Housing Accountability Act (Gov. Code § 65589.5), the Housing Crisis Act (Gov. Code 65905.5), the Permit Streamlining Act (Gov. Code § 65920 et seq.), and the California Environmental Quality Act (Pub. Res. Code § 21100 et seq.), as further set forth below. Petitioners allege as follows:

PARTIES TO THE ACTION

1. Petitioner and Plaintiff Yes In My Back Yard ("YIMBY") is a § 501(c)(3) nonprofit corporation; YIMBY is the litigation affiliate of YIMBY Action, a § 501(c)(4) nonprofit corporation, whose membership cuts across socioeconomic lines, including members with very low, low, moderate, middle, and higher incomes ("YIMBY Members"). YIMBY's mission is to increase the accessibility and affordability of housing in California by enforcing state housing laws and by advocating for increased access to housing for households of all income levels, including for YIMBY Members who reside in, or wish to reside in, the City and County of San Francisco. YIMBY has a direct and substantial interest in ensuring that Respondents' decisions are in conformity with the requirements of law, that those requirements are properly executed, and that Respondents' duties are enforced. YIMBY Members, as well as the general public, will be adversely affected by the acts described herein and are aggrieved by the acts, decisions, and omissions of Respondents as alleged in this Petition and Complaint. YIMBY brings this Petition and Complaint on its own behalf and on behalf of others affected by Respondents' failure to comply with state law as alleged herein.

2. Petitioner and Plaintiff Sonja Trauss ("Trauss") is a natural person and a resident of the State of California, and she is the founder and director of YIMBY. Trauss has a substantial interest in ensuring that Respondents' decisions are in conformity with the requirements of law, that those requirements are properly executed, and that the public duties of Respondents are enforced. Trauss is eligible to apply to reside in the subject housing development project.

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3. Respondent and Defendant City and County of San Francisco (the "City") is an incorporated municipality of the State of California.

4. Respondent and Defendant San Francisco Board of Supervisors (the "Board") is a policy making, legislative, and quasi-judicial municipal body, with the authority to hear appeals of California Environmental Quality Act decisions regarding housing development projects.

5. Petitioners are not aware of the identities of respondents/defendants DOES 1-25, who are responsible for the acts and omissions alleged herein and that caused damage to Petitioners; therefore Petitioners will amend this Petition and Complaint when the true identities of DOES 1-25 are ascertained.

6. Petitioners are informed and believe that at all times mentioned in this Petition and Complaint, all respondents/defendants were the agents or employees of their co-respondent/defendant, and in doing the things alleged in this Petition and Complaint, were acting within the course and scope of that agency and employment.

7. Real Party in Interest Nordstrom, Inc. is a Washington corporation registered to do business in California that owns the real property located at 469 Stevenson Street in San Francisco, which is the subject of this Petition.

8. Real Party in Interest 469 Stevenson Investment, LLC is a California limited liability company with its principal place of business in San Francisco, California. 469 Stevenson Investment, LLC is the authorized applicant for the subject housing development project.

9. Real Party in Interest Yerba Buena Neighborhood Consortium, LLC is a California limited liability company that is the appellant in the subject California Environmental Quality Act appeal (Board of Supervisors File No. 210919) that obtained the action challenged herein. Petitioners do not seek any relief against Yerba Buena Neighborhood Association, LLC and name it as a Real Party in Interest herein solely to comply with statutory requirements, inter alia the joinder requirements of Civ. Code of Proc. § 389. (*See also Sierra Club, Inc. v. California Coastal Com.* (1979) 95 Cal.App.3d 495, 501.) Yerba Buena Neighborhood Association, LLC

is free to disclaim any interest in this lawsuit, and are not required to participate. (*See Harris v. Alcoholic Bev. etc. Appeals Bd.* (1966) 245 Cal.App.2d 919, 923.)

JURISDICTION AND VENUE

10. San Francisco County Superior Court has initial jurisdiction of the matters alleged herein pursuant to Code of Civil Procedure §§ 1094.5 and 1085, which authorizes the Court to issue a writ of mandate.

11. Venue is proper in this Court because the entire controversy occurred in San Francisco County, and Respondents are situated in San Francisco County. (Code Civ. Proc. §§ 394 & 395.)

12. This action is timely because it has been filed within 90 days from the effective date of a decision of a local agency's disapproval of a housing development project. (Gov. Code § 65589.5(m).)

13. Petitioners performed any and all conditions precedent to filing this action to the extent required by law.

STATEMENT OF FACTS

14. This case concerns Respondents' illegal patterns and practices it institutes to avoid compliance with state housing laws adopted by the California legislature to address the ongoing housing crisis. As illustrated in this case, Respondent's conduct includes, but is not limited to, (i) failing to act on housing development project applications within statutory deadlines, (ii) abusing the California Environmental Quality Act review process to effectively deny housing development projects based on unsubstantiated opinions of individual Board members about speculative project impacts, and (iii) ignoring state housing laws that require approval of code-compliant housing development projects unless a finding can be made that a project would have a specific, adverse impact upon public health or safety. The City has applied these illegal policies and practices to avoid their obligations under state law, and have led to San Francisco being amongst the top two most expensive housing markets in the United States

15. In enacting the Housing Accountability Act (HAA), the Legislature found and

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declared:

> California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives . . . despite the fact that, for decades, the Legislature has enacted numerous statutes intended to significantly increase the approval, development, and affordability of housing for all income levels.

(Gov. Code § 65589.5(a)(2)(A)(J).)

16. To address this housing crisis, the HAA requires approval of proposed housing development projects that comply with "applicable, objective general plan and zoning standards and criteria, including design review standards." If a local agency proposes to disapprove a project, the local agency must make written findings, supported by a preponderance of evidence, that the housing development project would have a "specific, adverse impact upon the public health and safety," which is defined as a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions," and there is no feasible method to avoid satisfactorily mitigate or avoid the identified impact. (Gov. Code § 65589.5(j).)

17. The housing development project at issue here proposes to construct 495 new dwelling units, including 73 units that would be restricted as affordable housing, at 469 Stevenson Street in San Francisco, which is currently used as a surface parking lot for the department store Nordstrom (the Project).

18. An application for the Project was first submitted on November 17, 2017, and was accepted by the City as complete on May 31, 2018.

19. The City failed to provide the applicant with written documentation identifying and explaining any reasons the City considered the Project inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision within 60 days after the application was deemed complete as required by Gov. Code § 65589.5(J)(2)(A)(ii). Therefore, the housing development Project was

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deemed code-compliant pursuant to the HAA on July 30, 2018. (*Id*.)

20. On October 2, 2019, one year and one month after the application was deemed complete, the City prepared an Initial Study that assessed the list of potential impacts on all environmental factors required under the California Environmental Quality Act (CEQA).

21. The Initial Study determined that the Project could potentially result in impacts related to air quality, wind, and shadow. The Initial Study also found the Project would have a less than significant impact with respect to all other environmental factors, including population and housing, cultural resources, and geology and hazards. As a result, the City required an Environmental Impact Report (EIR) but limited the scope of the EIR to an evaluation of the three potential impacts identified in the Initial Study. The City accepted written comments on the proposed scope of the EIR for 30 days.

22. On March 11, 2020, five months after the Initial Study was completed, a Draft EIR was published. The San Francisco Planning Commission held a public hearing to receive comments on the Draft EIR on April 16, 2020. The public comment period closed on May 11, 2021.

23. The Planning Commission held a second, "informational" public hearing to discuss the Project on November 12, 2020.

24. In May 2021, one year after the public comment period closed, the City published its responses to comments on the Draft EIR.

25. The Commission held a third, fourth, and fifth public hearing to take action on the Project entitlements and certification of the EIR on June 10, 2021, June 24, 2021, and July 22, 2021, but continued the item each time without a vote.

26. The Commission conducted a sixth public hearing on July 29, 2021, wherein the Commission voted to approve the entitlements for the Project and certify the EIR, finding that the Project was consistent with the City's General Plan and Planning Code, and that the EIR for the Project was "adequate, accurate, and objective."

27. An appeal of the EIR certification to the Board of Supervisors was filed by the Yerba Buena Neighborhood Consortium, LLC on August 30, 2021. On October 5, 2021, the

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Board of Supervisors held a hearing – the seventh public hearing for the Project – and voted to continue the item without taking any action on the appeal.

28. On October 26, 2021, the Board of Supervisors held an eighth public hearing to discuss the appeal. Based on speculative and nongermane public opinion that the Project would result in gentrification, as well as unsubstantiated claims that the Project may have impacts on historical resources and geology, the Board voted to conditionally reverse the EIR certification, subject to the adoption of written findings in support of its action.

29. Several weeks after the Board's vote to conditionally reverse the EIR certification, the California Department of Housing and Community Development ("HCD") sent a "Letter of Inquiry and Technical Assistance" to the City (attached hereto as **Exhibit A**).

30. HCD wrote that it had become aware of the City's "effective denial" of the Project, as well as another 316-unit housing project located at 450 O'Farrell Street on October 5, 2021, and that "HCD is concerned that the City/County's actions are indicative of review processes that may be constraining the provision of housing in San Francisco."

31. HCD noted that the two projects shared the same fate of "having prior Planning Commission approvals of significant housing projects being overturned by the BOS" and "HCD is concerned that this represents a larger trend in the City/County."

32. HCD noted the City had "cited various vague concerns about FEIR deficiencies" during the hearing but failed to publish written findings or provide substantial evidence in support of the findings. HCD requested the City adopt written findings within 30 days and advised that "HCD's investigation remains open, and HCD is continuing its review of these particular actions and of the City/County's practices with respect to housing review and approval generally."

33. On December 12, 2021, three years and six months after the application for the Project was deemed complete, the Board of Supervisor adopted written findings to reverse the EIR certification (attached hereto as **Exhibit B**).

34. According to the adopted findings, individual Board members "[e]xpressed the opinion that the analysis of housing impacts based on displacement was inadequate," and

"[s]tated there is no question that the Project will cause significant displacement on the 6th Street corridor, Filipino community, and the broader low-income community," without providing any evidence in support of the Board members' opinions and statements.

35. The findings also noted that Board members "[s]tated that surrounding taller buildings do impact historic districts," without identifying those impacts or providing evidence in support of the Board members' statements.

36. The findings stated that the EIR was inadequate because it "relied on future compliance with the California and San Francisco Building Codes as a basis to reach its conclusion," despite the fact that the City routinely and properly relies on future compliance with building codes to reach the same conclusion in other similarly sized projects.

37. As a result of the unsubstantiated statements and opinions of individual Board members, the Board erroneously determined that the EIR did not comply with CEQA, moved to reverse the Commission's EIR certification, and directed the Planning Department to conduct further review.

38. As a result of the Board's reversal of the EIR certification, the Planning Commission's approval of the entitlements for the Project were deemed void pursuant to the City's Administrative Code § 31.16(b)(10), effectively disapproving the Project.

39. The state Permit Streamlining Act (PSA), codified at Gov. Code § 65920 et seq., is intended to expedite decisions on development projects. The PSA sets strict timelines for local agencies to act on proposed development projects, including a requirement for a lead agency to approve or disapprove a project within 120 days from the date of certification of an EIR. (Gov. Code § 65950(a)(2).)

40. CEQA requires a local agency to prepare and certify an Environmental Impact Report within one year from the date a development application is accepted as complete, which may be extended for 90 days by ordinance or resolution if justified by compelling circumstances and if the applicant consents. (Public Resources Code § 21151.5; CEQA Guidelines § 15108.)

41. In total, the one-year CEQA deadline to certify an EIR, plus a 90-day extension,

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and the 120-day PSA deadline from EIR certification to approve a project, provides local governments with an absolute upper limit of one year and seven months after an application is deemed complete to take a final action on a project.

42. More than three years and seven months have passed since the Project application was deemed complete. The City has failed to comply with its legal duty to certify the EIR within one year and failed to pass a resolution to extend the time to certify the EIR. The Board's reversal of the EIR certification voids the Planning Commission's approval of the Project entitlements, and Petitioners are informed and believe that the City does not consider its action to be "final." The Board's action puts the Project back at square one of the environmental review process, voids the Planning Commission's approval of the Project entitlements, and disregards the City's legal duty to expeditiously act on development projects.

43. The Housing Crisis Act of 2019, commonly referred to as SB 330, recognizes that permitting delays exacerbate the cost of residential construction and significantly contribute to the housing crisis. (Housing Crisis Act of 2019, Sec. 2(a)(10).) To expedite the approval of housing, SB 330 imposes a strict five-hearing rule for housing projects. (Gov. Code, § 65905.5.) SB 330 defines a "hearing" to include any public hearing and specifically states that a "continued hearing shall count as one of the five hearings." (Gov. Code, § 65905.5(a), (b)(2).) SB 330 requires a local government to approve or disapprove a housing development application at one of the five hearings. (*Id.*)

44. The City has already held eight public hearings on the Project after January 1, 2020, in violation of SB 330's five-hearing rule. The Board's reversal of the EIR certification at the seventh public hearing also voided the Commission's approval of the Project entitlements, which ensures that the City will violate the five-hearing rule again and will likely result in multiple future violations.

45. The Board's action to reverse the EIR certification and void the Project approval constitutes an "effective denial" of a code-compliant housing development Project, as stated by HCD in their letter to the Board, and is a thinly veiled abuse of the CEQA process.

46. The Board's action clearly violates the HAA. The Board's findings did not

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identify any applicable, objective general plan and zoning standards and criteria that the Project failed to meet. Rather, the Board's action disapproved the Project and voided the Commission's approval based on vague, unsubstantiated concerns regarding the adequacy of the EIR. The action is not supported by substantial evidence in the record.

47. The Board did not identify any applicable objective, identified written public health or safety standards, policies, or conditions at all, nor did the Board find that the Project failed to meet any such health and safety standards.

48. Petitioners wrote letters to the City and the Board to explain that the City had an obligation under the HAA to approved the code-compliant housing development Project, had a legal duty to certify the EIR, and was already in violation of SB 330. The City ignored those obligations and disapproved the Project.

FIRST CAUSE OF ACTION
(Writ of Mandate - CCP §§ 1094.5 and/or § 1085; Gov. Code § 65905.5 – Against All Respondents)

49. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 48 of this Petition and Complaint.

50. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents ignore their legal duty to either approve or disapprove housing development projects at one of the five public hearings allowed pursuant to SB 330; and if Respondents' action voiding the approval of the Project is not set aside and invalidated; and if Respondents' decision is allowed to stand. Petitioners' interests include ensuring Respondents comply with state laws that require they expedite decisions on housing development projects to address the housing needs of California residents; ensure Respondents' actions are in conformity with state law; and have those requirements properly executed. Petitioners have a clear and present right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

51. Respondents have already held seven public hearings on the Project in clear violation of SB 330's five-hearing limitation. If upheld, Respondents' actions to void the

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SAN FRANCISCO, CALIFORNIA 94104

Planning Commission's approval of the Project ensures that additional public hearings will be required. Respondents have failed to proceed in a manner required by law by holding more than five hearings, voiding the approval of the Project, and requiring additional public hearings for the Project.

52. As set forth herein, Petitioners contend that Respondents' failure to approve or disapprove a housing development project within five hearings violates SB 330 and represents a pattern and practice of the City's review of housing development projects that has caused San Francisco to be amongst the top two most expensive housing markets in the United States. Petitioners further contend that Respondents' actions are intended to evade their legal duties and deny Petitioners, YIMBY Members, and others similarly situated their rights under SB 330.

53. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the Respondents' actions, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order commanding Respondents to perform their legal duties under SB 330, including to reinstate Respondents' approval of the 469 Stevenson Project.

SECOND CAUSE OF ACTION
(Writ of Mandate - CCP §§ 1094.5 and/or § 1085; Gov. Code § Gov. Code § 65920 et seq., Pub. Res. Code § 21100 et seq. – Against All Respondents)

54. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 53 of this Petition and Complaint.

55. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if Respondents ignore their legal duty under CEQA to certify an EIR within one year of an application being deemed complete pursuant to Public Resources Code § 21151.5. Petitioners' interests include ensuring Respondents comply with state laws that require that they complete environmental review of

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SAN FRANCISCO, CALIFORNIA 94104

housing development projects in a timely manner to address the housing needs of California residents; ensure Respondents' actions are in conformity with state law; and have those requirements properly executed. Petitioners have a clear and present right to Respondents' performance of their legal duties as described herein. Respondents have failed to perform their duties.

56. As detailed above, CEQA requires that a lead agency prepare and certify an EIR within one year after an application is deemed complete, which may be extended for 90 days by ordinance or resolution if justified by compelling circumstances and if the applicant consents. Respondents failed to pass an ordinance or resolution extending the deadline to certify an EIR. More than three years and seven months have passed since the Project application was deemed complete. Respondents' action reversed the Planning Commission's certification of the EIR, disregarding the City's legal duty to prepare and certify an EIR within the timeframe allowed by law. Petitioners further contend that Respondents' actions are intended to evade their legal duties and deny Petitioners, YIMBY Members, and others similarly situated their rights under CEQA.

57. Pursuant to CEQA, an EIR need not be exhaustive or perfect, but merely sufficient to allow for an intelligent decision. The Planning Commission determined that the EIR for the Project was "adequate, accurate, and objective." Petitioners assert that Respondents' reversal of the EIR certification is invalid because Respondents abused their discretion by not proceeding in the manner required by law, issuing a decision unsupported by the findings, and issuing findings that are unsupported by the evidence.

58. Contrary to Respondents' actions, the criteria to certify the EIR pursuant to CEQA are met, and the Board abused its discretion in finding otherwise. The Board's findings reversing the EIR certification are based on argument, speculation, unsubstantiated opinion and narrative; evidence which is clearly erroneous and inaccurate; and evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.

59. Petitioners have no plain, speedy, and adequate remedy in the ordinary course

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SAN FRANCISCO, CALIFORNIA 94104

of law to challenge the Respondents' actions, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate. Petitioners seek an immediate stay or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to perform their legal duties under CEQA and the PSA, including to reinstate Respondents' certification of the EIR for the 469 Stevenson Project.

THIRD CAUSE OF ACTION
(Writ of Mandate - CCP § 1094.5 and/or § 1085; Gov. Code § 65589.5 – Against All Respondents)

60. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 59 of this Petition and Complaint.

61. Petitioners assert that the disapproval of the Project is invalid because Respondents abused their discretion by not proceeding in the manner required by law, issuing a decision unsupported by the findings, and issuing findings that are unsupported by the evidence.

62. Petitioners, YIMBY Members, and the public each have beneficial interests that have been, and will further be, severely injured and adversely affected if the disapproval of the Project is not set aside and invalidated, and if Respondents' decision is allowed to stand. Petitioners' interests include ensuring that Respondents comply with state laws that require the approval of code-compliant housing development projects in order to address the housing needs of San Francisco and California residents, and ensuring that Respondents' actions are in conformity with the requirements of the HAA.

63. The HAA must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov. Code § 65589(d).)

64. The HAA requires, inter alia:

> When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision

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SAN FRANCISCO, CALIFORNIA 94104

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601 MONTGOMERY STREET, SUITE 400
SAN FRANCISCO, CALIFORNIA 94104

> standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:
>
> (A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
>
> (B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.
>
> (Gov. Code § 65589.5(j)(1).)

65. The HAA provides that a housing development project shall be:

> deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision if there is substantial evidence that would allow a reasonable person to conclude that the housing development project . . . is consistent, compliant, or in conformity.
>
> (Gov. Code § 65889.5(f)(4))

66. The Project "complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards," required to qualify for the requested land-use entitlements.

67. Even if there were any ambiguity regarding the applicability of the HAA to the Project, the HAA directs that it must be construed broadly and "consistent with, and in promotion of, the statewide goal of a sufficient supply of decent housing to meet the needs of all Californians." (Gov. Code § 65589(d).) A broad interpretation of the HAA inexorably leads to the conclusion that it applies to the Project.

68. Pursuant to the HAA, to "Disapprove the housing development project" includes any instance in which a local agency votes on a proposed housing development

project application and the application is disapproved, including any required land use approvals or entitlements necessary for the issuance of a building permit. (Gov. Code § 65589.5(h)(5).) Respondents have not proceeded in a manner required by law by effectively denying a code-compliant housing development Project by voting to void the Planning Commission's approval of the entitlements for the Project without making findings that the Project would have a specific, adverse impact upon the public health or safety as required by section 65589.5(j). In the context of the HAA, "specific, adverse impact" means "a significant, quantifiable, direct, and *unavoidable* impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

69. The Board failed to make any such finding, much less one based on "objective, identified written public health or safety standards" or supported by a preponderance of the evidence. Even if such a finding could be made, it would only justify denial of the Project if the Board were to find there is "no feasible method to satisfactorily mitigate or avoid the adverse impact . . . other than the disapproval of the housing development." (Gov. Code § 65589.5(j)(1)(B).) The Board made no such finding, and nor could it.

70. Respondents' disapproval is not based on the required findings and, to the degree Respondents attempted to make such findings, the findings are unsupported by evidence in the record. Respondents disapproved the Project based solely on vague, unsubstantiated concerns regarding the adequacy of the EIR that are not supported by any evidence in the record. Respondents' actions are an abuse of the CEQA process and an attempt to avoid their legal duty to approve a code-compliant housing development project. This is a prohibited basis for the denial of a housing development project.

71. Pursuant to the HAA, to "Disapprove the housing development project" also includes any instance in which a local agency fails to comply with the time periods specified in subdivision (a) of Section 65950 of the PSA, which requires a local agency to take a final action on a project within 120 days after certification of an EIR. (Gov. Code § 65589.5(h)(5).)

72. As explained above, the one-year CEQA deadline to certify an EIR, plus a 90-

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SAN FRANCISCO, CALIFORNIA 94104

day extension, and the 120-day PSA deadline from EIR certification to approve a project provides local governments with an absolute upper limit of one year and seven months after an application is deemed complete to take a final action on a project.

73. More than three years and seven months have passed since the Project application was deemed complete. Respondents' action voided the Planning Commission's approval of the Project, and Respondents therefore do not consider their action on the Project to be "final." Respondents' action to void the approval of the Project violated their legal duty to comply with the time periods specified in subdivision (a) of Section 65950 of the PSA, which constitutes a disapproval of the Project under the HAA.

74. Respondents bear the burden of proving that their actions complied with the HAA in all respects. (Gov. Code § 65589.6.) Respondents cannot satisfy this burden.

75. Respondents acted in bad faith by denying a Code-compliant Project on a clearly pretextual and prohibited basis, and failing to comply with the time periods specified in the PSA.

76. Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law to challenge the disapproval, and a writ of mandate under Code of Civil Procedure § 1094.5 and/or § 1085 is the prescribed remedy for violations of this type. Petitioners have performed all conditions precedent to the issuance of a writ of mandate.

FOURTH CAUSE OF ACTION
(Declaratory Relief - Code Civ. Proc. § 1060 – Against All Respondents)

77. Petitioners incorporate here by reference the allegations contained in Paragraphs 1 through 76 of this Petition and Complaint.

78. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their obligations and duties under California law, including but not limited to Respondents' policies and practices which operate to avoid obligations established by state law, such as failing to comply with the five-hearing limitation, failing to certify an EIR within one year, and failing to approve code-compliant housing development projects without making any findings related to "objective, identified written public health or safety standards."

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Respondents' Pattern and Practice of Violating the Five-Hearing Limitation

79. Gov. Code § 65905.5 prohibits a local government from conducting more than five hearings in connection to a housing development project, and explicitly counts continued hearings toward one of the allowed five hearings. A hearing includes "any public hearing, workshop, or similar meeting, including any appeal, conducted by the city or county with respect to the housing development project" and specifically "does not include a hearing to review a legislative approval," such as general plan or zoning amendments. There is no exception for CEQA hearings in Gov. Code § 65905.5.

80. Petitioners are informed and believe, and on that basis allege, that Respondents have a policy not to count any hearings in which CEQA is discussed toward the five-hearing limit, in violation of state law. Petitioners further allege that Respondents have a pattern and practice of ignoring the five-hearing limitation.

81. In addition to the eight public hearings that Respondents held in connection to the 495-unit 469 Stevenson Project, Respondents held nine public hearings in connection with a proposed ten-unit project at 3055 Clement Street (Project File No. 2019-022830PRJ) between November 18, 2021 and September 1, 2022 before finally taking action on the project.

82. Respondents also held six public hearings in connection with a proposed 231-unit project at 1560 Folson Street (Project File No. 2018-014795PRJ) between August 8, 2020 and February 18, 2021 before finally taking action on the project.

83. Respondents also held six public hearings in connection with a proposed 28-unit project at 2214 Cayuga Avenue (Project File No. 2016-012135PRJ) between September 10, 2020 and April 29, 2021. Respondents still failed to take an action on the project at the sixth public hearing, and instead voted to continue consideration of the project "indefinitely."

84. Respondents also held eight public hearings in connection with a proposed 302-unit project at 450 O'Farrell Street (Project File No. 2013-1535PRJ) between January 7, 2021 and October 5, 2021 before finally taking action to disapprove the project.

85. Respondents also held six public hearings in connection with a proposed 2-unit project at 249 Texas Street (Project File No. 2020-003223PRJ) between February 4, 2021 and

June 3, 2021 before finally taking action on the project.

86. Respondents also held six public hearings in connection with a proposed 24-unit project at 5367 Diamond Heights Boulevard (Project File No. 2020-007481PRJ) between August 26, 2021 and February 3, 2022 before finally taking action on the project.

87. All of the above-referenced project are examples of five-hearing limitation violations, and only include projects where more than five hearings were held in connection with the proposed project at the *Planning Commission*. Petitioners are informed and believe, and on that basis allege, that there are many more examples of five-hearing-limit violations when accounting for other public hearings held in connection with housing development projects at other bodies, including hearings at the Historic Preservation Commission, tree removal appeal hearings at the Department of Public Works, permit issuance appeal hearings at the Board of Appeals, and entitlement appeals at the Board of Supervisors. The City does not track how many hearings are held at its various hearing bodies, which inevitably leads to a pattern and practice of violating the five-hearing limit.

Respondents' Policy, Pattern and Practice of Violating CEQA's Deadlines

88. Petitioners further allege that Respondents have a formal written policy to ignore the City's mandatory duty to comply with CEQA's deadlines for completing environmental review. The City also has a pattern and practice of failing to meet its own unlawful deadlines.

89. CEQA contains a series of deadlines that a lead agency must meet, including 30 days to complete an Initial Study or issue an Exemption, 180 days to complete a Negative Declaration, and one year to complete an EIR. (Public Resources Code §§ 21080.2 and 21151.5.) CEQA states that the deadlines "shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency."

90. On September 27, 2017, Mayor Edwin M. Lee issued Executive Directive 17-02 to establish target approval timeframes for housing development projects. Executive Directive 17-02 required the Planning Department to develop a "Process Improvements Plan" to meet or

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exceed the entitlement approval timeframes, and also required the Planning Department to issue quarterly reports detailing the City's progress on all aspects of housing approvals and permitting.

91. The only quarterly report discussing environmental review timelines was published by the Planning Department on February 19, 2019 (attached hereto as **Exhibit C**). In response to Executive Directive 17-02 "Process Improvements Plan" requirements, the report explains that the Planning Department has developed an official formal policy regarding "target" deadline for the City to complete certain "Review Milestones" for housing development project applications. The report also includes information on whether the City meets its own "target" deadlines.

92. For CEQA Exemptions, the City's target deadline is nine months (~270 days), far beyond CEQA's 30-day deadline. Moreover, according to the report, out of the 22 projects included in the report, the City only met the target 50% of the time, and the average time to issue an Exemption is 18 months (~540 days).

93. For Negative Declarations, the City's target deadline is 12 months (365 days), far beyond CEQA's 180-day deadline. Moreover, according to the report, out of the 60 projects included in the report, the City only met the target 57% of the time, and the average time to complete a Negative Declaration is 20 months (~600 days). For EIRs, the City's target deadline is either 18 months or 22 months, depending on whether the City deems the EIR "Complex," an arbitrary term that is not defined. Regardless, both the 18-month and 22-month deadlines are far beyond CEQA's one-year deadline. Moreover, according to the report, out of the 8 projects included in the report, the City only met the targets 25% of the time, and the average time to complete an EIR is 30 months for an EIR and 60 months for a "Complex" EIR.

94. Furthermore, the City does not initiate environmental review or start calculating its own "target" deadlines until the City decides that a project has a "Stable Project Description." This directly contradicts CEQA, which states that the deadlines "shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the local agency."

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95. In the City's November 2022 Housing Element Update - Analysis of Governmental and Non-Governmental Constraints Report, the City interviewed housing developers to understand how the City's review process may act as a constraint on the development of housing. One interviewee stated that "SF applies CEQA in a way that no other California community does, with a degree of precision and specificity that is not mandated by law. What takes 9 months in the peninsula takes over 3 years in SF. One major issue to address is the process required to declare a project stable for EIR."

96. The City does not define what constitutes a "Stable Project Description." This is an arbitrary term in which the Planning Department makes ad hoc determinations on a project-by-project basis.

97. Although the City has not published a report regarding whether the City meets its own "target" CEQA deadlines since February 2019, the City continues to display a pattern and practice of violating its own unlawful deadlines.

98. Respondents took more than five years to complete an EIR for a 966-unit project at 10 South Van Ness Avenue (Project File No. 2015-004568ENV), a process that began April 14, 2015 and was not completed until September 23, 2020. The City took three years just to publish the Initial Study on May 2, 2018.

99. Respondents took more than four years to complete an EIR for a 114-unit project at 550 O'Farrell Street (Project File No. 2017-004557ENV), a process that began September 1, 2017 and was not completed until November 30, 2021. The City took nearly three years just to publish the Initial Study in May 2020.

100. Respondents took nearly five years to complete an EIR for a 744-unit project at 3333 California Street (Project File No. 2015-014028ENV), a process that began October 20, 2015 and was not completed until August 24, 2020. The City took nearly three years just to publish the Initial Study on April 24, 2018.

101. Respondents took nearly five years to complete an EIR for a 62-unit project at 770 Woolsey Street (Project File No. 2017-012086ENV), a process that began October 4, 2017 and was not completed until April 6, 2022. The City took nearly four years just to publish the

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Initial Study on June 23, 2021.

102. Respondents took nearly five years to determine that a 138-unit project at 1500 15th Street (Project File No. 2016-011827ENV) was eligible for "streamlined" CEQA review and did not require an EIR, a process that began November 15, 2016 and was not completed until the City published an Initial Study on May 19, 2021.

103. Respondents took nearly three years to determine that a 205-unit project at 1458 San Bruno Avenue (Project File No. 2019-022404ENV) was eligible for "streamlined" CEQA review and did not require an EIR, a process that began December 3, 2019 and was not completed until the City published an Initial Study on August 10, 2022.

104. Respondents took nearly five years to determine that an 8-unit project at 2976 Mission Street (Project File No. 2017-013784ENV) was eligible for "streamlined" CEQA review and did not require an EIR, a process that began December 12, 2017 and was not completed until the City published an Initial Study on September 12, 2022.

105. Respondents took more than four years to determine that an 18-unit project at 478-484 Haight Street (Project File No. 2016-013012ENV) was exempt from CEQA review, a process that began January 17, 2017 and was not completed until the City issued a CEQA Exemption on June 17, 2021.

106. Respondents took more than six years to determine that a 21-unit project at 850 Bush Street (Project File No. 2015-005983ENV) was exempt from CEQA review, a process that began June 30, 2015 and was not completed until the City issued a CEQA Exemption on November 10, 2021.

107. Respondents took more than three years to determine that a 24-unit project at 4716-4722 Mission Street (Project File No. 2018-002625ENV) was exempt from CEQA review, a process that began May 9, 2018 and was not completed until the City issued a CEQA Exemption on July 14, 2021.

108. Respondents took nearly four years to determine that a 42-unit project at 425 Broadway Street (Project File No. 2017-015678ENV) was exempt from CEQA review, a process that began December 22, 2017 and was not completed until the City issued a CEQA

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Exemption on November 23, 2021.

109. Respondents took nearly three years to determine that a 25-unit project at 1320 Washington Street (Project File No. 2018-007380ENV) was exempt from CEQA review, a process that began December 27, 2018 and was not completed until the City issued a CEQA Exemption on October 25, 2021.

110. All of the above-referenced projects are examples where Respondents have violated CEQA's deadlines. Moreover, all of the City's environmental review dates are calculated from the date that the City arbitrarily determines that a project achieves a "Stable Project Description." The City does not track when a project achieves a "Stable Project Description," nor does the City track when a project application is accepted as complete, which inevitably leads to a pattern and practice of violating CEQA's deadlines that are required to be calculated from the time a project application is accepted as complete. Petitioners have identified many more examples of the City's failure to meet CEQA's deadline, including at least 40 instances where the City failed to timely make an exemption determination, and allege that the City violates CEQA's deadlines for a significant portion of the housing development projects that undergo environmental review.

111. Academic research, which HCD cited in the "Letter of Inquiry and Technical Assistance" that was sent to the City, also confirms that San Francisco has a pattern and practice of delaying the approval of housing. San Francisco was identified as an "extreme outlier in terms of timeframes to entitlement" compared to other jurisdictions. (O'Neill, et al. (2022) *Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns* (Report No. 3900-19STC005). Prepared for California Air Resources Board and the California Environmental Protection Agency (attached hereto as **Exhibit D**).) Out of the 140 projects studied, only 5% of projects were entitled in under one year and the average entitlement timeframe was 27 months. (*Id.* at p 97.)

112. Research demonstrates that San Francisco takes far longer than similarly sized cities to entitle projects even though San Francisco has a better-resourced planning department. (*Id.* at p 101.) The delays were not attributable to the level of environmental review, as most of

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the proposed projects did not require an EIR. Nor were the delays attributable to code-compliance issues, as the delays were also identified for projects that conformed to principally permitted base zoning standards. Rather, the findings "indicate that neighborhood level politics, not state mandates or planning department staffing or resources, likely influenced how land use regulation operated in San Francisco." (*Id.*)

113. The City's extreme entitlement timeframes have been directly linked to constraints on housing production, as a long entitlement timeframe "typically increases uncertainty in the development process, limiting development to investors that can manage the risk and handle holding costs that span years. In the context of San Francisco, this regulatory environment may have promoted development of extremely expensive housing." (*Id.* at p 101.)

114. Petitioners are informed and believe, and on that basis allege, that the academic research is accurate and that San Francisco's entitlement timeframes are an extreme outlier in California that led to constraints on the production of housing.

Respondents' Pattern and Practice of Abusing CEQA to Violate the HAA

115. Petitioners further allege that Respondents have a policy to ignore the limitations that the HAA places on the CEQA process, and that the HAA does not apply at all until the City completes the CEQA process.

116. To the contrary, the provisions of the HAA are applicable throughout the application process. For example, the HAA requires a local government to make a written code-compliance determination within 60 days after the application is deemed complete. (Gov. Code § 65589.5(j)(2).) The HAA also prohibits a city from subjecting a project to any ordinance, policy, or standard not in effect when a preliminary application for the project was submitted, which is applicable throughout the entire review process. (Gov. Code § 65589.5(o)(2).)

117. Courts have also explicitly recognized that the HAA does, in fact, limit a local government's discretion under CEQA. CEQA "recognizes that an agency's discretion is limited by its own legal obligations. Accordingly, where a legal obligation limits an agency's discretion, the scope of environmental review likewise is limited." (*Tiburon Open Space*,

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supra, 78 Cal.App.5th at 732.) Legal infeasibility limits discretion under CEQA, particularly where an action "would be prohibited by Government Code section 65589.5, subdivision (j) [HAA]." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* (1993) 23 Cal.App.4th 704, 715.) The City's discretion under CEQA is not unfettered and is limited by its other legal obligations under state law, including the HAA.

118. Petitioners are informed and believe, and on that basis allege, that Respondents' pattern and practice is to manipulate CEQA into a tool of obstruction to circumvent the HAA and other state laws.

119. For example, the City refused to process the EIR for the 469 Stevenson Project unless the applicant met the City's demand for payment of a "bonus fee" on the project's density bonus units. The applicant had proposed to provide 94 below-market-rate units, *24 more affordable units than were legally required*, in lieu of paying the density bonus fee. The City insisted on the fee rather than more affordable housing and refused to process the EIR, even though the State Attorney General had recently issued an opinion that such fees "imposed" on density bonus units are invalid and a violation of state law. On May 18, 2021, the applicant submitted a new affordable housing affidavit that agreed to pay the density bonus fee. *Less than a month later*, the EIR was finally scheduled for a hearing. Respondents held the EIR hostage until the applicant "voluntarily" agreed to pay the City's illegal density bonus fee.

120. Multiple members of the Board of Supervisors later admitted that they voted to reverse the EIR certification for the 469 Stevenson project for reasons completely unrelated to potential environmental impacts. Multiple Supervisors claimed they voted to reverse the EIR because the 469 Stevenson Project did not include enough affordable housing, even though the applicant had originally proposed 24 more affordable units than legally required, until the City held the EIR hostage to collect an illegal density-bonus fee.

121. Supervisor Rafael Mandelman tweeted on October 27 that "our system imparts a lot of $ value with entitlements. This developer does not own the land and our vote would have allowed them to sell their rights for more." Supervisor Mandelman then tweeted on October 28 that he agreed with the appellants' argument "that this site ought to be held for a

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future affordable development." Supervisor Mandelman tweeted again on November 1, 2021 that "469 Stevenson fell far short of the affordability percentages negotiated in similar projects such as the 5M and Mission Rock developments, the affordable target set by SF voters in Prop K, and the 33% goal that the BOS approved for the Central SOMA Plan."

122. Supervisor Mandelman was later quoted stating, "If this actually is able to become a 100% affordable housing project, I will feel very good about this vote." But, "If that doesn't happen and 15 years from now it's still a parking lot, then I will not feel good." (Knight, Heather, "S.F.'s real housing crisis: Supervisors who took a wrecking ball to plans for 800 units," *San Francisco Chronicle*, Oct. 30, 2021.) Supervisor Hillary Ronen was also quoted calling the project a "bad deal" because it did not include enough affordable housing. (*Id.*)

123. Supervisor Gordon Mar stated at a Candidate Forum held on August 27, 2022 that he voted to reverse the EIR due to concerns about low-income residents, but acknowledged that "CEQA is not the best tool to really get at issues like that," and "the City needs to look at alternative ways I think to address legitimate concerns about major new developments like 469 Stevenson outside of CEQA."

124. In defense of his vote to reverse the EIR, Supervisor Dean Preston tweeted on August 15, 2022 that "1. BOS upheld a CEQA appeal 2. There'd be no construction now regardless of appeal 3. Proposal was 15% onsite BMR." Jennifer Bolen, Legislative Aide to Supervisor Preston, explained in an email to a constituent that Supervisor Preston voted to reverse the EIR because it is "important to listen to the people directly impacted . . . all of whom were supportive of additional environmental review before moving the project forward. My understanding is that the community groups are continuing to work with the project developer to increase affordability, or figure out an alternative path forward."

125. The Supervisors have admitted their vote to reverse the certification of the EIR was not about concerns over environmental issue, but about extracting more affordable housing concessions from a housing development project than the law required. Petitioners are informed and believe, and on that basis allege, that Respondents' pattern and practice is to

subvert the CEQA process to shield itself from liability for flagrantly illegal behavior under the guise of concern for what Supervisor Matt Haney called "imaginary CEQA issues" in an August 15, 2022 tweet.

126. As set forth herein, Petitioners contend that Respondents' actions are prohibited by state law and represent a pattern and practice of the City's review of housing development projects that has caused San Francisco to be amongst the top two most expensive housing markets in the United States. Petitioners further contend that Respondents' actions are intended to evade their legal duties and deny Petitioners, YIMBY Members, and others similarly situated their rights under SB 330, CEQA, the PSA, and the HAA. Petitioners are informed and believe, and on that basis allege, that Respondents contend in all respects to the contrary. A judicial determination and declaration as to the applicability of state law to Respondents' actions, and of the resulting legal obligations of Respondents, is therefore necessary and appropriate.

WHEREFORE, Petitioners demand judgment against Respondents for the following:

1. For writ of mandate or other appropriate relief, including an injunction, declaration, and/or order, commanding Respondents to comply with SB 330, CEQA, the PSA, and the HAA with respect to the proposed Project at 469 Stevenson Street, including, but not limited to, an order that the Project is deemed compliant with all "applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete" as a matter of law and an order directing Respondents to approve the Project within 60 days pursuant to Gov. Code § 65589.5(k);

2. For declaratory relief, including an injunction, declaration, and/or order, commanding Respondents to comply with the requirements of the Housing Crisis Act, California Environmental Quality Act, and the Housing Accountability Act with respect to housing development projects, including, but not limited to, an order that Respondents are prohibited from holding more than five public hearings in connection to a housing

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development project; that Respondents have a mandatory legal duty to comply with the California Environmental Quality Act's deadlines; and a declaration that the City's policy to ignore the Housing Accountability Act until CEQA is complete violates state law.

3. For an order vacating the Board's action that reversed the EIR certification and voided the approval of the Project (Board of Supervisors File No. 210919);

4. For costs of suit herein;

5. For reasonable attorneys' fees under Code of Civil Procedure § 1021.5 and Gov. Code § 65589.5;

6. For fines and penalties to be assessed pursuant to Gov. Code § 65589.5(k) because Respondents acted in bad faith when they disapproved the Project; and

7. For any other relief that the Court deems just and proper.

Dated: November 21, 2022

ZACKS, FREEDMAN & PATTERSON, PC

By: Ryan J. Patterson
Attorneys for Petitioners

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VERIFICATION

I, Sonja Trauss, declare as follows:

1. I am a natural person and a resident of the State of California. I am a petitioner in this action and the founder of petitioner Yes in My Back Yard ("YIMBY"). I am authorized to verify this First Amended Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay on behalf of YIMBY.

2. I have read the foregoing First Amended Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay and know its contents. The matters stated in the First Amended Petition for Writ of Mandate, Prohibition, or Other Extraordinary Relief; Complaint for Declaratory Relief; and Request for Immediate Stay are true of my own knowledge from having reviewed San Francisco Board of Supervisors File No. 210919 that voided the approval of the Project at 469 Stevenson Street.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 21, 2022



Sonja Trauss

Exhibit A

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
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November 22, 2021

Kate Conner, LEED AP
Manager, Priority Projects and Process
Current Planning Division
City and County of San Francisco
49 South Van Ness Avenue, Suite 1400
San Francisco, CA 94103

RE: San Francisco – Letter of Inquiry and Technical Support

Dear Kate Conner:

The purpose of this letter is to seek information on two projects – 469 Stevenson Street and 450-474 O'Farrell Street – and to provide technical assistance to the City and County of San Francisco (City/County). The California Department of Housing and Community Development (HCD) has become aware of the effective denial of these housing projects, and HCD is concerned that the City/County's actions are indicative of review processes that may be constraining the provision of housing in San Francisco. It is well known that California is experiencing a housing crisis, and the provision of housing remains of the utmost priority.

Project Descriptions

469 Stevenson Street
HCD understands the project proposed at 469 Stevenson Street is a mixed-use, 27-story high rise with 495 housing units, including 19 percent (89) affordable units – 11 percent of the units at 50 percent area median income (AMI), 4 percent of the units at 80 percent AMI, and 4 percent of the units at 110 percent AMI. The Planning Commission certified the final environmental impact report (FEIR) for the project on July 29, 2021, finding expressly that the "FEIR was prepared, publicized, and reviewed" in a manner that was consistent with "CEQA, the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code" and that the FEIR is "adequate, accurate, and objective." In approving the project, the Planning Commission noted that the project would replace an underutilized site with high quality housing to serve a range of housing needs in the City/County in a manner that is consistent with the City/County's housing element and housing need. Despite prior approval and findings made by the Planning Commission, the Board of Supervisors (BOS) voted (8-3) on October 26, 2021, to overturn the Planning Commission's FEIR certification, and by extension approval of this critically needed

housing project in the City/County. The BOS cited various vague concerns about FEIR deficiencies, including seismic concerns, effects (e.g., shadowing) on historic resources, and gentrification. It appears that the BOS has tasked city planners to prepare a new environmental study and recirculate the EIR or portions of the EIR. ***To date, no written findings have been published or provided to the project applicant nor has any substantial evidence in support of these findings been identified.***

450-474 O'Farrell Street and 532 Jones Street
HCD understands the project proposed at 450-474 O'Farrell Street and 532 Jones Street (O'Farrell Project) is an amendment to a project approval obtained for this site in 2018. The envelope of the proposed building remains the same size and shape as the original approved project; the amendment to the Conditional Use Authorization (CUA) is for a reallocation of interior space. The original project included 176 housing units, and the proposed amendment includes 316 smaller housing units. The developer reports this model will yield more units that are "affordable by design" – in other words, not deed restricted, without need for any public financing, and available at naturally lower rents. HCD understands that 13.5 percent of the units (43 units) will be offered "below market rent" as required by the City/County. Despite prior approval by the Planning Commission, the BOS voted (11-0) on October 5, 2021, to overturn the Planning Commission's approval. ***To date, no written findings have been published nor provided to the project applicant.***

While these projects have sought different types of approval, they share the circumstance of having prior Planning Commission approvals of significant housing projects being overturned by the BOS – without any documented findings. HCD is concerned that this represents a larger trend in the City/County. As you know, California's housing production does not meet housing need. In the past ten years, housing production has averaged fewer than 80,000 new homes each year, far fewer than the 180,000 new homes needed. (Housing Crisis Act, Stats. 2019, ch. 654, § 2.) The Legislature has declared that housing availability is a priority of the highest order and that local and state governments have a responsibility to facilitate the development of housing for all economic segments of the community. (Gov. Code, § 65580.) As a result, the cost of housing has skyrocketed, and San Francisco stands amongst the top two most expensive housing markets in the United States.

For this reason, HCD requests that the City/County provide the written findings to HCD and each project applicant within 30 days, explaining the reasoning for and the evidence behind these decisions. While reasons for denial were discussed in public hearings, it is unclear what actions these project applicants are required to take to advance these projects. In the meantime, 811 potential housing units are in limbo.

Housing Crisis Act of 2019 – "5 Hearing Rule"

HCD is concerned about the significant delays in the approval of housing generally and in the City/County in particular. As you know, the Housing Crisis Act of 2019 recognized this as a concern and imposed a strict five-hearing rule for housing projects. (Gov. Code, § 65905.5.) Under that law, hearings include formal hearings, workshops, meetings, and continuances. (*Id*.at (a), (b)(2).)

Regarding the O'Farrell Project, the Planning Commission's report documents six hearings of the Planning Commission alone that meet this definition. The BOS appeal would be the seventh such meeting. Because the City's record notes that, "like the previous project, the revised project would not be obviously or substantially inconsistent with other local plans and policies or regional plans and policies" (Second Addendum to Environmental Impact Report, p. 11), HCD is concerned that the City/County may have violated the "5 Hearing Rule" in the Housing Crisis Act of 2019. (Gov. Code, § 65905.5.)

Housing Accountability Act

For the same reasons, HCD has significant concerns about the City's compliance with the Housing Accountability Act (HAA). Under Government Code section 65589.5, subdivision (j), a local government cannot disapprove or reduce the density of a housing development project that complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete unless it makes written findings supported by a preponderance of the evidence on the record that the project world have a specific, adverse impact upon the public health or safety and there is no feasible way to mitigate that impact. Disapproval means either the City/County votes on a proposed housing development project and the application is disapproved or the City/County fails to comply with the decision-making time period outlined in the Permit Streamlining Act. (Gov. Code, § 65950.) This includes denial of other required land use approvals or entitlements necessary for the issuance of a building permit. Regarding the O'Farrell Project, as noted above, while the BOS voted to disapprove the application, no written findings have yet to be made supporting that disapproval.

5th Cycle Housing Element

In the City/County's 5th Cycle Housing Element, the City/County committed to two key objectives with associated policies and programs. The Stevenson Project and O'Farrell Project each represent an opportunity for the City/County to take consistent action with its housing element commitments.

Below is an excerpt from the City/County's 5th Cycle Housing Element:

Objective 4: Foster a Housing Stock that meets the needs of all residents across lifecycles.

- *Policy 4.4: Encourage sufficient and suitable rental housing opportunities, emphasizing permanently affordable rental units wherever possible.*

The Stevenson Project includes 89 affordable units. Likewise, the O'Farrell Project commits 43 affordable units. The approval of these projects would demonstrate action consistent with Policy 4.4.

Below are additional excerpts from the City/County's 5th Cycle Housing Element:

Objective 10: Ensure a streamlined, yet thorough, and transparent decision-making process.

- *Policy 10.1: Create certainty in the development entitlement process, by providing clear community parameters for development and consistent application of these regulations.*
- *Policy 10.2: Implement planning process improvements to both reduce undue project delays and provide clear information to support community review.*
- *Policy 10.3: Use best practices to reduce excessive time or redundancy in local application of CEQA.*
    - *Implementing Program 84: Planning shall continue to implement tools and processes that streamline CEQA compliance, thereby reducing the time required for production of environmental documents and CEQA processes. In addition to contracting with previously established pools of qualified consultants to produce necessary technical studies (e.g., transportation) and environmental documents (e.g., EIRs), Planning will continue to implement streamlined processes, including but not limited to: Community Plan Exemptions that tier from previously certified Community Plan EIR's; participate in the preparation of Preliminary Project Assessments that outline the anticipated requirements for CEQA compliance, including necessary technical studies; and implement recent and pending updates to the CEQA Guidelines that provide mechanisms for streamlining the environmental assessment of infill development projects.*
- *Strategies for Further Review: Planning should continue to examine how zoning regulations can be clarified, and design guidelines developed through community planning processes. Planning staff should adhere to such controls in reviewing and recommending approval of projects.*

Objective 10 and its associated policies and programs are critical for the development of housing. Developers and members of the public rely on transparent processing of projects. HCD will continue to monitor the Stevenson Project and its CEQA path forward, particularly for timeliness and redundancy of areas of study.

6th Cycle Housing Element

HCD understands that San Francisco is starting the process to update the 6th cycle housing element. Academic research continues to show that San Francisco's processing and entitlement timeframes and procedures exceed the norms for other jurisdictions of similar size and complexity and act as a constraint on the development

of housing[1]. As part of the housing element's analysis of potential and actual governmental constraints on housing pursuant to Government Code section 65583, subdivision (a)(5), it must describe and analyze the permit process from application to approvals, including a discussion on timeframe for each step in the process, impediments, and how it addresses state law application processing requirements such as those found in the Permit Streamlining Act and the HAA. The element must also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need and include program actions with metrics and milestones to remove or mitigate identified constraints.

HCD Inquiry

As stated above, HCD is concerned specifically that the Stevenson Project and O'Farrell Project that have been effectively denied without written findings as well as larger trends in the City/County's review of housing. HCD requests the City/County provide written findings for these BOS actions.

HCD has both the authority and duty to review any action or failure to act by a city, county, or city and county that it determines is inconsistent with an adopted housing element or Government Code section 65583 (Gov. Code, § 65585, subd. (i)) or in violation of the HAA. (Gov. Code, § 65585, subd. (j).) At this time, HCD's investigation remains open, and HCD is continuing its review of these particular actions and of the City/County's practices with respect to housing review and approval generally.

If you have questions or need additional information, please contact Kevin Hefner at Kevin.Hefner@hcd.ca.gov regarding the Stevenson Project and Divya Sen at Divya.Sen@hcd.ca.gov regarding the O'Farrell Project.

Sincerely,

Shannan West
Housing Accountability Unit Chief

CC: Lisa Gibson, Environmental Review Officer, City and County of San Francisco
Carly Grob, Senior Planning, City and County of San Francisco

[1] O'Neill, Moira and Biber, Eric and Gualco-Nelson, Giulia and Marantz, Nicholas, Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns (September 18, 2021). Available at SSRN: https://ssrn.com/abstract=3956250 [ssrn.com]

Exhibit B

FILE NO. 211278 MOTION NO. M21-182

[Findings Reversing the Final Environmental Impact Report Certification - 469 Stevenson Street Project]

Motion adopting findings to reverse the Planning Commission's certification of the Final Environmental Impact Report prepared for the proposed 469 Stevenson Street project.

WHEREAS, The site of the proposed project at 469 Stevenson Street (Assessor's Block 3704, Lot 45) is a through lot located in the South of Market neighborhood, within the boundaries of the C-3-G (Downtown General Commercial) Zoning District and the Downtown Plan Area in a 160-F Height and Bulk District; the average height of buildings in the immediate area ranges from one to seven stories; it is approximately 28,790 square feet (0.66-acre) in size and currently developed as a public surface parking lot with 176 parking spaces with no existing onsite structures; and

WHEREAS, The proposed project at 469 Street would demolish the existing surface parking lot and construct a new 27-story mixed-use building that is approximately 274 feet tall (with an additional 10 feet for rooftop mechanical equipment), totaling approximately 535,000 gross square feet and including 495 rental dwelling units with a dwelling mix of approximately 192 studios, 149 one-bedroom units, 96 two-bedroom units, 50 three-bedroom units, and 8 five-bedroom units; approximately 4,000 square feet of commercial retail use on the ground floor; and approximately 25,000 square feet of private and common open space ("Project"); and

WHEREAS, The Project would provide three below-grade parking levels with 166 vehicular parking spaces; 200 class 1 bicycle spaces; two service delivery loading spaces; one on-site freight loading space located on the ground floor; and twenty-seven class 2 bicycle parking spaces placed along Jessie Street; and

WHEREAS, The Project would require 55,850 cubic yards of excavation and Project construction would span approximately 36 months; and

WHEREAS, The Project would use the State Density Bonus Program and provide 73 affordable housing units onsite; and

WHEREAS, Under the State Density Bonus Law, a housing development that includes on-site affordable housing is entitled to additional density, concessions and incentives, and waivers from development standards that might otherwise preclude the construction of the project. Specifically, the Project sought a density bonus of 42.5% and invoked an incentive/concession from Height (Section 250 of the Planning Code), and waivers of the following development standards of the Code: 1) Maximum Floor Area Ratio (Section 123); 2) Rear Yard (Section 134); 3) Common Useable Open Space (Section 135); 4) Dwelling Unit Exposure (Section 140); 5) Ground-Level Wind Current (Section 148); and 6) Bulk (Section 270); and

WHEREAS, The Planning Department prepared an Initial Study, released on October 2, 2019, that concluded that the Project could result in potentially significant environmental impacts related to air quality, wind, and shadow and that only those three topics would be discussed further in an Environmental Impact Report (hereinafter "EIR") as required by the California Environmental Quality Act ("CEQA"), Public Resources Code, Section 21000 et seq., the CEQA Guidelines, 14 California Code of Regulations, Section 15000 et seq., and San Francisco Administrative Code, Chapter 31; with respect to other topics, such as land use and planning, population and housing, cultural resources, tribal cultural resources, transportation and circulation, noise, greenhouse gas emissions, recreation, utilities and service systems, public services, biological resources, geology and soils, hydrology and water quality, hazards and hazardous materials, mineral resources, energy resources, agriculture and forestry resources, and wildfire, the Initial Study determined the potential individual and

cumulative environmental effects would be less than significant, or reduced to less than significant with mitigation measures, and therefore the EIR did not study these issues beyond the initial review undertaken in the Initial Study; and

WHEREAS, The Draft EIR was published on March 11, 2020, and circulated to governmental agencies and to interested organizations and individuals for a 60-day public review period that began March 12, 2020, and concluded on May 11, 2020; and

WHEREAS, The Planning Commission held a virtual public hearing on the Draft EIR on April 16, 2020; during their deliberations, Commissioners expressed concern about the size of the Project and its potential impacts on historic resources and gentrification and displacement; and

WHEREAS, The Planning Department prepared a Responses to Comments document ("RTC") to respond to environmental issues raised in written comments received during the public comment period and in writing or presented orally at the public hearing for the Draft EIR, and published the RTC on May 26, 2021; and

WHEREAS, On July 29, 2021, the Planning Commission held a virtual public hearing to consider the adequacy of the Final Environmental Impact Report ("Final EIR"); among other issues, commenters noted the project's displacement impacts and significant adverse impacts on adjacent historic resources such as the Mint Conservation District and the Filipino Conservation District, not sufficiently acknowledged by the Final EIR; commissioners noted that the RTC did not adequately address some of their previous questions, particularly about the potentially incompatible scale of the proposed tower in a setting that is comprised of not just simply one, but a number of historic districts; another issue discussed at the Commission hearing was the failure of the Final EIR project description to describe the proposed Project foundation; the Project sponsor testified that he did not know whether piers would be required, that that decision would be made with the design of the foundation, which had not been

completed to date. He added that the Project would either use piers or a mat, depending on what is appropriate for the building; and

WHEREAS, By Motion No. 20963, on July 29, 2021, the Planning Commission certified a Final Environmental Impact Report ("Final EIR") for the proposed Project, by a vote of 4-2; and

WHEREAS, By letter to the Clerk of the Board, dated August 27, 2021, the Brandt-Hawley Law Group, on behalf of the Yerba Buena Neighborhood Consortium ("Appellant"), appealed the Final EIR certification; and

WHEREAS, The Planning Department's Environmental Review Officer, by memorandum to the Clerk of the Board dated September 2, 2021, determined that the appeal had been timely filed; and

WHEREAS, On October 26, 2021, this Board held a duly noticed public hearing to consider the appeal of the Final EIR certification filed by Appellant; and,

WHEREAS, At the hearing, Appellant and members of the public presented evidence and testimony that the Project may have significant impacts that were not adequately studied in the Initial Study, the Draft EIR, or the Final EIR; these included the Project's potential impacts on adjacent historical resources; geotechnical impacts of the Project foundation; and physical impacts resulting from likely gentrification of the Project area and resulting displacement of current residents; and

WHEREAS, At the hearing, during the public comment and this Board's questions to the Appellant, the Project sponsor, and Planning Department staff, a majority of members of this Board found that the EIR had treated these impact areas in a conclusory manner; specifically, the Final EIR had concluded that there will be no significant impacts (therefore failing to analyze the impacts or identify feasible mitigation measures and alternatives to those

impacts) but failed to provide substantial evidence or a reasoned explanation as to why that conclusion was reached; and

WHEREAS, At the hearing, individual members of the Board of Supervisors:

- Explained that despite evidence of potentially significant impacts identified by qualified experts, some areas of potentially significant environmental impact were addressed only in the Initial Study, and were not further analyzed in the EIR, and were not mitigated as required by CEQA, including: (1) impacts relating to adjacent historical resources and districts, despite the recognition of the Planning Department that the Project may have an impact on the setting for those districts; (2) geotechnical impacts that should have received further EIR analysis for the benefit of decisionmakers; and (3) physical impacts resulting from potential gentrification of the Project area and displacement of current residents, and an inadequate range of reasonably feasible mitigation measures and alternatives to avoid or reduce those impacts; and
- Provided detailed comments objecting to the lack of objective analysis in the EIR of gentrification and displacement that would result from the large number of market-rate units proposed in the Project, noting concerns with the credibility of the research provided in a report relied upon by the Planning Department in the absence of further analysis in the EIR, and explained that the EIR's lack of analysis to determine whether the Project would result in gentrification and displacement prevented adequate analysis of the significance of foreseeable physical impacts resulting from those socio-economic impacts; and
- Expressed the opinion that the analysis of housing impacts based on displacement was inadequate; and

- Expressed the opinion that the Planning Department's approach to cumulative impacts of gentrification was fundamentally flawed, and that gentrification and displacement impacts should be considered in a holistic, thorough manner; and
- Stated there is no question that the Project will cause significant displacement on the 6th Street corridor, Filipino community, and the broader low-income community; and
- Stated that surrounding taller buildings do impact historic districts; and

WHEREAS, With regards to historic resources, the Initial Study acknowledged that the Project would include the construction of a building that is directly adjacent to the National Register-eligible Market Street Theatre and Loft Historic District, National and California-Register eligible Sixth Street Lodging House Historic District, and the Mint-Mission article 11 Conservation District, and a property within the Pacific Gas and Electric (PG&E) City Beautiful Substations Discontinuous Thematic Historic District; however, the EIR included no further analysis of the impacts of the 27-story Project on adjacent historic districts as required by CEQA, in light of substantial record evidence of potentially significant impacts; absent that analysis, the Final EIR's conclusions that the Project's setbacks would avoid significant impacts on adjacent districts were premature and were inadequately supported by evidence; and

WHEREAS, In the area of geotechnical impacts, the EIR did not conduct adequate analysis, as the Initial Study concluded that the Project would not result in any impacts to geology and soils and relied on future compliance with the California and San Francisco Building Codes as a basis to reach its conclusion; CEQA requires that the EIR analyze and determine whether the Project would have significant geotechnical impacts, beyond those conclusory statements; and

WHEREAS, The Project's physical effects relating to gentrification of the surrounding area and displacement of current residents were not studied in the EIR; the Final EIR (in the RTC) acknowledged that these socio-economic effects, in themselves, are not considered environmental impacts under CEQA, absent a related physical change in the environment. The Final EIR noted that "some displacement may occur," but without benefit of study or explanation, concluded that "the proposed project is not likely to result in residential displacement and gentrification" and therefore improperly dismissed any potential physical environmental impacts that may result from gentrification or displacement; and

WHEREAS, In reviewing the appeal of the Final EIR certification, this Board reviewed and considered the Final EIR, including the Draft EIR and the RTC, the appeal letter, the responses to the appeal documents that the Planning Department prepared, the other written records before the Board of Supervisors and the Planning Commission and all of the public testimony made in support of and opposed to the Project and the appeal; and

WHEREAS, The purpose of CEQA is to inform the public and decision-makers of the environmental consequences of projects, before those projects are approved; and

WHEREAS, Following the public hearing, in Motion No. M21-146 (File No. 210921), the Board of Supervisors conditionally reversed the Final EIR certification, subject to the adoption of written findings in support of such determination based on the written record before the Board of Supervisors as well as all of the testimony at the public hearing in support of and opposed to the appeal; and

WHEREAS, The written record and oral testimony in support of and opposed to the appeal and deliberation of the oral and written testimony at the public hearing before the Board of Supervisors by all parties and the public in support of and opposed to the appeal is in the Clerk of the Board of Supervisors File No. 210919 and is incorporated in this motion as though set forth in its entirety; now, therefore, be it

MOVED, That this Board of Supervisors finds that the Final EIR contains inadequate analysis and information regarding potential impacts to historic resources; potential geotechnical impacts resulting from construction of the Project; potential physical impacts resulting from gentrification and displacement of local residents; and potentially feasible mitigation measures and alternatives to address significant impacts in those impact areas, all of which were either improperly and prematurely scoped out of the EIR and studied only in the Initial Study, or studied in the EIR with insufficient analysis and evidence; and, be it

FURTHER MOVED, That based on the above findings this Board finds that the Final EIR does not comply with CEQA, because it is not sufficient as an informational document; and be it

FURTHER MOVED, That this Board reverses the EIR Certification by the Planning Commission; and, be it

FURTHER MOVED, That this Board finds that as to all other topics studied in the final EIR, that document complies with CEQA; is adequate, accurate and objective; is sufficient as an informational document; its conclusions are correct; and it reflects the independent judgment of the City; and, be it

FURTHER MOVED, That this Board remands the Final EIR to the Planning Department to undertake further environmental review of the Project consistent with this Motion, before further consideration of EIR Certification and any Project approvals.

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City and County of San Francisco
Tails
Motion: M21-182

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 211278 **Date Passed:** December 14, 2021

Motion adopting findings to reverse the Planning Commission's certification of the Final Environmental Impact Report prepared for the proposed 469 Stevenson Street project.

December 14, 2021 Board of Supervisors - APPROVED

Ayes: 8 - Chan, Mandelman, Mar, Melgar, Peskin, Preston, Ronen and Walton

Noes: 3 - Haney, Safai and Stefani

File No. 211278

I hereby certify that the foregoing Motion was APPROVED on 12/14/2021 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Exhibit C

SAN FRANCISCO
PLANNING DEPARTMENT

Informational Report

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

HEARING DATE: FEBRUARY 14, 2019

Project Name:	**Executive Directive 17-02: Keeping up the Pace of Housing Production Quarterly Report: June – December 2018**
Staff Contact:	Jacob Bintliff, Senior Planner, Special Projects & Policy jacob.bintliff@sfgov.org, 415-575-9170
Reviewed by:	Dan Sider, Director of Executive Programs dan.sider@sfgov.org, 415-558-6697
Recommendation:	**None; informational**

EXECUTIVE DIRECTIVE 17-02: KEEPING UP THE PACE OF HOUSING PRODUCTION

Executive Directive 17-02, issued September 27, 2017, established target approval timeframes for housing projects and directed the Planning Department to develop a Process Improvements Plan to meet or exceed these timeframes. The Directive also called for regular quarterly reporting to the Mayor's Office on the Department's implementation of these process improvements and our progress in speeding approvals.

The following memorandum comprises the first of these regular updates to the Mayor, and is provided here for reference in advance of an informational presentation on this topic scheduled for the February 14, 2019 Planning Commission hearing. Please note the Department's Process Improvements Plan, issued December 2017, and a flow chart illustrating the new Project Intake, Environmental Review, and Approval Process are attached as well for reference.

San Francisco Planning

1650 MISSION STREET, SUITE 400
SAN FRANCISCO, CA 94103
SFPLANNING.ORG / 415.575.9010

February 7, 2019

Mayor London N. Breed
City Hall, Room 200
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Executive Directive 17-02: Keeping up the Pace of Housing Production**
Quarterly Report: June – December 2018

Executive Directive 17-02, issued September 27, 2017, established target approval timeframes for housing projects and directed the Planning Department to develop a Process Improvements Plan to meet or exceed these timeframes. The Directive also called for regular quarterly reporting to your office on the Department's implementation of these process improvements and our progress in speeding approvals. This memo comprises the first of these regular updates, and includes the following:

A. **Process Improvements Status Report**: A summary of progress on various process improvement efforts included in the Plan, as of the end of 2018;
B. **Project Review Timeframes Report**: A quantitative performance report on project review timeframes for projects filed from June to December 2018; and
C. **Baseline Approval Timeframes:** A snapshot of overall approval timeframes for housing projects approved from 2016 to 2018, as compared with the Executive Directive targets.

This first report will serve as a baseline assessment to gauge the Department's progress in achieving the target review timeframes, and the performance targets included will be expanded in future reports as more projects reach the relevant project review milestones over time. I look forward to discussing these efforts with your office further and welcome any additional guidance on the structure and contents of future reports and on our process improvement efforts in general.

Sincerely,

John Rahaim
Planning Director

A. Process Improvements Status Report

The Department issued a Process Improvements Plan on December 1, 2017, which included dozens of improvements in every aspect of the Department's operations. Some of these measures have been or are being implemented via changes to internal procedures and policies, while others require changes to Planning Commission or Historic Preservation Commission policies, or legislative amendments to the Planning Code. The Plan is attached for your reference.

In the first year after the Plan's publication, as of the end of 2018, the bulk of the improvement measures included in the Plan have either been implemented or are well under development and are to be implemented throughout the coming year. The summary provided on the following pages lists the status of the most impactful of these measures, as well as several additional measures that have been undertaken by the Department since the Plan was published, including the following particularly noteworthy efforts:

- **Consolidating environmental and project review under a single Project Application.** This change represents the foundation of the Department's process improvements strategy by requiring projects to apply and provide all necessary information for both environmental review and all required Planning Code entitlement actions in one consolidated Project Application. This dramatically enhances the Department's ability to enforce submittal standards, thoroughly review applications for completeness and issue consolidated Plan Check Letters in a timely manner, and ensure housing projects are prioritized and scheduled for final approval within the target timeframes. The Project Application has been required for all projects seeking Planning Department review since June 4, 2018.

- **Advanced Planning Commission scheduling for housing projects.** Beginning in February 2019, housing projects will be scheduled for an approval hearing 6 to 22 months in advance, depending on the applicable Executive Directive approval timeframe, once the Project Description has been deemed stable. Projects that are not ready for approval by the specific date will be included in a regular report to the Planning Commission indicating the reason for the delay, and projects will be rescheduled accordingly. This will apply to all projects that submitted a Project Application as of June 2018, when the Department launched our consolidated Project Application (discussed above), and also to roughly 14 additional large projects that filed after the issuance of the Executive Directive, but before the new application review process.

- **Consistent Public Notification requirements, and Online Notice.** Pursuant to the Mayor's Process Improvements Ordinance (BF 180423), effective August 2018, the Department implemented a major simplification of Public Notification or "neighborhood notice" requirements, reducing the number of notification types from over 30 to just six. The ordinance and related improvements also accomplished an important modernization, introducing Online Notice for all forms of notification and supporting the Department's shift away from paper materials in favor of more widely-accessible digital notification.

- **Historic Resource Assessment (HRA).** Effective January 1, 2019 the Department launched a 12-month pilot program that will allow for prospective applicants to seek a preliminary determination of a property's historic resource classification before a full Project Application and plans are submitted. The HRA will provide greater certainty in the development process by allowing this critical review to be conducted in advance; identify and allow for the incorporation of specific preservation goals into a project's design, before that design is finalized; and provide a faster and less costly means for property owners to seek reclassification of properties that have been identified as potential resources.

- **Standard Conditions of Approval for selected CEQA topics.** In 2019, the Department will seek to replace project-by-project evaluation of required mitigation measures with Standard Conditions of Approval in several environmental topics, including Air Quality, Biological Resources, Paleontology, Historic Resources, Noise, and Transportation. This will significantly improve the transparency and predictability of the environmental review process, and allow for more projects to qualify for CEQA Exemptions.

- **Online applications and Electronic Document Review (EDR).** In Spring 2019, the Department will launch two major modernization efforts to streamline and enhance the way that development applications and associated plans are submitted and reviewed. Online submittal and payment will be available for all types of development applications, and staff will begin using EDR technology to receive and review digital plan sets. These improvements will expedite and reduce the cost of the application process, support consistent and timely application and plan set review, facilitate collaboration with project sponsors and more seamless interagency plan review, and improve the Department's reporting capabilities.

Executive Directive: Keeping Up the Pace of Housing Production

Summary and Status of Planning Department Process Improvements Plan, January 2019

A Application and Intake Procedures

	TASK	STATUS
A.1	Streamline Preliminary Project Assessment (PPA)	*Effective April 2018*
A.2	Consolidate environmental and project review via Project Application	*Effective June 2018*
A.3	Revise plan submittal and intake requirements	*Effective June 2018*
A.4	Uniform public notification procedures	
	» Consistent mailing and poster requirements; Online Notice	*Effective Jan. 2019 (BF 180423)*[1]
	» Apply uniform requirements to 311/312 building permit notices	*TBD (not in BF 180423)*[1]
	» Notification materials redesign and streamlining	*Planned for summer 2019*

B Routine Projects and Permits

	TASK	STATUS
B.1	Enhance capacity for Over-the-Counter (OTC) approvals at PIC counter	
	» Expand or add dedicated PIC shifts for: Preservation, Design, ADUs	*Effective April 2018, ongoing*
	» Streamline CEQA Categorical Exemption process for OTC approvals	*Effective January 2018*
	» Improve public information materials	*Ongoing*
B.2	Expand permits that can be approved same-day at PIC counter	
	» Minor alterations to Historic structures	*Effective Aug. 2018 (BF 180423)*[1]
	» Limited Rear Yard Additions, and related minor alterations	*TBD (not in BF 180423)*[1]
B.3	Accessory Dwelling Units and Unit Legalization approvals	
	» Assign ADU core staff at key agencies (DBI, SFFD, Public Works, Planning, SFPUC)	*Effective October 2018*
	» Offer combined interagency Pre-Application meetings	*Effective September 2018*
	» Expedited plan review, preliminary approval OTC by appointment	*Effective August 2018*
	» Provide interagency plan review and combined Plan Check Letter	*Effective October 2018*
	» Provide parallel processing with DBI and Planning for ADU permits	*Effective August 2018*

C Environmental Planning, Historic Preservation, and Design Review

	TASK	STATUS
Environmental Review		
C.1.1	Update the Planning Code for consistent definitions and procedures	*Spring/Summer 2019*
C.1.2	Streamline review process for selected CEQA topics:	
	» Two-tier transportation review: streamlined review for most projects	*Effective August 2018*
	» Launch web-based travel demand tool	*Launch in February 2019*
	» Streamline wind and shadow review	*TBD*
C.1.3	Streamline use of technical studies and environmental consultants	*Effective July 2018*
C.1.4	Expand and streamline environmental review exemptions	
	» Replace narrative "certificate" documents with checklists for Categorical Exemptions and Infill Exemptions.	*Effective January 2018*

Historic Preservation Review		
C.2.1	Revise Preservation review procedures:	
	» Historic Resource Assessment (HRA) for pre-project determination	*Effective Jan. 2019 (pilot)*
	» Revise Preservation Bulletin No. 16	*TBD*
C.2.2	Complete a citywide historic preservation survey	*Ongoing*
C.2.3	Reassess Historic Preservation staffing at PIC counter:	
	» Enhanced service hours by Preservation specialists	*Effective April 2018*
	» Revise PIC review procedures for non-Preservation specialists	*Summer 2019*
Design Review		
C.3.1	Identify Design Guidelines to be codified or standardized	*TBD*
C.3.2	Enhance staffing of Design Advisory teams, add Design staff at PIC	*Effective June 2018*
C.3.3	Adopt Urban Design Guidelines (UDGs) and develop UDGs matrix	*Effective May 2018*
C.3.4	Streamline Residential Design Guidelines (RDGs) with RDGs matrix	*Effective June 2018*
C.3.5	Update Residential Design Guidelines (RDGs) ,develop an RDGs matrix	*Effective Aug. 2018*

D Planning Code and Commission Policies

	TASK	STATUS
D.1	Advanced Planning Commission scheduling for housing projects	*Launch February 2019*
D.2	Streamline staffing and timeframe for Discretionary Review (DR) cases	*Effective June 2018*
D.3	Reduce requirements for Conditional Use and other entitlement hearings	
	» Eliminate Commission hearings for 100% Affordable Housing Bonus	*Effective Aug. 2018 (BF 180423)*[1]
	» Replace CU hearing for HOME-SF with a design review hearing	*Effective Mar. 2019 (BF 180456)*[2]
	» Identify additional approvals to be consolidated or eliminated	*TBD*
D.4.1	Update the Planning Code for consistent definitions and procedures	*Ongoing*
D.4.2	Ongoing Planning Code reorganization; Article 8 (Mixed Use Districts)	*Planned for summer 2019*
D.5	Planning Code revisions to streamline housing review	
	» Eliminate "Costa-Hawkins letters" for Inclusionary projects	*Effective Mar. 2018 (BF 171193)*[3]
	» Reduce the need for Variances for large downtown projects	*Effective Aug. 2018 (BF 180423)*[1]
	» Expand administrative approval for 100% Affordable projects	*Effective Aug. 2018 (BF 180423)*[1]
	» Expand approval options for ADUs in buildable area	*Effective Sept. 2018 (BF 180268)*[4]
	» Provide administrative approval of "no waiver" ADUs	*Pending BF 181156 (Safai)*[5]

E Administration and Technology

	TASK	STATUS
E.1.1	Online submittal and payment for all development application types	*Launch in Spring 2019*
E.1.2	Electronic Document Review (EDR) for Planning review	*Launch in Spring 2019*
E.1.3	Electronic Document Management System (EDMS)	*Effective Summer 2017*
E.1.4	Develop a web-based Impact Fee Calculator for staff	*Launch in Spring 2019*
E.1.5	In-House processing of public notification mailing lists	*Effective April 2018*
E.1.6	Property Information Map (PIM) enhancements	*Redesigned Dec. 2018*

NOTES:
(1) BF 180423: Mayor's Process Improvements Ordinance (Mayor Breed), approved July 2018
(2) BF 180456: HOME-SF and 100% Affordable Housing Bonus Program (Tang, Safai), approved August 2018
(3) BF 171193: Inclusionary Affordable Housing Program (Peskin, Kim), approved February 2018
(4) BF 180268: Accessory Dwelling Units (Tang, Kim, Brown), approved August 2018
(5) BF 181156: Accessory Dwelling Units in New Construction (Safai), introduced November 2018

B. Project Review Timeframes Report

As part of the consolidated Project Application and review process, Planning has implemented a series of time-certain review milestones that will increase the predictability of the application process, consolidate Department comments (e.g. for Planning Code review, environmental review, and design review) into a single document managed by the project planner, and greatly improve the transparency of the review process. In addition, the Department streamlined the Preliminary Project Assessment (PPA) process to provide clearer direction to applicants about the level of review that will be required, and reduced the target timeframe for PPAs to 60 days, down from 90 days. Taken together, these changes provide a more clear, expeditious and predictable review path from preliminary design to final approval.

- **Preliminary Project Assessment (PPA):** The PPA provides initial feedback from the Planning Department regarding Planning Code compliance, entitlement options, environmental review, and design. PPAs must be submitted for all projects greater than 10 units or 10,000 square feet of non-residential space before any application for development or environmental review can be initiated.

- **Notice of Incomplete Application (NIA):** Project Applications are reviewed for basic completeness (including required supplemental materials and payment) within 30 days. Projects will either be deemed Accepted or provided with a NIA letter with instructions on how to provide a complete application.

- **Plan Check Letter (PCL):** Project Applications will be reviewed within 90 days of being deemed Accepted, and Planning will provide a PCL to applicants documenting any Planning Code compliance, environmental review, or design review deficiencies to be resolved in order to achieve a compliant project, if needed. Once applicants have provided satisfactory revisions, or if they are satisfactory as proposed, the project will be deemed to have a "Stable Project Description."

- **Target Hearing Date:** Once the Project Description is stable, the project will be scheduled on the Target Hearing Calendar for a date that is within the applicable Executive Directive approval timeframes, and all necessary environmental and entitlement review will be completed within this timeframe.

For more detail regarding the consolidated process, see the Project Intake, Environmental Review, and Approval Process flowchart attached here.

The following table reports the Department's performance against the review timeframes outlined above for all Project Applications received since June 4, 2018 when the consolidated review process came into effect (or after April 2, 2018 for PPAs). Note that the Department will include metrics on Target Hearing Date performance in upcoming reports, as more projects advance to this stage in the review process.

Project Review Timeframes: Project Applications Filed, June – December 2018

Review Milestones	Performance Target	Number of Projects (total units)	Average Performance	Percent Meeting Target
Preliminary Project Application (PPA)	Issue PPA in **60 days**	22 (2,556)	63 days	68% of projects
Notice of Incomplete Application (NIA)	Issue first NIA, or mark Accepted, in **30 days**	42 (1,240)	17 days	79% of projects
Plan Check Letter (PCL)	Issue first PCL in **90 days**	23 (422 units)	80 days	48% of projects

- Note: these figures do not include Accessory Dwelling Unit (ADU) or Unit Legalization projects. In conformity with Mayor Breed's August 2018 Executive Directive to accelerate the approval of ADUs, these projects are subject to a separate expedited interagency review process, which has allowed for most new ADU projects to be acted on or approved by Planning (and other key agencies) in four months and reduce the permit review backlog for these projects. A full update on ADU process improvements and status will be provided in the second quarter of this year.

In the first six months of implementation the Department has, on average, exceeded or nearly met the performance target for each of these project review milestones. Two-thirds of projects are receiving PPA feedback within 60 days, and nearly 80 percent are either accepted or issued an NIA within 30 days after an application is submitted. Nearly half of all projects are receiving a consolidated PCL letter within 90 days.

These results are encouraging considering the short time these new procedures have been in place, and to be expected initially as staff gain experience with the new procedures and various supporting efficiency measures continue to come online over time. Department staff have committed to the new consolidated review process, and have worked collaboratively across divisions to identify and resolve implementation issues on a daily basis. In addition, the Department has already taken corrective measures and initiated further improvements to close the gap on these review timeframes, including revised internal procedures, new technology resources, and reorganization of staffing functions.

Finally, the Department anticipates that the various process improvement efforts that have been recently adopted or are underway for implementation this year will significantly improve performance on these review milestones, and that the response time and quality of submittals from applicants will continue to improve as these new procedures and expectations become more familiar within the development community.

C. Baseline Approval Timeframes: Projects Filed Prior to Executive Directive Improvements

This section is intended to provide a baseline assessment of the overall approval timeframes for recently approved project that filed prior to the consolidated review process in June 2018. The table below summarizes the duration from the first application filed to project approval for most housing projects of 10 or more units that were approved by the Planning Commission in the years 2016 through 2018. This includes 91 projects with a total of roughly 11,000 units. Projects that were approved without a Commission hearing, and smaller projects, were excluded due to data availability. The table further provides an estimated comparison of these past timeframes against the new target approval timeframes that would have been applied to these projects under the Executive Directive, accounting for the amount of additional time that would have been provided for the initial completeness check and plan review process and response time from applicants.

The Department considers this an appropriate baseline as these projects reflect the approval timeframes resulting from previous application and review processes. In future reports, the Department intends to include a comparison of this baseline to the approval timeframes for projects approved after 2018, and that will have been subject to the streamlined review process and other process improvement measures that have been implemented or initiated under the Executive Directive.

Approval Timeframe Baseline: Housing Projects Approved 2016 - 2018

Executive Directive Target Approval Timeframes	Number of Projects (Total Units)	Average Approval Timeframe	Percent of Projects Approved within Target Timeframes
9 months (CEQA exemption projects)	22 (966)	18 months	50% of projects
12 months (Non-exempt projects with no EIR)	60 (6,764)	20 months	57% of projects
18 months (Environmental Impact Report (EIR) projects)	4 (1,362)	30 months	25% of projects
22 months ("Complex" EIR projects)	4 (1,834)	60 months	25% of projects

- Note: The Department will continue to review past approval records in advance of the next regular update, and these figures may be adjusted for greater accuracy accordingly.

The Planning Department recognizes the urgency of San Francisco's housing crisis, and embraces the call to accelerate and streamline housing review and approvals at every opportunity. The Process Improvements Plan was designed to eliminate waste and redundancy, while enhancing our ability to apply appropriate design and environmental review standards and applicable City policies. The myriad improvement efforts that have been implemented or are currently underway, as summarized in this report, have already affected an important shift in the way we go about our work. Consistent, predictable review timeframes and standards are becoming the norm, and our various divisions and staff teams are working in concert as part of one consolidated review process. The baseline approval timeframes estimated above demonstrate that we have significant ground to cover in achieving the target timeframes set forth in the Executive Directive. However, the recent project review timeframes reported here indicate that we are already well on our way to achieving a fundamental shift in our review process, and one that sets the stage for further improvements over the coming months and years.

Attachments:

A. Planning Department Process Improvements Plan, December 2017
B. Project Intake, Environmental Review, and Approval Process flow chart

Exhibit D

Final Report:
Examining Entitlement in California to Inform Policy and Process: Advancing Social Equity in Housing Development Patterns

3900-19STC005

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The University of California, Berkeley submits this Final Report in partial fulfillment of contract #3900-19STC005, *Examining Entitlement to Inform Policy and Process in California: Advancing Social Equity in Housing Development Patterns* under the sponsorship of the California Air Resources Board.

Electronic copy available at: https://ssrn.com/abstract=3956250

Abstract *8*

Executive Summary *9*

I. Introduction *11*

II. The Legal Background: Navigating California Law Applicable to Planning for and Approving Residential Development *15*

A. Pathways to Planning and Zoning Approvals **15**

B. Moving through Environmental Review (California Environmental Quality Act, or CEQA) **19**

1. Mitigating Potentially Significant Environmental Impacts 21
2. "Reverse CEQA" – The Limitations of Environmental Review in Measuring the Impact of the Environment on a Project 22
3. CEQA and Climate Goals 23

C. Achieving Equity in Housing Opportunity through California's Fair Housing and Housing Element Law **24**

III. Measuring Law: What prior research tells us about how regulation impacts affordability and access to opportunity. *26*

A. There is indirect evidence that land use regulations limit housing supply and increase housing costs in coastal cities **26**

1. Indirect evidence of regulation as a constraint on housing supply. 26
2. Describing regulatory environments through indices. 27
3. Exploring supply constraints through the case study approach. 31

B. There is evidence that cities use land use regulation as a tool of exclusion **31**

C. Advocates argue that CEQA litigation and environmental regulation is not promoting equitable infill TOD—creating problems for fair housing and climate goals **33**

D. Legal scholars and economists suggest that exclusionary regulation might also contribute to sprawl. **35**

IV. Materials and Methods *36*

A. Case Study Jurisdiction Selection Process **36**

B. Summarizing and Analyzing Base Zoning and Approvals **37**

C. Building the Project Observation Database **38**

D. Interviews **41**

E. Coding **42**

F. Research Question and Hypothesis **43**

G. Limitations of Research Design **43**

V. Findings and Discussion *44*

A. Identifying and Selecting Key Indicators of Stringency and Exclusion **45**

1. Local governments generally make little land available for dense housing. 45

Electronic copy available at: https://ssrn.com/abstract=3956250

2. Most dense development is subject to discretionary review, even in areas designated for dense development. 51
3. Local governments approve dense housing at very different rates across metros and within metros. 54
4. Discretionary processes vary by jurisdiction, not by type of development or location in TOD areas; entitlement timeframes range from months to years depending on the city. 57
5. New dense housing in our Southern California and Silicon Valley infill cities commonly demolishes old housing, potentially causing direct physical displacement in some places; in exurban areas, most development goes where there was no housing before—with some rezoning of agricultural land in San Diego County 59
6. No urban cities have permissive regulatory environments for housing and six are likely prohibitive. 63
7. Generally there is little difference between entitlement timeframes and environmental review pathways in urban and exurban areas. 70
9. Less than 3% of all development approvals face community opposition through litigation, but litigation rates vary across jurisdictions. 78
10. Approximately 11% of development approvals are challenged through local administrative appeals, with variable rates across jurisdictions. 90

B. Assessing regulatory constraints on achieving fair housing goals. 96

1. Analyzing the impact of onerous process on achieving fair housing and climate goals in San Francisco. 96
2. Analyzing whether climate policy and fair housing policy are in tension in the City of Los Angeles. 102

C. Ongoing work to assess how CEQA exemptions and tiering may be used in higher VMT locations and higher wildfire hazard areas. 106

1. Some urban infill developments that benefited from CEQA exemptions are in higher VMT locations. 107
2. Residential development sited in Fire Risk Zones had expedited CEQA review or no CEQA review. 107

***Summary and Conclusions* 111**

***Recommendations* 114**

***References* 117**

***Glossary of terms, abbreviations, and symbols* 129**

Electronic copy available at: https://ssrn.com/abstract=3956250

List of Figures

Figure 1: Types of Environmental Review
Figure 2: Capturing Approval Process Observations

Chart 1: Comparative Analysis of Regulatory Types
Chart 2: Distribution of Deed-Restricted Affordable Housing Units in Relationship to Opportunity Classification in San Francisco
Chart 3: Distribution of Deed-Restricted Affordable Housing Units in Relationship to Opportunity Classification in Los Angeles
Chart 4: City of Los Angeles Rate of Rent-Stabilized Demolition in Relationship to Replacement by Deed-Restricted Affordable, Sorted by TCAC Classifications

List of Tables

Table 1: Infill Study Jurisdictions
Table 2: Summary of Base Zoning Analysis Entire City All Zoned Land
Table 3: Base Zoning High Quality Transit Area Only
Table 4: Base Zoning, Opportunity, and Transit Area
Table 5: Summary Analysis of Ministerial Processes in Local Ordinances
Table 6: Approvals of Proposals to Develop 5 or More Units of Housing, All Cities 2014-2017
Table 7: Standardized Approval Rates
Table 8: Entitlement Timeframes and Average Steps to Approval All Jurisdictions 2014-2017
Table 9: All Study Jurisdictions Prior Use
Table 10: Rates of Demolition Associated with Housing Approvals All Jurisdictions
Table 11: Standardized Approval Rates Sorted by LAO Reporting on Metro Housing Costs, Demand, and Production
Table 12: Standardized Approval Rates Sorted by LAO Reporting on Metro Housing Costs, Demand, and Production—with Stringency Category
Table 13: Single-family Project Timeframes Across Jurisdictions
Table 14: Multi-family Family Project Timeframes Across Jurisdictions
Table 15: Single-family Subdivision Median Timelines Sorted by Metro
Table 16: Multi-family Median Timelines Sorted by Metro
Table 17: Prevalence of Rezoning Sorted By Metro
Table 18: Rate of Deed-Restricted Affordable Development Sorted by Metro
Table 19: CEQA Pathways Sorted By Metro
Table 20: Share of Litigated Projects and Units for All Jurisdictions
Table 21: Litigation Rates By Individual Jurisdictions
Table 22: % Projects Litigated in TCAC Areas

Electronic copy available at: https://ssrn.com/abstract=3956250

Table 23: % Units Litigated in TCAC Areas
Table 24: Litigated Projects by Claim Type
Table 25: Litigated Units by Claim Type
Table 26: Litigation and Use of EIRs
Table 27: Litigation and Use of MNDs
Table 28: Litigation and Use of CEQA Tiering
Table 29: Litigation and Use of CEQA Exemptions
Table 30: Litigation and Land Use Approval Pathways
Table 31: Litigation and Land Use Approval Pathways
Table 32: Litigation Success Rates
Table 33: Litigation Success Rates and GHG/VMT Claims
Table 34: Entitlement Timeframe and Litigation
Table 35: Appeals and Litigation Timeframes
Table 36: Opposition to Approvals Through Administrative Appeals All Jurisdictions
Table 37: Administrative Appeals and Rezoning
Table 38: Administrative Appeals and CUPs
Table 39: Administrative Appeals and Variances
Table 40: Administrative Appeals and Other Land Use Approval Pathways
Table 41: % Projects Appealed in TCAC Areas
Table 42: San Francisco Timelines Percentiles and Median—All Projects
Table 43: San Francisco Prevalence of Zoning Actions in Timeline Quartiles
Table 44: San Francisco Prevalence of California Environmental Quality Act Review Pathway by Timeline Quartiles
Table 45: San Francisco Project Size Sorted by Timeline Quartiles
Table 46: San Francisco Affordability Sorted by Timeline Quartiles
Table 47: San Francisco Opportunity Classifications Sorted by Timeline Quartiles
Table 48: San Francisco Median Timelines Measured by Affordability and Access to Opportunity
Table 49: Percentage of Los Angeles Entire City Land Area by TCAC Classification and Percentage of Units Entire City by TCAC Classification
Table 50: Rates of Demolition and Replacement Rates for the City of Los Angeles
Table 51: Distribution of Projects and Units by Fire Risk (Cal Fire FHSZ State and Local Responsibility Areas)
Table 52: Distribution of % Projects and % Units by Fire Risk (Cal Fire FHSZ State and Local Responsibility Areas)
Table 53: Project CEQA Pathways by Fire Risk in Placer County
Table 54: Project CEQA Pathways by Fire Risk in San Diego County
Table 55: Project CEQA Pathways by Fire Risk in the City of San Diego
Table 56: Project CEQA Pathways by Fire Risk in the City of Los Angeles
Table 57: Project CEQA Pathways by Fire Risk in Los Angeles County

Electronic copy available at: https://ssrn.com/abstract=3956250

Abstract

This report details findings and analysis from the ongoing Comprehensive Assessment of Land Use Entitlements Study (CALES). CALES examines how jurisdictions approve housing development that would produce five or more units, if built. CALES also analyzes how enforceable climate policies, such as the California Environmental Quality Act (CEQA), operate in relationship to the approval of new housing in urban and exurban areas and whether new housing development in both contexts faces opposition through lawsuits. All data points to local authority over land and local regulation as the most significant barrier to increasing the development of dense, infill housing and affordable housing in the study areas. Local governments could eliminate obstacles associated with state-level environmental regulation (and related litigation) by reforming their own local law. Though community opposition to housing through litigation varies across cities, less than 3% of all approvals in our data faced litigation—with no meaningful difference between litigation rates for housing in urban or exurban contexts. Both urban multi-family and exurban subdivision development used similar expedited environmental review pathways intended to promote infill development; this is true for exurban development sited in high fire hazard areas.

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Executive Summary

Background

California faces a persistent housing crisis that challenges climate policy implementation, civil rights, and poverty alleviation. Inadequate housing supply in the state's high-cost coastal metropolitan areas contributes to this crisis. The California Air Resources Board has made clear that reducing automobile travel is critical to achieving the state's climate change goals. Increasing ***dense infill transit-oriented residential development (TOD)***[1] in the state's high-cost metro areas could address the housing crisis while also mitigating climate change. Some affordable housing advocates contend that infill residential TOD displaces lower income populations, disproportionately people of color, pushing them into adjacent ***exurban*** areas. These advocates caution against policy that promotes residential TOD unless it prioritizes affordable housing. Relatedly, some commentators argue that recent state policies unduly constrain housing development in exurban areas, also to the disadvantage of people of color. Though there is evidence that land use regulation, generally, constrains housing supply and increases housing costs in high-cost metros, there has been no research to date that provides granular local-level data on how land use regulation (both state and local) impacts specific types of housing development (such as TOD or exurban development). Many cities have also created housing affordability, equity, and climate goals, but lack the data to evaluate them. This data gap inhibits effective local and state policy development. Crafting regulation that advances housing affordability and tackles the impacts of climate change demands granular data about how land use regulation operates.

Objective and Methods

To understand the impact of land use regulation, including state-required environmental review and local planning and zoning, on the production of ***dense*** housing development (defined as five or more housing units), we conducted mixed method case study research in twenty jurisdictions in the State of California. We identified sixteen cities, including eight of the state's ten largest cities, that would likely approve TOD residential development and one city and three counties that would likely approve exurban development for study. We researched and summarized each jurisdiction's local planning and zoning. We then gathered data on how they approved all residential or mixed-use development that would produce five or more housing units from 2014-2017. We examined each jurisdiction's ***entitlement process*** and application of state-required environmental review. We interviewed stakeholders involved in the residential development process in all twenty jurisdictions.

We compared our study jurisdictions' local regulations, application of state-required environmental review, and use of state incentives to increase desired housing (such as TOD). We described the likely impact of different regulations on different types of housing supply. We used spatial analysis to examine whether the housing approvals we gathered would promote the goals of fair housing legislation and California climate policy.

[1]Terms in bold and italics are defined in the glossary section.

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Results

Our work suggests that the chief regulatory contributor to California's housing crisis is local governments hindering dense housing via zoning and development approval processes. Many cities we studied have zoned little land for dense (and thus affordable) housing, and even less so in higher opportunity neighborhoods (as identified by the ***California Fair Housing Task Force Opportunity Mapping Methodology***). For instance, only 3.19% of all zoned land in the City of San Diego allows for dense housing (Table 2). But even where cities zoned more land for dense development, local regulation creates lengthy housing development approval timelines that impact the development of individual projects. Across all jurisdictions, most development did not require intensive environmental review, and infill and exurban development used similar pathways to meet state environmental review requirements. Variation between median timeframes for approval of similar housing in neighboring urban cities with identical environmental review processes were extreme, differing by over 20 months (Table 14). This variability creates uncertainty for developers and may constrain infill development. Notably, infill development took far longer to approve in urban areas than exurban areas we studied in San Diego County and Los Angeles County. All of this may contribute to ***sprawl***.

Less than 3% of approved projects were litigated (about 6.9% of all approved units); they were more likely to face ***administrative appeals*** through the local land use regulatory process. Though most lawsuits included a claim brought under the ***California Environmental Quality Act (CEQA)***, ~70% of lawsuits also had claims based on local land use law. Most lawsuits settled and plaintiffs rarely succeeded in court. Many lawsuits had claims relating to greenhouse gas emissions or vehicle miles traveled, but these were not more likely to succeed than ones without these claims. There is no meaningful difference between rates of litigation for urban or exurban development, though interviews indicate that we should examine lawsuits challenging specific and general plans to understand how litigation might impact planning and rezoning for dense housing supply.

In some cities, entitlement included approving demolition of existing housing, often in neighborhoods with a history of disinvestment. Demolition of rental housing in these cities signals physical displacement. It may also risk economic displacement by eliminating existing rent stabilized housing in neighborhoods that have recently become more affluent. Very little of the entitled housing in these more affluent neighborhoods will include affordable housing if built.

Conclusion

Local regulation within infill areas we studied appears inadequate to support both climate and fair housing goals. Our urban study cities need to approve more housing. Cities approved few affordable units in higher opportunity areas, which is unsurprising given how little land area they zone for all incomes in those areas. State environmental review did not appear to play a dominant role in incentivizing or constraining either TOD or sprawl. Local law limits the impact of CEQA ***streamlining*** or exemptions on approval timelines. Single-family subdivision in exurban areas may also benefit from less intensive review. Litigation rates are low but can add years to overall timeframes.

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I. Introduction

California, the nation's largest state by population and economy, is acutely impacted by a persistent housing crisis that is in part driven by high housing costs in its coastal metropolitan regions (Alamo, Uhler, & O'Malley, 2015). This housing crisis presents a complex problem that challenges climate policy implementation, fair housing goals, and anti-poverty policy agendas (O'Neill, Gualco-Nelson, & Biber, 2019). California's housing crisis is now the state's leading cause of poverty (Taylor et al., 2015). It contributes to racial residential segregation at a "megaregional" level and increases megacommutes as low- and moderate-income households are pushed into ***exurban***[2] areas (Verma et. al., 2019). Most scholars and researchers attribute California's high housing costs to inadequate housing supply (Alamo, Uhler, & O'Malley, 2015; Been, 2018; Been, Ellen, & O'Regan, 2019).

Running parallel to the issue of housing supply and affordability are statewide goals to reduce ***greenhouse gas emissions (GHG emissions)***.[3] The California Air Resources Board (the agency in charge of reducing the state's greenhouse gas emissions) has made clear that reducing emissions from transportation is critical to achieving the state's climate change goals and depends on reducing total ***vehicle miles traveled (VMT)***[4] (California's 2017 Climate Change Scoping Plan: The Strategy for Achieving California's 2030 Greenhouse Gas Target, 2017).

To address the housing crisis and meet GHG emissions reduction goals, state and cities should invest heavily to encourage dense housing in urban and suburban areas that are less car-centered and more oriented around mass-transit and walkable neighborhoods. Such development, referred to in this paper as ***dense residential infill transit-oriented development (dense residential infill TOD)***,[5] is defined as development that incorporates smart growth, new urbanism, and transit-oriented development (Salkin, 2009) in metro areas where the demand for housing outstrips supply (Elkind et al., 2017; Nasri & Zhang, 2014).

The state has attempted to spur such development in the past. In 2008, California enacted legislation requiring the development of sustainable, integrated regional transportation and community planning strategies (S.B. 375, 2007–2008 Leg., Reg. Sess.

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[2] Exurbs and exurban refer to jurisdictions and unincorporated areas within specific counties that lie beyond the suburbs; these areas have economic ties to the urban core of the metro areas that we study. Typically, this is where a significant portion of the population commutes to work in an urban metro area, and where housing density is low and the population is rapidly growing. Exurbs frequently occupy urban-rural interfaces and require heavier car usage (Brookings Institute, "Finding Exurbia: America's Fast-Growing Communities at the Urban Fringe," October 1, 2006, available at https://www.brookings.edu/research/finding-exurbia-americas-fast-growing-communities-at-the-metropolitan-fringe/).

[3] The state legislature directed in 2006 that the CEQA guidelines mandate analysis of greenhouse gas emissions (GHG) from proposed projects (California Public Resources Code Section 21083.5). Several provisions of the CEQA guidelines provide for this analysis (14 California Code of Regulations Sections 15064.4, 15126.4(c), 15183.5,15364.5).

[4] The state legislature in 2013 directed amendments of the CEQA guidelines to require the use of vehicle miles traveled (VMT) to assess the transportation and GHG impacts of a proposed project (SB 743). Using VMT as the assessment of the impacts of a project encourages mitigation measures that decrease automobile use and therefore GHG emissions, and also can incentivize projects that are located in dense urban settings (projects that might otherwise increase traffic impacts). The CEQA guideline revisions were completed in 2018 (14 California Code of Regulations 15064.3).

[5] We use the term **dense** development to refer to development of five or more units of housing. See discussion in Section IV.C, Materials and Methods. We use the term **infill** development to describe development in the urban and suburban jurisdictions that comprise the core of the metropolitan areas that we study. **TOD** is development placed near public transit that aims to reduce car traffic and greenhouse gas emission and multi-use neighborhoods, and often results in medium or high-density housing.

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(Cal. 2008)). However, more than a decade later, there are still severe housing shortages in California's metro areas. Although many agree that increasing TOD within cities remains critical to combating climate change (Knox & McCarthy, 2012; Nolon, 2012; Owen, 2009), some advocates and scholars argue that TOD policy that does not encompass affordable development policy objectives may exacerbate displacement and exclusion of low-income households (Chapple & Loukaitou-Sideris, 2019; "Getting There Together: Tools to Advocate for Inclusive Development near Transit," 2012; Hutson, 2016; Kaswan, 2009; Rawson & Tawatao, 2012; Rice, Cohen, Long, & Jurjevich, 2020) and may even adversely impact climate goals (Kaswan, 2009). There is an abundance of writing on the need for more affordability within high-cost cities, but little consensus exists on how to increase affordable housing opportunities and meet fair housing goals while also addressing sustainability goals.

Some scholars within law, urban planning, and economics suggest relaxing regulation to support supply side strategies to address both issues. In California, these arguments take various forms. Practitioners argue that eliminating or expediting state-mandated environmental review is critical to increasing housing supply (Hernandez, 2018; Hernandez, Friedman, & DeHerrera, 2015). Others disagree and argue that existing law that promotes TOD by ***streamlining***[6] environmental review but fails to require affordable housing development may displace low-income residents (Rawson & Tawatao, 2012). Proposals to limit local authority over residential infill development near transit have failed (S.B. 827, 2018; S.B. 50, 2019), but not without considerable debate about their likelihood of addressing fair housing and climate goals (Cashin et al., 2018; Eaken et al., 2018). Housing policy scholars disagree about whether market-based, supply-side strategies will address housing needs for moderate- income households or only benefit market-rate luxury development to the disadvantage of low-income communities already struggling to stay in place (Rodriguez-Pose & Storper, 2020).

In sum, California's housing crisis and its impact on climate goals, equity, and fair housing generate debates about the comparative role that local land use regulation and state-level environmental regulation each play in contributing to inadequate housing supply and inequitable outcomes—and which should be the focus of legal reform. These policy debates invoke a series of related research questions:

1. How does existing regulation operate to allow or constrain dense residential development, generally?
2. How does existing regulation operate to promote or constrain infill TOD, specifically?
3. How does existing regulation operate to promote or constrain ***sprawl***?[7]

[6] Streamlining refers broadly to accelerating environmental review processes for proposed development on an individual project level. This includes "tiering," whereby cities develop an Environmental Impact Report for an area within the city where development is anticipated, from which individual projects can be 'tiered,' or to predetermined CEQA exemptions for classes and types of proposed development.

[7] Sprawl refers to low-density residential and commercial development that occurs at the outer edges of urban areas. As such, the concept overlaps significantly with exurban development. Sprawl can impose significant environmental and economic costs in the form of increased vehicle mileage, paving over agricultural or undeveloped land, placing greater strain on infrastructure and public services. Smart Growth America examined the impact of sprawl in its 2014 report, Measuring Sprawl 2014, available at https://smartgrowthamerica.org/resources/measuring-sprawl-2014/.

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4. How does existing land use regulation support or limit affordable development in different local contexts?
5. What is the relative influence, if any, of state law and policy promoting TOD and local law regulating land use in generating inequitable outcomes like displacement in high-cost cities?
6. Is opposition through ***administrative appeals***[8] or litigation common, and if so what types of claims dominate, and are they successful?

Prior studies that have examined some of these questions have looked at how the stringency of land use regulatory regimes impacts housing supply and costs. ***Stringency*** refers to the degree to which regulation is restrictive, often due to zoning prohibitions, development costs, or other factors. There is evidence that stringent land use regulation constrains housing supply and increases housing costs in high-cost metros (Glaeser and Gyourko, 2018; Glaeser and Gyourko, 2002; Gyourko, J., Saiz, A., & Summers, A., 2008; Quigley, J. M., Rafael, S., & Rosenthal, L. A. 2008), but this research has methodological limitations that matter for the California housing policy debate. The heterogeneity and complexity of land use law, regulated at the local level, also makes it difficult for researchers to take analysis from one location and generalize across jurisdictions (Been, 2018; J. E. Gyourko & Molloy, 2014). To scale a land use study to larger geographic areas, much of the underlying data comes in whole or in part from survey tools that inventory regulations and their application. Survey responses, however, are not consistently reliable (Lewis and Marantz 2019), and the surveys do not identify which specific laws or regulations may contribute disproportionately to housing costs or which may influence development patterns and specific types of housing (O'Neill, Gualco-Nelson, & Biber, 2019; O'Neill, Gualco-Nelson, & Biber, 2021). Creating an inventory of the text of law and regulations across jurisdictions would address reliability concerns, but it would not answer questions about how law is applied in diverse contexts (Fischel, 1995; Gabbe, 2019).

Crafting regulatory reform that can achieve multiple policy aims, among them addressing affordability and fair housing goals while also addressing the impacts of climate change, requires understanding whether and how existing land use regulation fails to accomplish desired policy aims. This, in turn, requires granular, local-level data about both the presence of specific regulatory tools and how that land use regulation operates in practice within high-cost cities.

PI O'Neill, Co-PI Biber, along with former UC Berkeley researcher Gualco-Nelson (hereafter referred to as "UCB Team") responded to this gap in existing research by initiating phased, mixed method case study research on sixteen California high-cost cities, all municipal incorporations that prioritized infill development (hereafter referred to as "infill jurisdictions"). The UCB Team titled the work the Comprehensive Assessment of Land use Entitlements Study (CALES). CALES contributes data and analysis to multiple

[8] Administrative appeals refer to the local government administrative process by which a party can appeal a determination made by the local government in a discretionary review process. Unlike litigation, administrative appeals are not decided by a court, but rather by a local agency. Projects can be appealed based on the decisions under local regulatory requirements or on CEQA determinations.

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questions about how local and state land use regulation operate to promote or constrain dense housing production that meets fair housing, affordability, and climate policy goals.

CALES joins legal research and analysis of each city's land use regime—including spatial analysis of the city's ***base zoning***[9] (density and use restrictions)—with case study research (Yin, 2014) that gathers objective and precise project-level data on the process steps of approving residential development over a four-year period (2014 through 2017).[10] CALES allows for analysis of residential development approval processes, rates of litigation and administrative appeals, and rates of applications for building permits for entitled projects. The UCB Team's case studies reveal whether and how cities apply "law on the books" and specific points of regulatory stringency. All of the UCB Team's observations of law as it is applied in our study cities are geocoded, allowing researchers to map the application of law in the study cities in relationship to existing geographic information systems tools that identify ***high quality transit areas*** (HQTA), areas of opportunity, environmental conditions, and more.

In March 2020, with support from the California Air Resources Board, the UCB Team expanded CALES to incorporate data collection in four exurban jurisdictions where residential development of five or more units of housing would most likely be ***greenfield development***—that is, development in exurban areas that usually results in low-density housing product—rather than infill development. The UCB team selected three counties that approve housing development in unincorporated county areas and one incorporated suburban community located in the exurban areas of previously studied major metropolitan areas. To facilitate comparative analysis of how infill and greenfield residential development operates, this report draws on data and findings from all twenty jurisdictions within CALES and incorporates findings analysis from earlier UCB working papers and publications, as needed.

UC Irvine Professor Nick Marantz (hereafter "UCI Team") joined the UCB Team in March 2020 to support data cleaning, provide analysis of whether and how dense residential development sited in transit priority areas might proceed differently through approval pathways, and explore additional analysis with the CALES data.[11]

Because this analysis references various parts of California law, this report begins with a brief discussion of California's land use regulatory environment to provide key definitions that we use throughout the discussion of methods, findings, and analysis. The report then lays out the methods and research questions and details all findings from the CALES project to date, including relevant analysis and policy recommendations.

[9] Base zoning refers to the underlying zoning district and use designations (residential, commercial, or industrial) provided for in the text of the ordinance and zoning map.

[10] Following standard usage in land use law, we define entitlement to include the regulatory approvals needed from a local government in order to be able to apply for a building permit or other permits for construction.

[11] The UCI Team is now leading research that joins CALES data with other datasets to answer several different additional research questions, including but not limited to: (1) whether and how planning and local regulatory processes respond to changes in housing prices using proprietary data; (2) what factors affect development decisions and construction delays in job-rich and transit-accessible areas in five incorporated cities in Los Angeles County and unincorporated areas in Los Angeles County; and (3) how the siting of new housing relates to statewide goals concerning reductions in vehicles miles traveled. The UCI Team's work is ongoing and extends beyond the scope and term of the contract associated with this report.

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II. The Legal Background: Navigating California Law Applicable to Planning for and Approving Residential Development

Assessing how cities regulate the development of five or more units of housing in any California community involves understanding some of the basic regulatory tools that cities use to control residential development. It also requires understanding state mandated procedural and substantive requirements on local government regulatory processes—such as the California Environmental Quality Act. We focus only on components of California land use law implicated in this research study and do not discuss the breadth and applicability of the larger, complex body of law that practitioners and academics describe as "land use law" within California. Instead, we focus on the approval process that local governments impose on project proponents before they are eligible to apply for a building permit. This first procedural step is generally called the ***entitlement process***. The entitlement process requires project proponents to gain local government approval *before* they are eligible to apply for a building permit, and thus is typically the first step towards constructing new development. It is central to land use approval processes because it is the primary mechanism by which local governments control whether and how development occurs on a parcel of land.

A. Pathways to Planning and Zoning Approvals[12]

California law allows cities to use a range of tools to review and approve housing development based on a hierarchical system of land use law. At the top of "the hierarchy of local government law regulating land use" is the General Plan[13]—likened to a "constitution" for long-term physical development of the city or county.[14] Each jurisdiction must 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. Although the General Plan always codifies the city's planning law, depending on the jurisdiction, it does 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.[15]

Although not required by state law, some jurisdictions may also incorporate provisions within the General Plan for specific plans, or community plans, to address anticipated growth. Relevant for infill development, specific plans may direct development to particular locations. Specific plans may also be extremely detailed and may direct nearly every aspect of development by codifying acceptable land uses[16] and requiring

[12] Much of this content draws on "Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California's Housing Policy Debates," "Part I: Background," "A. Navigating the law applicable to entitlement processes in California," "1. Local law governing infill development" at pp. 8 (O'Neill et al., 2019).

[13] 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 Commc'ns, Inc. v. City of Walnut Creek, 802 P.2d 317, 321–22 (Cal. 1990)).

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

[15] 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.

[16] *See* CAL. GOV'T CODE § 65451(a); *see also* Hafen v. County of Orange, 26 Cal. Rptr. 3d 584, 591 (Ct. App. 2005).

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review of proposed development for compliance with the specific plan. Community plans may offer policy goals and programs for a particular geographic area with the General 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 within specific neighborhoods. We refer to base zoning in this report to describe the underlying zoning district and use (residential, commercial, or industrial) provided for in the text of the ordinance and the zoning map. Base zoning might, for instance, regulate the height, density, and spacing of buildings, as well as control the use of the property. Zoning in California may restrict development while also incentivizing development proposed in the General Plan. Zoning may also mandate ***exactions***, which are defined under California law as a monetary fee or dedication of land to the public as a condition of development approval.[17]

State law also reserves some authority over housing development.[18] Two of the most important provisions under state law are Density Bonus law and laws related to Accessory Dwelling Units. ***Density bonuses*** are intended to incentivize and increase affordable housing production by allowing for a denser development than would otherwise be possible under the base zoning in return for provision of affordable or senior housing units.[19] ***Accessory Dwelling Units (ADUs)*** are additional, independent dwelling units constructed on a residential parcel that are generally smaller than the primary residential unit on the parcel; state law requires approval of ADUs by local governments in certain circumstances in order to increase housing production in otherwise low-density residential neighborhoods.[20] We do not include ADU analysis in our study.

State law generally allows local jurisdictions considerable flexibility in how to regulate land use within this broad framework. Sometimes a city's General Plan provides specific language that not only guides development policy, but also closely regulates the form of development and land use through planning designations.[21] Similarly, a specific plan may be very general—or it may closely regulate development. California also treats

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[17] *See generally* CAL. GOV'T. CODE §§ 66000–66025; Williams Commc'ns, LLC v. City of Riverside, 8 Cal. Rptr. 3d 96, 107–08 (Ct. App. 2003). 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.

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

[19] *See* CAL. GOV'T CODE §§ 65915–65918. Specifically, 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.

[20] State law defines ADUs as "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).

[21] 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).

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the two kinds of cities within California (charter and general law cities)[22] differently with respect to whether the city's zoning ordinances must be consistent with the city's General Plan.[23] A charter city's zoning may be inconsistent with its General Plan, or more specifically, the city may have outdated zoning ordinances that do not reflect changes to city policy on specific types of development.[24] General law cities must maintain consistency between the zoning ordinance and the General Plan.

To enable comparative analysis across our jurisdictions, we describe planning designations and zoning that regulate use (e.g., residential, mixed, commercial, industrial) and density as one dimension of regulation—what we will refer to later as "base zoning." Another aspect of regulation involves how proposed housing moves through the entitlement processes—what we will refer to throughout this report as "process requirements" or "process."

In understanding the entitlement process, a key distinction is between discretionary and ministerial review. ***Discretionary review*** refers to a local government's authority to impose subjective standards when deciding whether to approve proposed development. ***Ministerial review*** employs an objective standard that requires a local government to approve a proposed development, so long as it conforms to the objective standards. Discretionary review grants the local government the power to reject proposed development for subjective reasons and ministerial review does not. Ministerial review is often referred to as ***"by-right"*** or ***"as of right"*** development and involves approvals in which a government agency applies law to fact without using subjective judgment. Proposed housing that is subject to ministerial review is also not subject to environmental review under the California Environmental Quality Act (O'Neill et al., 2019).

California cities have substantial latitude in what type of processes they use to approve residential development, including whether they use discretionary or ministerial reviews. We group land use approval processes into four general categories. First, cities can allow for a ministerial or "by-right" process when proposed development conforms to the underlying base zoning district's use and density requirements. Second, cities can 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.[25] Third, cities also impose

[22] Charter cities have generally broader autonomy under the California state constitution than general law cities. 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).

[23] 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). However, the provisions of a general plan within every city must be internally consistent. *See* CAL. GOV'T. CODE §§ 65302, 65300.5.

[24] The City of San Jose is illustrative. Within the City of San Jose, many 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, but they did not routinely require a general plan amendment because 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.

[25] *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).

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discretionary review when the proposed project would not comply with the base zoning in the 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 (general plan amendment).

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 (for instance) aesthetic controls that may impose discretionary review that is particularly subjective in nature (Blaesser, 2005). Examples of this include design review, architectural review, site development review, and historical preservation review/certificate of appropriateness.[26] We refer to this type of proposed development in our analysis as "code compliant but requiring discretionary review."

Another key step in the entitlement process is the regulation of subdivision, or the process of dividing land into two or more parcels for the purpose of sale, lease, or financing (Cal. Gov't Code § 66424). 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.[27] Although the California Subdivision Map Act sets the framework and minimum requirements for the approval of subdivisions, local governments implement that regulatory process through the enactment of a local subdivision ordinance (Cal. Gov't Code § 66411). The process begins when a developer seeking to create five or more units of land files a Tentative Map application (Cal. Gov't Code § 66428(b)). After the approval of the Tentative Map, the developer must comply with any imposed conditions before filing for Final Map approval (Cal. Gov.'t Code § 66457). The Tentative Map is a discretionary review process—Final Maps are not typically discretionary actions (Cal. Gov't Code § 66474.1). In our work, we track 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 (Cal. Gov't Code § 66412(d)), but certain lot line adjustments do not require tentative maps (Cal. Gov't Code § 66412(d)).

Development Agreements are also important for our analysis. Development Agreements 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 (Cal. Gov't. Code § 65867). Development Agreements are relevant to large, phased development projects in our study jurisdictions.

[26] 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.

[27] Vertical subdivision allows for the creation of condominiums.

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B. Moving through Environmental Review (California Environmental Quality Act, or CEQA)

Modeled after the ***National Environmental Policy Act (NEPA)***,[28] CEQA combines mandatory information disclosure with public participation. CEQA's focus is on government projects and approvals that produce significant environmental impacts (Cal. Pub. Res. Code § 21002). CEQA applies to any residential development project that requires a public agency's discretionary approval (Cal. Pub. Res. Code § 21080). CEQA review for a project is directed by a ***lead agency***;[29] in the context of residential development, the lead public agency is usually the local Planning Department (Cal. Gov't Code §§ 65100, 65101) as planning agencies generally enforce the local zoning ordinances and make land use determinations. With some exceptions, it is the lead agency that determines whether the required approval is discretionary or ministerial (14 C.C.R. § 15369). Though building permits are presumptively ministerial (or "by-right"), local agencies can specify otherwise in their laws (14 C.C.R. § 15268(b).) (San Francisco does this). Conditional or special use permits, variances, Development Agreements, subdivision maps, or zoning changes are typically discretionary approvals (Cal. Gov't Code § 65583.2) because planning departments are not legally obligated to grant these types of approvals; instead, they use judgment to evaluate the project based on subjective criteria (14 C.C.R. §15357).

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 (14 C.C.R. §§ 15300–15333). In our research, we focus primarily 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 (14 C.C.R. § 15332). 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 (14 C.C.R. §§ 15303, 15301). In addition to these statutory and categorical exemptions, a project may be exempt when there has already been a prior ***Environmental Impact Report (EIR)*** made on it. An EIR is a document created pursuant to CEQA to inform stakeholders and community of the potential environmental impacts of a new project and possible mitigation strategies and substitutes for the project.

When a project is not categorically exempt or exempt based on prior EIR analysis, the lead agency conducts an Initial Study (14 C.C.R. § 15063(a)) to assess whether there is substantial evidence that a project may have a significant effect on the environment. If not, the agency issues a ***Negative Declaration (ND)*** (14 C.C.R. 15070(a)).[30] If there is substantial evidence that a project may have a significant effect on the environment, but

[28] NEPA mandates environmental review for all projects managed by federal agencies or sited on federal land. NEPA imposes notice and information requirements involving documentation around potential environmental impacts, and mitigation of potentially significant environmental impacts below a significant level where feasible. Projects must either complete a NEPA Environmental Assessment, Environmental Impact Statement, or can be issued a Categorical Exclusion if the project fulfills certain criteria. California provides a joint CEQA/NEPA process for some projects.

[29] In environmental review, the lead agency is the public body that gives final discretionary approval for the project.

[30] An ND is a California Environmental Quality Act (CEQA) document created to inform stakeholders and community that the proposed project will not have a significant effect on the environment.

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the developer can incorporate mitigation that reduce impacts below the threshold of significance, then the agency issues a ***Mitigated Negative Declaration (MND)***[31] (14 C.C.R. § 15070(b)(22)). A lead agency must prepare an EIR where there is substantial evidence that the project may have a significant effect on the environment[32] and where it is not clear from the Initial Study that these impacts can be mitigated below a significance threshold.[33]

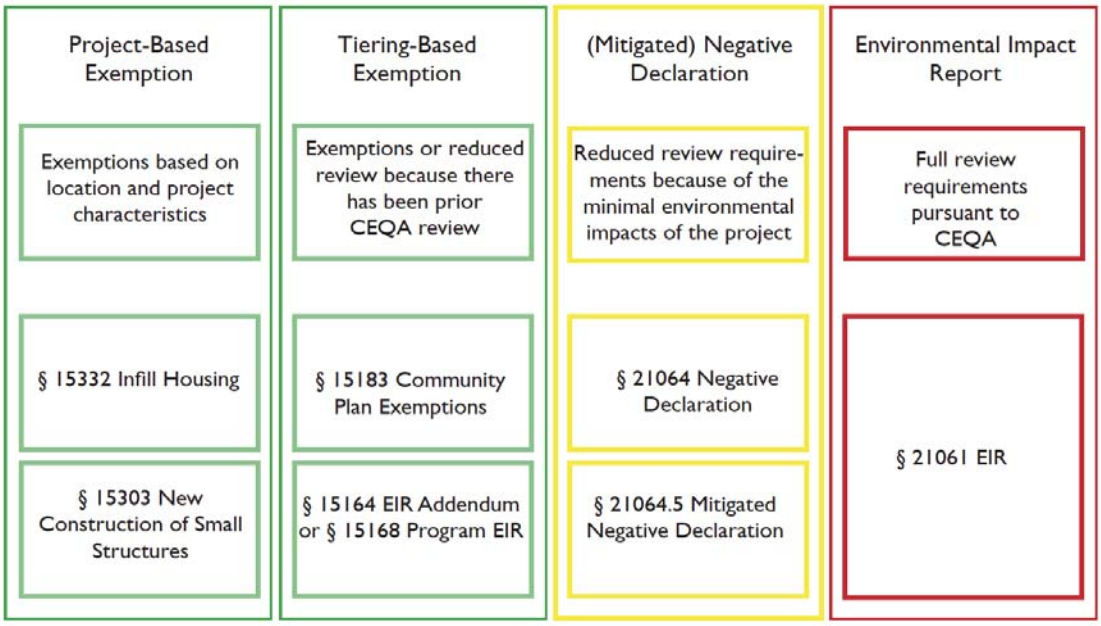
Tiering allows proposed development to go through a streamlined environmental review process under CEQA; environmental review of a proposed project can focus on a narrow set of issues that have not already been evaluated in a prior EIR that covers the proposed project. If all the issues have been evaluated in a previous EIR, then no further study is required. 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.[34] Another form of tiering is the Program EIR, which can exempt future development activity from environmental review, provided that underlying conditions have not changed since the preparation of the Program EIR.[35] An EIR Addendum is commonly used for projects that will be built out in phases under a master plan and a master EIR where the underlying conditions of approval have not changed.[36] If some of the relevant environmental conditions have changed since the prior EIR, then the lead agency can prepare a Supplemental EIR, which only needs to contain information necessary to make the original EIR adequate.[37]

When proposed development satisfies environmental review through tiering, this can allow project-level review to occur at the MND or Categorical Exemption level—substantially reducing project-level costs for the developer, because cities generally pay the costs of the relevant plan- or program-level CEQA review. Financially under-resourced jurisdictions may determine that the project-specific EIR presents a more economically feasible way of considering environmental effects than an update to the General Plan because it effectively shifts the costs of CEQA compliance to individual developers (Olshansky, 1996). 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.

[31] An MND is a California Environmental Quality Act (CEQA) document created to inform stakeholders and community that the proposed project's potential impacts to the environment can be mitigated by certain strategies and describes how the developer will implement these strategies.
[32] *Id.* § 15063(b)(1), § 15060 (indicating a project may also bypass the Initial Study to proceed directly to the EIR)
[33] *See* CAL. PUB. RES. CODE § 21064.5; CEQA GUIDELINES § 15070.
[34] *See* CEQA GUIDELINES § 15183.
[35] *See id.* § 15168.
[36] *See id.* § 15162.
[37] *See id.* § 15163.

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Figure 1: Types of Environmental Review



1. Mitigating Potentially Significant Environmental Impacts

When applied at the project level, CEQA's information mandate operates to require cities to "identify and confront the environmental consequences" of a proposed development (Karkkainen, 2002). These procedural requirements can facilitate the development of feasible project-specific mitigation actions—CEQA generally requires lead agencies to mitigate significant environmental impacts where feasible (Cal. Public Resource Section 21002.1(a), 21100(b)(3); Barbour & Teitz, 2005). Mitigating project-specific environmental problems can also address environmental problems that more general laws are slower to address (Gualco-Nelson, 2017). 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 (Olshansky, 1996). Also, project-level review can impose more costs on the developer—prior research has found the differences between a Categorical Exemption, MND, and EIR, in time and cost, can be great.

Critics 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 (Barbour & Teitz, 2005; Shigley, 2010). Some also question whether or not CEQA actually leads to meaningful mitigation of harm (Barbour & Teitz, 2005) Because CEQA leaves implementation entirely to local control, agencies can weigh environmental harms and social or economic benefits differently (Barbour & Teitz, 2005).

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2. "Reverse CEQA" – The Limitations of Environmental Review in Measuring the Impact of the Environment on a Project

At least three of the metro areas that we studied include high wildfire hazard areas. We observed some entitlement sited in high wildfire hazard areas did not undergo more intensive environmental review. Although environmental review through CEQA is one of the legal tools California offers to protect against harm from wildfire, it is not without limitations. We discuss those limitations here.

CEQA requires analysis of how a project impacts the environment, but it does not generally require lead agencies to analyze how existing environmental conditions impact a project (California Building Industry Association v. Bay Area Air Quality Management, 62 Cal.4th 369 (2015)). In the context of residential development, that means that environmental review of proposed residential development may not require analysis of whether the surrounding environmental conditions will impact the residential development. We refer to this as the "reverse CEQA"[38] issue.

The California Supreme Court has identified one important exception to this limitation within CEQA—when a project would exacerbate an existing environmental hazard or condition, then a lead agency must analyze the potential impact of that exacerbated hazard or condition on the project (*California Building Industry Association v. Bay Area Air Quality Management*, 62 Cal.4th 369 (2015)). Consistent with this, CEQA Guidelines provide that an EIR "shall also analyze any significant environmental effects the project might cause *or risk exacerbating by bringing development and people into the area affected*. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of *locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas*), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans, addressing such hazards areas" (14 Cal. Code Regs. § 15126.2, emphasis added). This is important for residential development that may be sited in locations that face high wildfire hazards or are prone to flooding.

Statute and the State CEQA Guidelines also limit the ability of jurisdictions to use CEQA exemptions when infill (14 Cal Code Regs § 21159.24), affordable housing (14 Cal Code Regs § 21159.23), transit priority projects (14 Cal Code Regs § 21155.1) or housing development is sited in a location that could expose future occupants to certain hazards and risks associated with, for example, wildfire, earthquakes, landslides, or flooding.[39]

The 2020 fire season demonstrated the severity of wildfire risk in California and underscored the importance of the reverse CEQA concept analysis in the wildfire context. Lower courts' application of the reverse CEQA concept, however, does not make clear whether siting proposed residential development in an area with high wildfire hazards, for example, will require environmental review. In *California Clean Energy Committee v. County of Placer*, an unpublished non-citable opinion, the Third District Court of Appeal found an EIR associated with a ski resort expansion in a high fire risk area deficient

[38] The term "reverse CEQA" does not come from court rulings but is widely used by academics whose work involves CEQA. Accordingly, we employ the term here.

[39] Though not the focus of this report, proposed development that involves the purchase of a school site or the construction of an elementary or secondary school is also subject to additional review requirements regarding exposure to hazardous waste. (14 Cal. Code Regs. § 21151.8)

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because it "largely focuses on fire *prevention, suppression,* and *access* for emergency responders, and […] says nothing substantive about emergency *evacuations* of residents, workers and visitors or the impact of such evacuations on access for emergency personnel, vehicles, and equipment (2015 WL 9412772). The court reversed approval of the EIR. But in *Clews Land & Livestock, LLC v. City of San Diego,* 19 Cal.App.5th 161 (2017), the Fourth District Court of Appeal upheld the use of an MND with a siting of a secondary school in a very high fire risk zone. There the court determined that the project's location in a very high fire risk zone did not create "potentially significant exacerbating impacts on existing environmental hazards," because the environmental hazard was "unchanged" by the project—the inherent difficulty of evacuating animals and personnel already existed (at 194).

The state legislature partially responded to the potential lack of CEQA analysis in the wildfire context by incorporating assessment of whether placing projects in high fire risk areas would exacerbate fire risks during the planning process, specifically in the Safety Element (SB 1241, 2012). Appendix G of the 2019 updates to CEQA guidelines reflect this change, and where a proposed development is sited in or near a very high ***fire hazard severity zone (FHSZ)***,[40] then the lead agency may use a checklist to examine whether a project would exacerbate fire risk, and "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands."[41]

3. CEQA and Climate Goals

The state legislature has determined that California is vulnerable to the effects of climate change. Despite its global nature, that State has taken early action to curb greenhouse gas (GHG) emissions on a statewide level. California is a global economic force but also a major global GHG emitter.[42] Due to the state's vulnerability and range of GHG emission sources within its borders, the State committed to a leadership role in reducing climate pollution.

CEQA has become a core component of California's broader efforts to reduce GHG emissions and mitigate climate change. Following advocacy and litigation by non-profit organizations, coalitions, and the California Attorney General's Office (Waite, 2010), the state legislature directed in 2006 that the CEQA guidelines be amended to address the analysis and mitigation of GHG emissions from proposed projects (California Public Resources Code Section 21083.5). Several provisions of the CEQA guidelines, in relevant part, provide for this analysis and appropriate methods to mitigate GHG emissions (14 California Code of Regulations Sections 15064.4, 15126.4(c), 15183.5, 15364.5, Appendix G: Initial Study Checklist, and Appendix F: Energy Conservation). The practice of analyzing and mitigating GHG emissions continues to evolve but the CEQA

[40] Fire hazard severity zones are defined by CalFire to describe the fire risk in each area in California. Broken into federal, state, and local responsibility areas, they are categorized as: Very High Fire Hazard, High Fire Hazard, Moderate Fire Hazard, and not categorized (not in a fire risk area).

[41] The California Attorney General has also urged lead agencies to consider proposed projects' impact on evacuation in the event of wildfire and how development interfaces with wildland vegetation. (Letter from Andrew Contreiras, Deputy Attorney General, regarding Guenoc Valley Mixed-Use Planned Development Project Final Environmental Impact Report, 2020).

[42] California ranks second only to Texas in states with the most GHG emissions according to the Environmental Protection Agency's State Inventory and Projection Tool 2020, (Friedrich et al, 2021).

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profession has taken substantial strides since the CEQA guidelines amendments took effect in 2009. However, that area of CEQA review continues to be a subject of litigation in the state courts, indicating the potential for caselaw to clarify unresolved areas of interpretation in the statute and application of the CEQA guidelines.

One key component for CEQA analysis of transportation impacts is the extent to which a project may substantially increase automobile use, and therefore increase GHG emissions from internal-combustion engines and fossil fuel consumption. The traditional CEQA analysis had focused transportation analysis, for projects and plans alike, on the potential to increase traffic congestion and degrade level-of-service —i.e., whether a project would cause increased delays for automobiles thereby necessitate roadway expansions – principally, new lane miles - to improve automotive circulation. The focus resulted largely in lead agencies to require subsequently project proponents increase roadway capacity for automobile use when mitigating transportation impacts—but this form of mitigation leads to an overall increase in automobile use. Accordingly, the state legislature in 2013 directed the Office of Planning and Research (OPR) to prepare amendments to the CEQA guidelines that proposed alternative metrics for use in the transportation analysis (SB 743). Following extensive outreach with affected stakeholders and the public, OPR recommended the use of vehicle miles traveled (VMT) to assess the transportation impacts of a proposed project, and by extension, can serve as a proxy for use in the GHG emissions analysis as well as other analyses for air quality, energy, noise, and water quality impacts.[43] Using VMT as the metric to assess the impacts of a project helps to reorient mitigation measures that decrease automobile use, and therefore, GHG emissions. Using VMT can also provide multiple co-benefits and better characterize potential impacts of development in dense urban settings (projects that might otherwise increase traffic impacts when measured in terms of vehicle delay). OPR prepared and transmitted the relevant CEQA guideline amendments to the Natural Resources Agency, which then conducted a rulemaking and adopted the guideline amendments in 2018 (14 California Code of Regulations 15064.3).

C. Achieving Equity in Housing Opportunity through California's Fair Housing and Housing Element Law

Also relevant to our research is California's recent enactment of AB 686 in 2017 to Affirmatively Further Fair Housing. Under AB 686, all cities and counties must analyze segregation and concentrated poverty and identify goals to address housing discrimination in their General Plan and take "meaningful action" to ***affirmatively further fair housing (AFFH)***[44] (Housing Discrimination: affirmatively furthering fair housing, AB-

43 While SB 743 and its implementing guidelines eliminates level of service (LOS) as an environmental impact that must be evaluated under CEQA, it does not prohibit LOS consideration outside of the CEQA process. Thus, jurisdictions can retain LOS standards in other ways, for instance by keeping LOS targets in their general plans or exacting impact fees. Indeed, LOS policies are ensconced in the General Plans of many California cities. (Barbour et al, 2019)

44 California Government Code § 8899.50 defines Affirmatively Furthering Fair Housing as taking meaningful actions, in addition to combating discrimination, that: overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics; address significant disparities in housing needs and in access to

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686 Chapter 958 “Bill Analysis” and “Text,” 2017-2018 Reg. Ses.; Bill Analysis, Housing Discrimination: affirmatively furthering fair housing, AB-686 Chapter 958, 2017-2018 Reg. Ses.; Housing Discrimination: affirmatively furthering fair housing, AB-686 Chapter 958, 2017-2018 Reg. Ses.). AB 686 requires that local governments use local, state, and federal data in this process. This builds on California’s signature fair housing legislation, the Housing Element of the General Plan. Housing Element law requires jurisdictions to plan and zone for density to accommodate their portion of their regional housing need, though the affirmative rezoning obligation only applies 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)*** [45] for the prior planning period (Cal. Gov’t. Code § 65583 et seq.). Housing Element law specifically requires each city and county to 1) engage in a multi-year planning process to accommodate housing needs determined by the state, (2) demonstrate enough parcels are zoned to accommodate low-income housing, and (3) identify and correct for regulatory constraints on housing production (Cal. Gov. Code Sections 65580 to 65889.11). Inadequate Housing Elements risk loss of funding and local power over permitting, though historically these enforcement provisions proved ineffectual at supporting housing production overall to accommodate population growth (Elmendorf, Biber, Monkkonen, & O’Neill, 2020a, 2020b).

While it may require rezoning, Housing Element law places no affirmative production requirement on the jurisdiction (Lewis, 2003). Housing Element law also uses density as a proxy for affordability of housing for low-income residents. In urban jurisdictions, the default standard for density to allow for all income levels is 30 dwelling units per acre (Cal. Gov. Code Section 65852.2). We use this standard in our own analysis of individual regulatory environments, referring to this density and use default as “***permissive density***” and to areas with zoning that allows for 30 or more dwelling units per acre as being *“**zoned for all income levels**.”* This individual proxy for affordability does not offer a complete picture of the feasibility of developing affordable housing; development also depends on the availability of land and financial subsidies. Still, the amount of land zoned for all income levels is a key indicator of whether a jurisdiction is creating or eliminating a fundamental regulatory barrier to affordable housing.

During our study years, California’s legislature also passed several housing reform legislative packages that improve Housing Element law. This legislation corrects past failings in the regional planning process that determines each local government’s housing needs, and strengthens state review and enforcement mechanisms with respect to local Housing Elements (Elmendorf et al., 2020a). California’s new AFFH rule and recent legislative reforms to the Housing Element law may operate together to require local governments to identify and correct for local regulatory constraints on housing development that would otherwise obstruct fair housing goals—and to improve how local

opportunity; replace segregated living patterns with truly integrated and balanced living patterns; transform racially and ethnically concentrated areas of poverty into areas of opportunity; foster and maintain compliance with civil rights and fair housing laws.

[45] The RHNA is the total amount of housing a metropolitan area is required to provide under state law in order to meet housing needs over the next reporting cycle (usually eight years). The RHNA is determined by the California Department of Housing and Community Development (HCD). The RHNA is then allocated to individual local governments within the metropolitan area by councils of governments (COGs), which represent the local governments within the metropolitan area.

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governments engage with community around fair housing goals during the Housing Element planning process itself.

Regulatory obstacles can include more than inadequate land zoned for permissive density, such as approval processes that are burdensome for affordable or multi-family housing. Accordingly, our analysis includes both base zoning and process in order to understand whether our study jurisdictions appear to have regulatory obstacles to affordable housing and multi-family housing, and most importantly, whether cities are creating regulatory constraints that would obstruct fair housing goals.

We can also connect our assessment of regulatory obstacles with mapping of where providing more housing would facilitate greater access to job, educational, and other opportunities for low-income residents. For this, we draw on state-level spatial data from the ***California Fair Housing Task Force*** that sort census tracts into five categories of opportunity, ranging from highest opportunity to high poverty and high segregation. The Task Force using demographic data across educational attainment and economic status, and environmental indicators to identify areas of opportunity, including job proximity, adult education attainment, exposure to pollutants, graduation rates, and reading proficiency rates. (California Fair Housing Task Force Opportunity Mapping Methodology, 2018). We use this tool to explore how base zoning and housing development patterns during our study years may be supporting or potentially obstructing fair housing goals.

III. Measuring Law: What prior research tells us about how regulation impacts affordability and access to opportunity.

Having covered some of the relevant areas of California law that we will engage with in our analysis, we now describe relevant empirical work examining land use regulation that informed our own methods.

A. There is indirect evidence that land use regulations limit housing supply and increase housing costs in coastal cities.

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 summarize the findings and methods of two research areas: (1) studies that explore the influence of land use regulation on housing supply and costs (indirect or direct impact on housing costs), and (2) studies that explore the influence of land use regulation on spatial equality (indirect or direct impact on segregation/exclusion). The below review is not intended to be exhaustive although it does cover the most significant work; our review also focuses on studies critical to shaping the policy debates about land use regulation within California, specifically.

1. Indirect evidence of regulation as a constraint on housing supply.

Using basic supply and demand economics, urban economists argue that a sharp decline in supply beginning in the 1970s has led to the affordability crisis in many of the nation's coastal cities, like those in California, where the labor market is strong and

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demand for housing is high (Alamo et al., 2015; Glaeser, Gyourko, & Saks, 2003). They argue that 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. 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. Because of the difficulty of measuring the impact of particular land use policies, 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."

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 (Glaeser & Gyourko, 2002). They concluded the gap between hard costs and sale price is not a function of higher land costs and found that stringent land use regulation which imposes longer than average (defined as six months) lag times between permit application and approval creates an "implicit zoning tax." One limitation of this research is that it does not isolate which land use regulations might impose the lag time in development, and it uses national averages (such as RS Means Construction data for hard construction costs) which may not accurately describe local labor and equipment costs in high-cost cities in California. Still, it offers an important indicator of regulatory stringency that intuitively would increase housing development costs—time lags to approval. We use this in our own work as one metric of regulatory stringency.

2. Describing regulatory environments through indices.

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. This work also produced important datasets that other researchers would rely on. 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. Important for our work is that 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. Pendall et al. then coded these results to create "regulatory clusters" (groups of jurisdictions with similar land use typologies) on a spectrum—traditional, exclusion, reform, and "Wild Wild Texas"—or deregulated jurisdictions (Pendall, Puentes, & Martin, 2006). To gauge the level of exclusionary land use regulation, the survey also 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. The Pendall study does not examine whether the jurisdiction requires environmental review, which is an important component of land use regulation in California.

Notably, for the Pendall study the researchers used the lack of permissive base zoning to help define whether a jurisdiction was exclusionary. Based on their

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methodology, the researchers concluded that the most exclusionary jurisdictions were in the Northeast, whereas San Francisco, San Diego, and other western metro areas were ranked as the least exclusionary. Nearly two-thirds of the Western metro regions surveyed had affordable housing incentive programs and nearly half had dedicated affordable housing funds. 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 also used other regulatory tools that Pendall et al. concluded made it more expensive and difficult to develop housing. Pendall and colleagues issued the same survey again in 2018 (Gallagher et al., 2019).

Relevant to our own methods, this study sorted regulatory environments by typologies, and defined the restrictiveness of the regulatory environment by a range of regulatory tools. Also, important for our work is Pendall et. al's findings that suggest some metro regions committed to constructing affordable housing may be employing regulatory tools that decrease supply. This indicates it is important to look carefully at how regulatory tools within cities interact to support or constrain housing development—particularly affordable development.

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)***. The WRLURI measures restrictiveness and determines the "average" degree of land use regulation in the nation by focusing on process and outcomes, rather than just the presence of regulatory constraints (Joseph Gyourko, Albert Saiz, & Summers, 2008). The WRULRI distributed a fifteen-question survey to planning officials in 2,649 jurisdictions. 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. 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 years 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 survey that determined the features typical of judicial review for exactions, fair share development requirements, building moratoria, and spot zoning. They also used data on ballot box planning measures from a database that tracks initiatives nationwide. 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. The WRLURI was reissued in 2018, so we also reference findings from the most recent survey tool labeled the WRLURI18.

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The WRLURI18's stringency index provides a general assessment and comparative analysis of whether a jurisdiction's land use system is restrictive, or "stringent," in the aggregate, and it also provides information about each stringency measurement. Accordingly, this survey defined the concept of "stringency" based on the perceptions of planners nationwide as to how their regulatory systems operated to restrict development. Lightly regulated cities, for example, took approximately 3.7 months to approve proposed housing whereas highly regulated cities took approximately 8.4 months (J. Gyourko, Hartley, & Krimmel, 2019). A moderately regulated city would require two levels of approvals to grant an approval that did not involve a zoning change whereas a highly regulated city would require three levels of approval. Stringently regulated cities tend to have consistently high stringency values across all the land use indicators. The responses to the WRLURI18 did not indicate that stringently regulated metros became less so over time compared to the first WRLURI.

The first WRLURI remains highly influential in California's housing policy debates, because of the finding that stringency is associated with higher housing costs. SB 35, for example, requires local jurisdictions not in compliance with Regional Housing Needs Assessment (RHINA) 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)). The index also has been used in subsequent studies (Turner Matthew, Haughwout, & van der Klaauw, 2014) and informs survey design for related research (Jackson, 2018; Quigley, Raphael, & Rosenthal, 2008; Mawhorter & Reid, 2018).

The WRLURI study has its limitations in terms of how it can inform legal reform. The authors assign stringency variables to ***metropolitan statistical areas (MSAs)***.[46] In the WRLURI, the San Francisco MSA is ranked as more highly regulated than the national average, and in WRLURI18 the San Francisco MSA is ranked as the most stringently regulated MSA. The WRLURI18 determines a stringency level for the San Francisco MSA based on observations from 22 cities from five counties—and the largest cities are missing. San Francisco, Oakland, Hayward, Fremont, San Ramon or Richmond, for example, are not included in the observations. Even if the survey responses are reliable, the San Francisco MSA stringency value cannot describe the regulatory process across many cities within those five counties. California law allows so much variation in how cities regulate land at the local level, so this limits the usefulness of the underlying data for legal reform. But the WRLURI and WRLURI18 offers us insight into how planners from the responding jurisdictions perceive the regulatory environment—or housing approval processes—should operate in theory. The survey's subindices also provide us guidance on relevant indicators of stringency, such as time lags to approval and court involvement through litigation.

California land use law is also the subject of at least five regional and statewide studies.[47] Quigley, Raphael & Rosenthal 2009 used a method similar to WRLURI to

[46] Defined by the U.S. Census Bureau, a metropolitan statistical area (MSA) is "a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core." United States Census Bureau, https://www.census.gov/programs-surveys/metro-micro/about.html.

[47] We omit discussion of several earlier California focused surveys conducted in 1989 (MADELYN GLICKFELD AND NED LEVINE, REGIONAL GROWTH AND LOCAL REACTION: THE ENACTMENT AND EFFECTS OF LOCAL GROWTH CONTROL AND MANAGEMENT MEASURES IN CALIFORNIA

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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 (Quigley et al., 2008). This research also asked about inclusionary zoning and "perceived level of controversy" associated with certain project types, "regulatory reasonableness," "transparency," and "estimates [of] the all-inclusive cost of the entire entitlement process." Indexing the results of both surveys, the authors created the ***Berkeley Land Use Regulation Index (BLURI)***. We used these questions to help guide our own interview questions with stakeholders in our study jurisdictions.

The BLURI does not contradict the findings of the WRLURI but provides more local information. The average approval lag between application and permit was 2 years for a multi-family development and 2.5 years for a single-family home development. Within this time frame, environmental approvals took 1.9 years for multi-family and 2.3 years for single-family homes. 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. We used these findings to help inform how we summarized the relevant planning law applicable to our study jurisdictions and our proposed development data collection methods. Specifically, our planning code summaries identify the nuances of discretionary approval pathways within our study cities and our data collection crosses several years to capture information about approval pathways.

Another study that relies on a California-focused survey is the ***California Land Use Regulatory Index (CaLURI)***,[48] which provides insight into the geographic variability of land use stringency across California (Jackson, 2018). Jackson sent surveys to planning staff in 540 cities and counties, and 420 jurisdictions responded. 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. The survey also asked whether the jurisdiction permitted low-cost housing alternatives, like mobile homes, and whether the jurisdiction restricts growth through its General Plan. Relevant for our work, this survey asked about affordable housing requirements, and planners' perceptions as to which groups wield the most political influence and as to the main drivers of development regulation. Jackson aggregated the sub-indices in his work to create a stringency measure for each responding jurisdiction and found that the San Francisco Bay Area is the most stringently regulated region in California. Jackson concluded that while Southern California is more likely to restrict the form of new development, the Bay Area tends to prohibit development outright. We use Jackson's findings as to regional differences to structure our own analysis. Also, like the CaLURI, we analyzed the planning and zoning codes in each study city to understand the impact of height, bulk, setback requirements and FAR when calculating base zoning. We also included mobile homes in our definition of housing and looked carefully at whether cities had affordable housing mandates.

(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)).

[48] The CaLURI is distinguishable from the CALURI. The CALURI, authored by Desen Lin and Susan Wachter, is a working paper and a more recent Index that relies on the survey data responses from California jurisdictions to the WRLURI.

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3. Exploring supply constraints through the case study approach.

Although local surveys are limited in how they evaluate how local governments implement land use regulation at a project level, case studies can offer insight into how cities treat individual proposed developments, as a report for the Department of Housing and Community Development (HCD Landis Report) in 2000 illustrates. The HCD Landis Report analyzed 46 housing developments approved between 1995-1997 in 31 cities and counties (Landis & Smith-Heimer, 2000). 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. The authors sent surveys to these pre-selected jurisdictions asking planners to identify a "typical" development in their community. 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.

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. For multi-family units, this timeline shrunk to 6.7 months, with only 2.3 separate reviews. 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. This work also explored the role of CEQA on lag times. The type of CEQA review directly coincided with approval timeline, with average delays of three years and twelve continuances for EIRs—but EIRs were uncommon. Landis also found that the use of specific plans can significantly cut down on approval delays, and that certain jurisdictions were not complying with the California Permit Streamlining Act (Cal. Gov. Code § 65950 et seq.), which requires all jurisdictions—including charter cities (Cal. Gov't Code § 65921)—to approve projects within certain time windows. All of these findings were important for our work, leading us to investigate the importance of specific plans and timeframes.

The authors of this work selected the jurisdictions they studied based on the jurisdictions' openness to new development, and local planners within those jurisdictions selected the individual project case studies. That approach to choosing cities and projects for study limits what we can learn from the findings, largely because it does not provide us insight into what happens in cities that may not be open to development or how the study cities that are open to development treat different types of proposed development. Still, this study informed our own methods because the case study research approach offered a more comprehensive look into the regulatory regime within each study city, including how CEQA influences development approval timelines and burdens. In our own methods, we opted to look at all projects within study jurisdictions that received approvals during a study period to address the limits of this work.

B. There is evidence that cities use land use regulation as a tool of exclusion.

Whether proposed housing will advance fair housing goals is also critical to our work. We therefore also briefly highlight some of the prior research and writing that analyzes whether stringency in land use regulation is associated with racial and/or

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economic exclusion, which in turn can contribute to spatial inequality (Rothwell Jonathan & Massey Douglas, 2010). For example, using income and racial segregation data and the Pendall 2006 land use survey, Rothwell and Massey found a strong relationship between density and income segregation. The higher a metropolitan area's zoning density score, the lower the degree of class segregation. These findings support the exclusionary suburb paradigm, in which wealthy suburbs use zoning to maintain low-density development to exclude low-income people and minorities. It also reinforces that despite the contemporary complexity of land use regulation, density within base zoning still matters a great deal.

Related research also helps distinguish the concepts of stringency, and restrictiveness, from exclusion (Lens & Monkkonen, 2016). Comparing land use stringency data from the WRLURI survey with a segregation index, Lens and Monkkonen found that the overall WRLURI score as a measurement of local regulatory stringency did not correlate with income segregation; this suggests that not all dimensions of stringency in land use regulation contribute to class segregation. They did find that density restrictions are strongly correlated with income segregation and seclusion of the super elite, however. Also, they found that income segregation is higher where local governments are more involved in entitlement approvals and communities put more pressure on the government to control growth, and that income segregation is lower in places with a higher degree of state involvement in local planning decisions. Jurisdictions that required multiple levels of government approvals to build also tended to be more segregated. Finally, the authors observed higher levels of income segregation in MSAs with central cities that regulate land use more stringently than surrounding suburbs. The authors concluded that inclusionary incentives and reduced local control might be the most effective at reducing segregation.

Lens and Monkkonen's conclusions suggest that not all stringent regulation will be exclusionary and obstruct affordable housing supply. This is important to consider in the context of the limits on California's local governments' powers in the area of taxing and revenue collection. Consider the perspective of a California city trying to increase affordability to reduce barriers to housing for low-income residents with limited fiscal means to subsidize the affordable housing itself: regulatory stringency may provide an effective tool to increase deal making with market-rate developers who can provide affordable units. Even jurisdictions with affluent populations (measured by median area household income) in California may not always have the revenue to directly subsidize required (or desired) affordable development. Still, Lens and Monkkonen's work also calls attention to how land use regulation might contribute to gentrification and ***displacement***[49] pressures in cities that in turn produce segregation, exclusion, and discrimination (powell, 2002; Wyly & Hammel, 2004).

One theory about how land use regulation operates within cities in an exclusionary manner suggests that demand for development controls increases as cities become

[49] Varying definitions of displacement inform legal reform debates. We typically refer to four different definitions of displacement that are in the urban planning literature: (1) exclusionary displacement (the inability to move into a neighborhood because of reasons outside of a household's control—like high housing costs); (2) direct physical displacement (eviction or demolition); (3) direct economic displacement (when price increases force an individual or a family's departure from home); and (4) symbolic or cultural displacement (when transitions in the physical and social environment of gentrifying neighborhoods cause a once familiar place to become unfamiliar, resulting in long-term residents feeling politically/socially marginalized or unsafe).

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denser and richer, evidenced by the tightening of development controls as affluent individuals return to cities, reversing decades of urban flight (Mangin, 2014). This assumes regulation changes to reflect the preferences of newly arrived affluent urban workers. This class of residents prefer wealthier established neighborhoods that disallow new development, so the newly arrived affluent workers move into the lower-income neighborhoods adjacent to these wealthy anti-development areas and that drives up neighborhood rents. This dynamic can disrupt normal filtering processes, in which the construction of middle- to upper-quality housing stock can open opportunities for lower-quality housing stock as middle to upper-income households occupy better housing (Baer & Williamson, 1988).

Based on this theoretical framework, market-rate development would offer a supply-side solution to the gentrification problem, and proponents of this approach argue that anti-gentrification advocates, community development, and affordable housing practitioners that oppose market rate development may be working against their own interests (Been, Ellen, & O'Regan, 2019). This approach argues for easing local control over land use and supporting a supply-side solution for market-rate development, coupled with more subsidized housing, to address segregation, gentrification and displacement. A supply-side solution coupled with subsidized development for affordability is now a dominant theme in California's public policy debate and public discourse about potential solutions to the housing crisis (Dillon, 2018; Doughtery, 2020; Manville, Monkkonen & Lends, 2020; Taylor, 2016). For instance, Senator Weiner introduced SB 50 to require large-scale state-wide upzoning for residential development, but not without controversy (Dillon, 2019; Khouri, 2019).

C. Advocates argue that CEQA litigation and environmental regulation is not promoting equitable infill TOD—creating problems for fair housing and climate goals

Although no research in California has identified *which* land use regulations may be contributing to exclusion within cities generally, there is an active debate about the role of CEQA litigation as a tool to block infill development. In 2015, the law firm Holland & Knight produced a widely circulated report analyzing all CEQA lawsuits filed within a fifteen-year period and found that eighty percent of CEQA litigation in the past fifteen years targeted infill development (Hecht, 2015; Hernandez et al., 2015). Scholars criticized this report for its overly inclusive definition of infill development (Hecht, 2015). The Holland & Knight team updated their 2015 report with two follow-up studies with similar results in 2018 and 2019 (Hernandez, 2018, 2019) that specifically tied CEQA litigation (including over GHG EMISSIONS and VMT impacts from proposed projects) as a contributor to rising housing prices in California, and as excluding housing from high-opportunity neighborhoods. In contrast, a 2016 report from BAE Economics, found low rates of litigation and infrequent use of EIRs (Smith-Heimer, Hitchcock, Roosa, & Guerrero, 2016.)

More generally, scholars and others frequently identify litigation overall as a primary obstacle to housing production (Einstein, 2019; Hernandez et al., 2015). Policymakers have put forward multiple proposals to change California's state law to

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reduce litigation challenging various housing projects by narrowing the scope of CEQA (SB 902, 2020; AB 1907, 2020; SB 995, 2020; Koseff, 2020). There is too little research, however, on the topic of whether litigation significantly curtails housing development. The research that does exist has significant limitations. Professional reports analyze counts of the number of lawsuits against projects (Hernandez et al., 2015; Smith-Heimer et al., 2016) but neither offer insight into how many housing developments that received approvals were or were not litigated. A California state legislative study of CEQA litigation against state-approved projects found a CEQA litigation rate of less than one percent of all state-approved projects (California Environmental Quality Act (CEQA) Survey FY 2011/12 to FY2015/16, 2017), but this, too, offers little information about how CEQA litigation impacts housing development; the subject of the study is state-approved projects that generally include projects like highway construction and natural resource management projects and not housing. Political scientists and economists have used measures of litigation – such as the number of reported judicial opinions (Einstein, 2019)– but that also does not provide accurate assessments of litigation. Many lawsuits do not produce reported opinions, and some lawsuits may produce multiple reported opinions, so the number of reported judicial opinions can be a misleading measure of overall litigation. Prior studies in California that focused only on litigation filed under CEQA (Hernandez et al., 2015) rather than on the broader range of statutes that might be relevant for litigation, can also be misleading.

Finally, whether the threat of litigation, alone, acts as a constraint on housing development is a hotly debated topic in housing policy circles. No research to date has assessed the impact of the risk of litigation in deterring projects from ever being proposed. Because research on this issue presents major methodological challenges, it is likely that the question of whether the threat of CEQA litigation has a chilling effect on potential development will remain unanswered. Testing whether this statement is true requires identifying research participants that would have proposed development in a jurisdiction of interest, but for a perceived threat of litigation. Identifying this participant group presents a range of reliability issues. Testing whether litigation caused approved projects to change to reduce the risk of litigation also presents feasibility and validity issues.

Still, these debates about CEQA litigation informed our research design in three ways. First, we collected data on litigation for approved housing projects in our study jurisdictions, allowing us to examine the rates of litigation for approved projects—the Holland & Knight studies only examine lawsuits, rather than the full universe of approved projects whether litigated or not. Thus, they cannot provide an assessment of the risk of litigation for projects. We then can connect our data with project and approval characteristics to determine which kinds of projects might be more at risk for litigation, and potentially also assess whether the risk of litigation varies by neighborhood.

Second, we expanded our study to include the four exurban jurisdictions funded by CARB. Incorporating study of exurban jurisdictions, and approved developments, in relationship to infill developments allows us to compare rates of development approvals and litigation in each category to determine if infill development litigation rates are comparatively higher than exurban development in the same metro areas. We do this to assess the claim that litigation is disproportionately focusing on infill development and driving development to exurban areas, although not all aspects of that argument can be

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fully tested with approval and litigation data. We supplement these data with interviews to better understand what factors might drive more or less infill or exurban development in specific metros. It also allows us to assess whether housing projects in exurban areas face more stringent CEQA review processes or take longer to approve than infill projects. Overall, this comparison will let us analyze whether changes in CEQA, such as streamlining review processes or eliminating litigation, might differentially advance exurban or infill development. Third, we collected data on the nature of the legal claims raised in lawsuits—whether claims are based on CEQA or other laws, and whether claims drew on GHG or VMT impacts—to assess arguments that CEQA and GHG/VMT analysis is the primary driver of litigation. In addition, we are currently analyzing local regulatory definitions related to CEQA streamlining for infill development to understand whether qualifying projects contribute to the goal of GHG reduction.

Evaluating whether environmental review obstructs infill development that might otherwise support climate policy is only one dimension of this work. There is also the issue of whether state law to promote infill development, such as streamlining and other incentives, creates unintended displacement of low-income communities. Legal advocates and urban planning scholars warn that TOD without intentional affordability policy might displace residents as it might focus development into neighborhoods that have been historically subject to disinvestment (Chapple & Loukaitou-Sideris, 2019; Rawson & Tawatao, 2012; Hutson 2016, O'Neill, Gualco-Nelson, & Biber, 2020). This dynamic might not only have significant equity impacts, but also could undermine efforts to reduce VMT. The displacement of poorer residents who disproportionately use public transit more by higher income residents who are more likely to use automobiles could increase VMT overall (Kallerman & Weinberg, 2016; Manville & Taylor, 2018) (Billingham, Bluestone, & Pollack, 2010; Chava, Newman, & Tiwari, 2018; Kaswan, 2009; Robert, 2007; Chatman, Xu, Park, & Spevack, 2019)..

D. Legal scholars and economists suggest that exclusionary regulation might also contribute to sprawl.

Relatedly, just as restrictive land use regulation might constrain supply in urban infill areas, or operate to exclude, there is also a question of whether restrictive land use regulation directly contributes to sprawling development in exurban areas. In this way, assessing the stringency of regulation is important to both fair housing and climate goals. Just as restrictive regulation that limits development to single-family homes, particularly with large minimum lot sizes and large setbacks, can be indicative of exclusionary zoning, these same regulatory tools can serve as an important indicator that local regulation might generate sprawl within the metro area (Lewyn, 2017).

Theoretically, when jurisdictions prohibit growth through restrictive low-density zoning, this can force development into neighboring jurisdictions if those jurisdictions welcome more residential development (Fischel, 1999; Carruthers, 2003; Esparza et al., 2000; Byun et al., 2005; Kim et al., 2015). Economist William Fischel theorized that as development proceeds, homeowners typically aim to lock in low-density zoning to protect their property values—what Fischel calls the "homevoter hypothesis"—which makes new development difficult. When enough jurisdictions within a single metro restrict

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development, this can in time facilitate sprawl into once rural jurisdictions through leap-frog development (Fischel, 2001; Marble et al., 2020).

Assessing whether local regulation may likely promote sprawl also requires examining the regulation in context—in some contexts, low-density zoning represents a "holding zone," where the local government uses the low-density zoning as an initial bargaining tool (Hills & Schleicher, 2015; Mandelker, 1976; Porter et al., 1988). Potential indicators of a jurisdiction in California using low-density zoning as a holding zone might be frequency and ease of general plan amendments and rezoning approvals.

IV. Materials and Methods

We used a case study approach (John W. Creswell & Creswell, 2018; Yin, 2014) that uses mixed methods (John W. Creswell, 2013), legal research, and overlapping phases of data collection and analysis (Berg & Lune, 2012).

A. Case Study Jurisdiction Selection Process

To answer questions about the presence and potential impact of specific regulatory and planning tools on residential development patterns in high-cost California cities, we first selected cities that could ostensibly approve infill development in high-cost metros given their size and location within strong regional economies where demand for infill housing appears high. We first chose charter cities of various sizes within California major metropolitan areas (specifically, urban core cities and some first ring suburban communities) as they have the most discretion over land use among California's cities. We used a 2015 California Legislative Analyst's Office report that identified the metro areas with the highest housing costs in the state and where demand has outpaced supply (Alamo et al., 2015) to select our first group of study cities and regions. Using American Community Survey data and California Department of Housing and Community Development's State Income Limits for 2017 (Memorandum from Jennifer Seeger, Assistant Deputy Director Division of Housing Policy Development to Interested Parties, 2017), we further selected cities within each of these major metropolitan areas for study to include both the largest cities in those metro areas, while also selecting smaller neighboring cities to obtain a study group within each metro that could provide a range of socioeconomic characteristics. To be considered for the study, each urban city needed to meet minimum size thresholds defined by population and land area: the city needed to have a minimum population of 50,000 people and a minimum land area of 5 square miles to provide sufficient data for meaningful analysis. We examined demographic criteria (population size, average household income, percentage of the population living in poverty, and area median income), land area, and population density using Fact Finder.

Table 1 below lists the demographic criteria associated with the first group ofcities we studied: Folsom, Fresno, Inglewood, Long Beach, Los Angeles, Mountain View, Oakland, Palo Alto, Pasadena, Redondo Beach, Redwood City, Sacramento, San Diego, San Francisco, San Jose, and Santa Monica. To allow for comparative analysis with jurisdictions that would likely approve greenfield or exurban development in the same

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metros, we examined annual progress reports[50] for rates of approved development in exurban jurisdictions within our study metros to identify potential jurisdictions that approved enough housing to allow for meaningful analysis. We then selected three counties, Los Angeles County, Placer County, and San Diego County, and one additional jurisdiction within the Sacramento metro area, Roseville, to compare our findings with the infill jurisdictions in the same metros.

Table 1: Infill Study Jurisdictions (Data pulled from American Community Survey 2015 5-year estimates)

	Population	Density (pop./sq. mi.)	Land Area (sq. mi.)	Median Household Income	% in Poverty	4 Person A.M.I.
Folsom	74,156	3,379	28	$100,978	4.7	$76,100
Fresno	510,451	4,559	114	$41,531	29.8	$59,900
Inglewood	111,411	12,286	9	$42,044	22.4	$64,800
Long Beach	470,237	9,350	50	$52,783	20.6	$64,800
Los Angeles	3,900,794	8,323	469	$50,205	22.1	$64,800
Mountain View	77,973	6,500	12	$103,488	7.8	$113,300
Oakland	408,073	7,315	56	$54,618	20.4	$97,400
Palo Alto	66,478	2,783	24	$136,519	5.4	$106,300
Pasadena	139,899	6,090	23	$72,402	15.3	$64,800
Redondo Beach	67,695	10,922	6	$105,145	4.7	$64,800
Redwood City	81,342	4,189	19	$84,934	9.4	$115,300
Sacramento	480,566	4,908	98	$50,739	22	$76,100
San Diego	1,359,791	4,182	325	$66,116	15.4	$79,300
San Francisco	840,763	17,937	47	$81,294	13.2	$115,300
San Jose	1,000,860	5,670	178	$84,647	11.3	$113,300
Santa Monica	92,169	10,953	8	$76,580	11.3	$64,800

B. Summarizing and Analyzing Base Zoning and Approvals

Our work begins with understanding what law is applicable to proposed residential or mixed-use development within our study jurisdictions. For each study jurisdiction, we created a summary of the jurisdiction's planning code. We analyzed code provisions most relevant to residential/mixed use development approvals, starting with the largest-scale planning tools (the General Plan) and then drilling down to the smallest-scale level (use

[50] Every jurisdiction must prepare an annual progress report to the Department of Housing and Community Development (HCD) on the jurisdiction's progress in implementing its housing element (Gov. Code § 65400).

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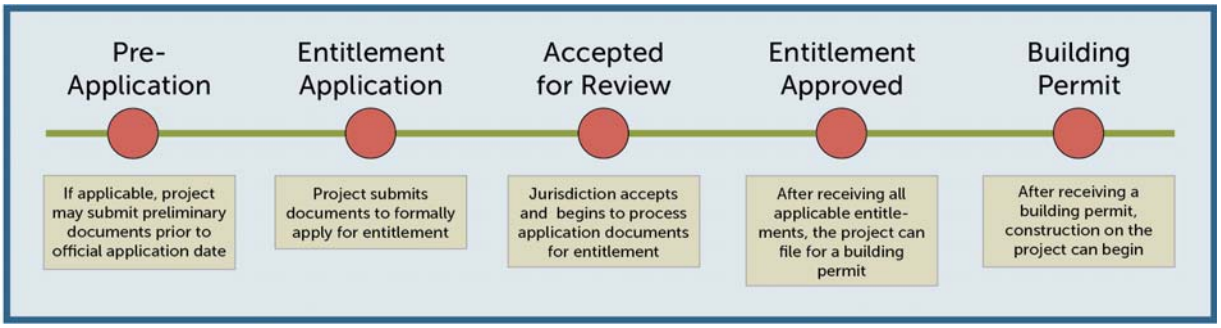
and development controls). We reviewed permitted and restricted uses, height limitations within specific neighborhoods, maximum commercial and residential density and lot coverage, minimum parking requirements (if applicable), and rules governing appeals in each jurisdiction. We cataloged all characteristics of local processes that appear to be intended 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.

Where cities made zoning shapefiles publicly accessible (Inglewood and Folsom did not), we also conducted base zoning analysis using mapping. This allowed us to group zones based on density and use, and then calculate the amount of zoned land area that could accommodate multi-family housing for all income levels (using a density default standard under Government Code 65583.2(c)(3)). The base zoning analysis will identify the amount of land area within the jurisdiction that meets that state-determined density default standard and allows residential development of 30 dwelling units per acre (urban default standard) or 20 dwelling units per acre (suburban default standard), as one important indicator of the potential for affordable housing development.

C. Building the Project Observation Database

We then used these planning code summaries to aid our construction of data collection methods to collect ***residential entitlement***[51] and permitting data for all residential developments of five units or more approved by our study jurisdictions in 2014, 2015, 2016, or 2017. For developments subject to discretionary review processes, we identified and coded the final approval conferring entitlement (see Figure 2 below). For development subject only to a ministerial process, we identified and coded the building permit issuance only to provide an accurate count of approvals within our study years. We did not obtain building permit data for all entitlement observations, as that was outside of the scope of this study.

Figure 2: Capturing Approval Process Observations



[51] Residential entitlement refers to a final approval for a proposed development subject to discretionary review that precedes the application for a building permit. Entitlement typically requires a series of approvals and documentation to proceed to apply for a building permit application.

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We chose our study years to study development patterns post-Great Recession. While we identify observations by the year that jurisdictions entitled a proposed development, each observation's study period extends as far back as the earliest application date, as other scholars have found approval timelines in highly regulated communities can take a year or more (Joseph Gyourko et al., 2008). We selected the five-unit threshold as a level of development more likely to be substantial in both the number of units produced and the impacts that development might have on the broader community; these larger projects are also more likely to produce dense development in infill communities that can support transit-oriented development. These rationales are reflected in state law, which uses the five-unit threshold to require more substantial review for the subdivision of parcels for development and defines "housing development" as "five or more residential units" in the state Density Bonus law (Cal. Gov't. Code § 65915(i)). We include both single-family and multi-family housing developments creating five or more residential units. We defined residential units broadly, encompassing live-work spaces, single room occupancy hotels, ***deed-restricted***[52] affordable housing, and student apartments (what RHNA would allow to be counted as a housing unit, which does not include dorm rooms). We did not include facilities for the elderly dedicated to providing medical care, hospice care or residential facilities constructed by hospitals to house patients' families.

We gathered project approval data through online permitting and public access portals for each jurisdiction, searching for project approval documents, geographic information systems zoning shapefiles and project site information, tax assessor records, and city council and planning commission meeting minutes. To collect this data, we first reviewed the jurisdiction's website to find public notices for all environmental review documents, lists of approved developments, parcel information maps, and administrative appeals. We searched property addresses within cities' databases to identify applicable zoning ordinances. We quality checked data pulled from public portals by cross-referencing project data against all available documentation to ensure accuracy. Where data gaps existed because documents were not publicly available, we requested additional required documentation from planning department staff, or filed a public records request for required documentation. Once we had a preliminary compilation of projects for a jurisdiction, we reached out to planning staff to review the data with planning department personnel to test for accuracy. Not all departments responded to this request.

For each process observation we also gathered data on administrative appeals challenging the approvals, and litigation data. For the latter, we searched court records for lawsuits against the approving jurisdiction to identify lawsuits that challenged approved projects. For each lawsuit, we collected the petition or complaint filed by the objecting party, as well as the final judgment by the trial or appeals court that resolved the lawsuit. We used qualitative data analysis software (MaxQDA) to code petitions and complaints to determine what claims (CEQA or non-CEQA, GHG/VMT or not) were raised by the objecting party and which (if any) claims were successful.

We also geocoded the observations using the Texas A&M Geoservices resource for projects with postal addresses or a postal address range. Because some parcels may

[52] Deed restricted housing maintains affordability by setting income requirements for renters or by restricting the resale price. These limitations are set forth in the deed itself.

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not be assigned addresses at the time of application, we used the project location information detailed in the project staff report (such as a metes-and-bounds property description) to identify a location in Google Maps, and used the coordinates provided by Google Maps.

We implemented Quality Control procedures throughout data collection to ensure accuracy and to revise data collection methods as needed. Because we generated a new dataset from documents typically managed by planning departments, we began with creating a separate database for each study jurisdiction. Each jurisdiction database went through quality control before being coded and merged into a master dataset. The UCB PI and CO-PI and UCB research staff created a "project list" that was typically overinclusive for the first round of data collection. The UCB Team determined data collection processes for each jurisdiction, generated a Project Manual, templates for data collection, and trained students on jurisdiction-specific planning and project level public portals. The UCB Team then assigned a small batch of data collection to graduate and undergraduate student researchers. After students completed the first batch of data collection, the UCB Team reviewed their work and met one-on-one with students to go over the first data set. After that stage, student researchers gathered additional data.

Once a student researcher demonstrated understanding of how to collect data, the student researchers submitted batches of data of no more than forty projects for UCB Team review for obvious flaws or errors. Where feasible given the ease of data access, research staff double-checked all entries. Where the city system did not make that feasible, the UCB Team randomly selected 10 percent of the projects to double-check data entry. If there were more than 1 percent errors, or any mistakes signaled potential systemic issues with data collection/accuracy, the UCB Team conducted a more thorough review of up to 25 percent of the overall projects based on the nature of problems identified in the random sample. The research staff corrected the data entry directly or in coordination with the student researcher. Where questions about whether a proposed development qualified for entry in the master database, the PI and CO-PI reviewed the project details and made the decision about whether the proposed development met the study criteria for inclusion.

To ensure accuracy, the UCB Team did not rely on jurisdiction reports of approvals over the study period (such as pipeline reports or other housing data in online public portals). Instead, the UCB Team collected the underlying project approval documents that would confirm approvals, such as public meeting agendas and minutes. Where possible, student researchers pasted directly from the approval documents into the project database. Also, when the UCB Team coded the data from each study jurisdiction, the UCB Team provided a second review of the data entry and corrected any inconsistencies or errors at that stage.

A final stage of data cleaning involved the UCB PI and research staff working with the UCI Co-PI to run individual variables through data analysis software (Stata) to identify readily apparent coding errors in the master dataset, and then UCB staff cleaning data through Stata. The UCI Team also reviewed geographic coordinates for potential inaccuracy using the ArcGIS geocoding engine. The UCI Team then passed a list of potentially inaccurate geographic coordinates (a total of ~130 in all observations) to the UCB Team. UCB student researchers, with supervision, used project characteristics

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sourced from documents including Planning Areas, Assessor Parcel numbers, and prior use descriptions, along with Google Maps satellite imagery and historic Street View photos to identify more precise geographic coordinates. Students, with research staff supervision, looked for agreement between planning areas, prior use description (particularly if construction activity occurred at the site as well) and planning area before confirming an address.[53]

In total, after data cleaning, the observation data includes 2,001 observations of city or county approvals of proposed developments of five or more units during our study period.

We briefly also elaborate on what we do not analyze in this report. Although we collected building permit data for proposed developments of five or more units in jurisdictions with ministerial processes for this development, we did not collect all building permit data for all entitlement observations in this study. We completed a first effort at data collection for all building permits associated with our entitlement observations issued on or before December 31, 2019, for fifteen of our study jurisdictions. We found that several of our study cities inconsistently record building permit filing dates and issuance dates in online public access portals. We do not provide analysis of building permit data associated with our entitlement observations in this report as substantially more data collection is needed.

When examining proposed development, we also did not collect data on, or code for, development fees (defined here to broadly include impact fees and service fees). Development fees are a critical dimension of regulatory stringency, relevant to assess as a control on supply, particularly affordable development, and to assess as a tool of exclusion and growth control measure. In the California context analyzing development fees demands constructing a parallel study. California constrains how local governments collect revenue necessary for infrastructure and public services. Thus, teasing out whether impact and development fees operate to exclude growth or operate as essential mechanisms to pay for necessary infrastructure to support growth, demands its own study. This would begin with analysis of state law that governs development fees, local regulations and fee schedules, and then collection of project observations just to explore this topic. We were not resourced to incorporate this additional work into our own study—but we also would direct policymakers to the Terner Center for analysis of existing development fees in California (Mawhorter et al., 2018; Raetz et al., 2019).

D. Interviews

We conducted semi-structured, in-depth interviews with key informants from each jurisdiction we chose to study. We used three strategies to generate a list of potential participants across four stakeholder groups in all jurisdictions: (1) public agency staff (including local planning staff, housing and community development staff, and city attorneys that work on land use), (2) housing developers (market-rate and non-profit affordable), (3) community-based organizations and advocates, and (4) consultants (design, legal, and entitlement). We examined the study jurisdictions' websites to identify

[53] At the time of writing this report, the UCB Team has completed confirmation of precise coordinates for 30 of all geographic coordinates requiring review—those located in Los Angeles County.

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public agency personnel, and the public data access portals for market rate developers, consultants, and private counsel associated with project applications. We used our professional networks to identify additional stakeholders in both the public, private, and nonprofit sectors and to identify affordable developers and community-based organizations involved with residential development processes. We also identified potential participants from newspaper articles, blogs, and other media that described stakeholders associated with notable residential developments within our study jurisdictions.

In sum, we identified hundreds of potential interview participants through examination of websites, professional reports, and project-level data. We reached out to all potential candidates by email and telephone. 85 key informants agreed to participate in in-depth interviews. We were able to interview at least one participant within each stakeholder group and within each jurisdiction. Some participants represented more than one stakeholder group or more than one jurisdiction, and some participants allowed us to interview them twice or for more than an hour. We used open-ended questions to collect perceptions of: the jurisdiction's approval 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 (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 and impressions.

E. Coding

We created our coding structure for our process observation data using a deductive-inductive approach. We first coded project observations for approval events we identified as potential indicators of stringency if analyzed based on what existing legal, urban planning and urban studies scholarship determined to be stringency measures. These variables include current site usage, proposed project characteristics, earliest application date, final entitlement approval date, required discretionary review milestones, environmental review milestones, opposition through an administrative appeal or litigation event. We then reviewed the observations for idiosyncrasies in the approval events, and cross-referenced our planning code summaries and interview data, to inform and modify our coding structure to code for the function of approval or process milestones within our study jurisdictions. There are 172 variables in the coding structure to capture how approved development navigated processes, inclusive of project characteristics (in terms of product type, number of units, and whether any units are deed-restricted to be below market rate units) not including the geographic coordinates for observations.

We have completed coding our interviews using qualitative data analysis software (MaxQDA) using an inductive-deductive approach, first identifying themes that stakeholders prioritized in their discussion. We then examined whether these themes were consistent with theories about how state or local land use regulation influences housing costs and housing supply. We triangulated themes from interviews with analysis based on observations and legal research. Collectively, interview participants identified themselves as knowledgeable about land use regulation in 96 jurisdictions (including many we did not include in our study set) across the state.

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F. Research Question and Hypothesis

Our study examines (1) whether existing local land use law and/or environmental regulations governing infill development individually, or in conjunction, present significant obstacles to equitable infill development, (2) whether regulation intended to promote infill development and disincentivize sprawl is disproportionately impacting communities already affected by gentrification and displacement, and (3) whether current law intended to promote infill development and curtail development in previously undeveloped exurban areas (greenfield development) may increase the regulatory burden on the construction of housing in greenfield areas, such that households already pushed out of the urban core face a persistent affordability crisis even in exurban areas, risking overcrowding and homelessness or displacement out of the metro area entirely.

Based on our review of existing research we hypothesized that:

1. 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 in infill contexts are a product of local discretion over land and development of onerous local regulations;
3. Local governments can eliminate any barriers associated with state environmental regulation by reforming their local zoning;
4. State law aimed at incentivizing infill development in transit-accessible neighborhoods is applied differently (and sometimes ineffectually) within these local contexts; and
5. State law aimed at incentivizing infill development may operate to make greenfield development more difficult.

G. Limitations of Research Design

This study analyzed how land use law operates in twenty California jurisdictions, using a mixed method approach. This approach allowed us to collect data from a variety of sources, including housing approval data from actual entitlements cities and counties issued over four years, diverse stakeholder interviews, GIS zoning data, and legal texts. The quantitative portion of the CALES relies on uniquely detailed information of individual housing development approvals. For example, we can analyze and compare how similar development (in terms of affordability or project characteristics) navigated approval processes within and across jurisdictions. The qualitative portion entailed interviews with stakeholders from each identified stakeholder group in each study jurisdiction to gather different perspectives on each research question. In sum, we can provide a detailed picture of each study jurisdiction's regulatory environment and offer some insight into which regulations most likely influence housing development outcomes.

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As with any research, there are several limitations. We list those here. First, the findings in each study jurisdiction, or the comparisons across jurisdictions, cannot be extrapolated to other geographies. Second, our descriptive analysis from the quantitative process observation data cannot be extrapolated to entitlements (or, in the case of ministerial process observations, building permits) issued before 2013 or after 2017. Relatedly, we cannot compare timelines for discretionary and ministerial projects, because the timelines for ministerial projects culminate with a building permit, whereas the timelines for discretionary projects culminate with an entitlement that occurs prior to the issuance of a building permit. This type of comparison requires augmenting the observation data set to capture building permits, if any exist, for all entitlement observations to allow for a direct comparison of timeframes. Third, the data does not include information about when and how jurisdictions *deny* proposals to build housing. Fourth, as is the case with any observational data, causal inferences can be drawn from the quantitative CALES only under strong assumptions or with a quasi-experimental research design, which we did not conduct for this report.[54] The qualitative data is comprehensive in that the team interviewed stakeholders from each identified stakeholder group in each study jurisdiction to gather different perspectives on each question. All interview data, and related analysis, however, is limited by the fact that all study participants volunteered. Voluntary participation in interviews increases selection bias and limits the generalizability of findings from interviews, even within the study's geographies.

V. Findings and Discussion

We first analyzed our 16 infill cities to examine how these local regulatory environments approve dense residential development and whether these first 16 regulatory environments appear to promote both climate and fair housing goals. We next added four jurisdictions (one city and three counties) that regularly approve greenfield development in exurban areas to our study. We provide findings that answer the question of whether regulation over infill development likely promotes climate and fair housing policy goals in the first 16 study cities. We then examine whether regulation over exurban development appears to operate any differently in exurban communities to promote climate and fair housing goals—providing comparative analysis of all 20 study jurisdictions.

[54] UCI is presently leading two studies that joins CALES data with other data in ways that may facilitate inferential analysis. The first, sponsored by the UC Irvine Institute of Transportation Studies, examines factors that (1) affect decisions about whether and where to build infill projects in job-rich and transit-accessible locations, and (2) contribute to entitlement delays. The analysis first identifies how the locations of projects are spatially associated with transit systems and other transportation infrastructure. Then, using descriptive statistics and multivariate modeling, it identifies how project-level attributes and contextual variables, including those related to transportation, affect decisions about whether and where to build infill projects in jobs-rich and transit-rich locations. The researchers will also conduct a systematic comparison of permitting timelines for otherwise comparable projects with different degrees of transit availability or job accessibility, along with multivariate modeling to compare potential determinants of delay. The second, sponsored by the Chan Zuckerberg Initiative will join CALES data with proprietary data on housing prices to develop spatially and temporally precise measures of housing cost appreciation, in order to identify "hot spots" for housing cost increases (a key indicator of gentrification).

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A. Identifying and Selecting Key Indicators of Stringency and Exclusion

Regulation over land use has increased in its complexity and variability across jurisdictions (William, 1990) and stringent or exclusionary land use regulation has multiple dimensions (J. E. Gyourko & Molloy, 2014; Saiz, 2010a). We evaluate regulation to identify indicators of stringency and exclusion as two separate issues. Stringency and exclusion are related, but they are not the same thing. Stringent regulation, often measured in terms of restrictiveness, may be a tool to promote exclusion (O'Neill at al., 2020). But stringent regulation may also be used to promote inclusion, if for example an inclusionary zoning mandate (which researchers may count as an indicator of stringency) operates to support affordable housing development (Jackson, 2018; Schuetz, Meltzer, & Been, 2009).

We look for potential indicators of exclusive regulation that operates to exclude low-income households that would qualify for deed-restricted affordable housing, and we also look at how regulation might promote or limit development of the "missing middle" income housing. We use multi-family housing as a proxy for housing that could supply middle-income housing. Conceptually, this proxy depends on a supply-side remedy to housing affordability and filtering; it assumes that an increase in supply will reduce housing prices and make housing more affordable to middle-income households that do not qualify for deed-restricted housing (likely because their income exceeds the thresholds for subsidized housing) but are still priced out of the current market.

Three common dimensions of stringency in land use regulation are: (1) prohibition of some or all residential development outright in base zoning; (2) imposition of fees and costs on residential development (Been, 1991), and (3) onerous process that generates increased uncertainty of approval, potentially generating time lags to approvals to build even on parcels that provide for appropriate use and density (Gabbe, 2018; Jackson, 2016; KL Einstein, D Glick, & Palmer, 2017) or public opposition that may lead to a denial of a right to build. Though a study of all three would provide the most comprehensive analysis of how regulation might constrain multi-family housing development, collecting data on all three demands more legal research on both fee schedules but also data collection on the imposition of fees on individual projects. Our project list could permit the latter at another time. As discussed in our methods, in this report we limit our comparative analyses of stringency to regulation that would fall within the first and third groups, sometimes referred to as prohibition and process (Monkkonen, Lens, & Manville, 2020).

1. Local governments generally make little land available for dense housing.

To determine how much zoned land our study jurisdictions made available for multi-family housing, and later assess whether base zoning operated as a potential constraint on multi-family housing, we defined two basic categories of base zoning. "Permissive base zoning" is zoning that, according to state law, allows multi-family residential use at a density high enough to accommodate housing affordable to all income levels. Specifically, the threshold for permissive base zoning is the default density standard in state law that demonstrates a jurisdiction can accommodate its regional need for housing at all income levels; the density threshold in all our study cities is thirty dwelling units per acre (Cal. Gov't. Code §65832.2). "Restrictive base zoning" refers to single-

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family only zones. We then examined zoning maps and ordinances to determine the amount of land area with permissive base zoning and land area with restrictive zoning. We do not compare the base zoning of counties that regulate land use in unincorporated areas with our other jurisdictions, as these areas require different analysis for permissive base zoning.[55]

Fifteen of our seventeen study cities made zoning shapefiles publicly accessible, (Folsom and Inglewood did not). We used the zoning ordinance language and zoning map GIS shapefiles to determine how much land area within our study cities limited use and density to single-family homes, only, or would permit dense residential development suitable for all income levels exclusive of street area. Table 2 below details the amount of land area zoned for single-family housing only and land area zoned for all income levels citywide, as a percentage of all zoned land area and by square miles, for the cities and counties where data allowed for this analysis.

Nine of the fifteen cities have less than ten percent of their total zoned land area zoned for multi-family housing sufficient to accommodate all income levels. Among all cities where we could analyze base zoning, Roseville, one of our exurban study jurisdictions, has the most restrictive base zoning if measured by percentage of zoned land. Among jurisdictions that we would expect to accommodate infill dense housing, San Diego has the most restrictive base zoning (if measured by percentage of permissive base zoning) with approximately 3% of its total zoned land area zoned for all income levels. San Francisco, previously identified in other scholarship as the most stringently regulated of all our studies (J. Gyourko et al., 2019; Jackson, 2018; Joseph Gyourko et al., 2008; Quigley et al., 2008) has the most permissive base zoning of all our study cities, with 33.54% of its total zoned land area zoned for all income levels.

[55] We did not categorize zones in exurban unincorporated areas of counties for the purpose of comparative analysis across all jurisdictions for several reasons. The first reason is that some counties provided residential density in distinct form-based metrics for each zone, limiting the ability to compare zones within one jurisdiction, or across jurisdictions. Specifically, some jurisdictions provided many types of form-based limitations for each parcel, not just zone. This meant that height, setback, and even building type were distinct for each zoned parcel, limiting our ability to calculate a dwelling unit per acre equivalency for each zone to compare across different jurisdictions. Additionally, zones that provided a form-based (height) limitation as proportionate to buildable area do not easily allow for calculating what might be a realistic buildable area for the purposes of comparative analysis, as lot size and urban/exurban context vary greatly in unincorporated areas that include both urban village areas and very low-density areas.

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Table 2: Summary of Base Zoning Analysis Entire City All Zoned Land[1]

	% Zoned for all income levels[2]/All Zoned Land Citywide	Total Land Area Zoned for All Income Levels (mi^2)	% Zoned for Single-family Homes/All Zoned Land Citywide[3]	Total Land Area Zoned for Single-family Homes (mi^2)
Fresno	5.22%	4.87	42.33%	39.50
Long Beach	4.34%	1.73	30.84%	12.30
Los Angeles	11.21%	45.56	46.69%	189.79
Mountain View	9.93%	0.99	26.08%	2.60
Oakland	7.11%	4.75	27.83%	18.59
Palo Alto[4]	3.53%	0.80	52.56%	11.87
Pasadena	12.39%	2.28	46.86%	8.62
Redondo Beach	3.30%	0.16	28.26%	1.36
Redwood City[5]	12.81%	1.11	35.29%	3.04
Roseville	.23%	0.10	44.51%	18.09
Sacramento	9.21%	7.64	42.89%	35.61
San Diego	3.19%	8.70	70.25%	191.61
San Francisco	33.54%	11.86	24.99%	8.84
San Jose	4.03%	6.13	44.34%	67.44
Santa Monica	17.73%	1.06	32.21%	1.93

[1]Denominator is all zoned area in the jurisdiction; calculations exclude street area.
[2]San Francisco, Fresno, and Santa Monica all employ a form-based code for some regions of the cities. When a dwelling unit per acre density metric and FAR were not available, or the FAR range or density varied to the point that the zone could not be categorized in just one zone group, we used the narrative section of the city's zoning ordinance to match it to like zones. We looked for keywords such as "medium intensity," "high-rise," and others to sort the individual zones when no other metrics were available. In San Francisco many form-based zones do not have a residential density limit, thus we sought to reflect the overall limitations of these zones in our groupings. Even with height and bulk restrictions in place, form-based codes in San Francisco still permit more density than the RH-2 and RH-3 zones which both satisfy the 30 du/per acre threshold. In San Francisco, form-based zones all together make up 8.14% of zoned land area of the HQTA and 8.14% of zoned land area of the city as a whole. In Fresno, form-based zones all together make up 6.71% of zoned land area of the HQTA and 1.02% of zoned land area of the city as a whole. In San Diego, form-based zones all together make up .93% of zoned land area of the HQTA and .26% of zoned land area of the city as a whole. In Santa Monica, form-based zones all together make up 19.45% of zoned land area of the HQTA and 17.26% of zoned land area of the city as a whole.
[3]This calculation also includes zones in cities that have other zoned land that allows for single family homes, such as agricultural zones that allow for only one single family home. We chose this approach to define zones that allow for residential use expansively.
[4]Our calculations assume that all "Planned Multi-family Districts" were zoned for All Income Levels, as we could not locate the ordinances establishing these districts.
[5]We did not include zoned land described as "Tidal Plain" in the Redwood City zoning code, as much of this area appeared to be water based on Google Satellite imagery.

Next, we calculated permissive or restrictive base zones within ***high quality transit areas (HQTA)*** in fifteen of our study cities where we could access the necessary transit access shapefiles. HQTA and permissive density together provide a proxy for whether the residentially zoned land area would meet criteria needed for deed-restricted affordable housing development. Land zoned for high-density residential development is also one prerequisite for creating compact, market rate, transit-oriented development (TOD). In addition, dense development in HQTA can be pedestrian- and transit-friendly,

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helping to advance climate policy goals (California's 2017 Climate Change Scoping Plan: The strategy for achieving California's 2030 greenhouse gas target, 2017).

We define HQTA as referring to areas within ½ mile of ***major transit stop (MTS)*** or ¼ mile of a ***high quality transit corridor (HQTC)***. MTS means 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 interval of fifteen minutes or less during the morning and afternoon peak commute periods (Cal. Pub. Res. Code Sec. 21064.3). HQTC means a corridor with fixed route bus service with service intervals no longer than fifteen minutes during peak commute hours (Cal. Pub. Res. Code Sec. 21155(b)). We chose the ¼ mile buffer for the HQTC instead of the ½ mile buffer to be consistent with proposed state laws that would have permitted significant increases in allowable density near transit, like SB 827 and SB 50 (SB 50, Cal. Reg. Leg. Sess. 2019-2020 (2019); SB 827, Cal. Reg. Leg. Sess. 2017-2018 (2018)). In Los Angeles, we were unable to obtain a shapefile that reflects current HQTA boundaries. We used the boundaries of Los Angeles' Transit Oriented Communities program, which are coterminous with the boundaries of the MTS. (City of Los Angeles, Transit Oriented Communities Guidelines (2017)). While we used this Los Angeles layer as an indicator of HQTA, it does not include the HQTC and thus underrepresents the full extent of the HQTA in Los Angeles. [56]

Table 3 indicates how much land area within the jurisdiction's HQTA has permissive base zoning and how much has single-family only zoning. Limited permissive base zoning within the HQTA likely limits affordable housing development or dense TOD. For example, only 7 percent of Long Beach's HQTA also has permissive base zoning, whereas 35% of its HQTA has restrictive base zoning. Similarly, ~10 percent of San Diego's HQTA has permissive base zoning, whereas ~43% of the HQTA has restrictive base zoning. Nine of these fourteen cities have higher percentages of restrictive zoning, compared to permissive base zoning, in their HQTAs—with Long Beach, Palo Alto, Sacramento, and San Diego having the starkest difference between the two zoning categories among this group. Four cities, in contrast, have more of their HQTAs permissively zoned relative to the amount of area restrictively zoned—with San Francisco again the city with the highest percentage of permissively zoned land area within its HQTA.

[56] We used the SCAG 2045 Planning Year transit areas for Long Beach, Pasadena, and Santa Monica zoning and transit analysis. This area is likely overinclusive as it includes intended transit areas for plan year 2045.

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Table 3: Base Zoning High Quality Transit Area Only

	% HQTA Zoned for all income levels/All zoned land in HQTA	Total HQTA Land Area Zoned for All Income Levels (mi^2)	% HQTA Zoned for Single-family Homes	Total HQTA Zoned for Single-family Zones Only (mi^2)
Fresno	34.72%	2.94	25.01%	2.11
Long Beach	7.02%	1.55	34.63%	7.64
Los Angeles	28.50%	30.33	26.67%	28.38
Mountain View	24.61%	0.85	21.99%	0.76
Oakland	23.09%	4.39	27.08%	5.15
Palo Alto	21.49%	0.45	39.22%	0.83
Pasadena	29.01%	1.81	33.30%	2.07
Redondo Beach	-	-	-	-
Redwood City	49.41%	0.50	11.35%	0.11
Roseville	1.39%	0.10	40.73%	2.78
Sacramento	13.10%	5.42	45.25%	18.75
San Diego	9.56%	7.41	43.14%	33.42
San Francisco	34.71%	11.18	25.19%	8.11
San Jose	9.33%	2.69	33.68%	9.70
Santa Monica	19.67%	1.03	26.60%	1.39

To assess whether cities are zoning land to promote fair housing goals, we also calculate whether base zoning in our cities is likely to support affordable development in highest or high opportunity areas or likely to direct affordable development primarily into high poverty areas. To incorporate an opportunity measure, we use the Highest Resource and High Resource land area from the California Fair Housing Task Force data, which classifies census tracts in our study jurisdictions into Highest, High, Moderate and Low Resource areas along with a category for High Segregation and Poverty. We consider areas identified as High and Highest Resource by the California Fair Housing Task Force to be highest and high opportunity areas. We again use HQTA with permissive base zoning to assess whether the zoning supports affordable development in highest and high opportunity areas.

Table 4 indicates that a few cities do not have very much land at all that is in a High or Highest Resource area and HQTA. This may be because cities have comparatively low rates of HQTA, generally, (e.g., Palo Alto) or comparatively lower rates of HQTA in High and Highest Resource areas relative to other TCAC classifications (e.g., Oakland). Cities that have some land area that is single-family only zoning in HQTA and in a High or Highest Resource area may want to examine the ability to rezone for all income levels. San Diego is the most noteworthy example as it has 2.78 square miles of HQTA that is also in a Highest or High Opportunity Area zoned for all income levels, but

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16.63 square miles of HQTA in Highest or High Opportunity Areas zoned for single-family zoning. It is possible that HQTA in Highest or High Opportunity areas zoned for single-family only may have other geographic constraints making increased density difficult, but this requires further research to determine if local governments could increase density in these areas but are choosing not to do so. We do not have information about geographic constraints that could make zoning for dense multi-family housing difficult in higher opportunity HQTA (Saiz, 2010b). But this is worthy of further study.

Table 4: Base Zoning, Opportunity, and Transit Area[1]

	% HQTA that is Highest Resource and High Resource and zoned for all income levels	Total land area (mi^2) in HQTA High and Highest Resource and Zoned for All Income Levels	% HQTA that is Highest Resource and High Resource and zoned for Single-family Homes	Total land area (mi^2) HQTA High and Highest Resource Single-family Zoning Only	% HQTA that is High Segregation & Poverty, & Low Resource and Zoned for All Income Levels	Total land area (mi^2) In HQTA High Segregation and Poverty and Low Resource Zoned for All Income Level	% HQTA that is High Segregation and Poverty Zoned for Single-family	Total land area (Sq mi2) HQTA High Segregation and Poverty Zoned for Single-family
Fresno	5.79%	0.49	4.14%	0.35	22.6%	1.91	8.27%	0.70
Long Beach	0.00%[2]	0.00	17.03%	3.76	6.00%	1.32	1.78%	0.39
Los Angeles	8.67%	9.22	12.53%	13.32	13.93%	14.81	2.59%	2.75
Mountain View	22.70%	0.79	18.12%	0.63	-	-	-	-
Oakland	0.66%	0.13	2.03%	0.39	15.51%	2.94	4.34%	0.82
Palo Alto[3]	21.49%	0.45	39.22%	0.83	-	-	-	-
Pasadena	18.58%	1.16	32.16%	2.00	7.97%	0.50	0.00%	0.00
Redondo Beach	-	-	-	-	-	-	-	-
Redwood City	8.88%	0.09	9.17%	0.09	32.48	.33	-	-
Roseville	0.00%[4]	0.00	36.79%	2.51	.91%	.06	-	-
Sacramento	4.10%	1.70	11.39%	4.72	6.78%	2.81	10.66%	4.42
San Diego	3.59%	2.78	21.49%	16.63	5.09%	3.94	5.89%	4.56
San Francisco	16.28%	5.23	9.78%	3.14	8.60%	2.76	1.35%	0.43
San Jose	2.82%	0.81	5.45%	1.57	6.37%	1.83	-	-
Santa Monica	20.18%	1.02	27.62%	1.39	-	-	-	-

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[1]For Los Angeles, we used the Transit Oriented Communities (TOC) boundaries to represent high quality transit areas. For Redondo Beach, Pasadena, Long Beach, and Santa Monica, we used SCAG's Transit Priority Area geography to represent high quality transit areas. For San Francisco, Oakland, Mountain View, Palo Alto, Redwood City, and San Jose, we used MTC's HQTA layers. For Sacramento, we used HQTA layers available from SACOG. For San Diego, we used the HQTA file made available by SANDAG. For Fresno, we sourced transit routes and cross-referenced schedules for frequency in order to create HQTA layers.
[2]Area of intersection is so small that the closest rounding is 0% and 0 square miles.
[3]Our estimate for 30 du/acre for Palo Alto assumes that all multi-family Planned Districts (for which we could not locate exact density) allow for 30 du/acre or higher. The amount of land area zoned for 30 du/acre could be lower than this estimate.
[4]Area of intersection is so small that the closest rounding is 0% and 0 square miles.

2. Most dense development is subject to discretionary review, even in areas designated for dense development.

To analyze and compare development approval processes, we first determine whether a proposed development of five or more units is subject to a discretionary or ministerial approval process. Ministerial approvals are approvals in which a government agency simply applies law to fact without using subjective judgment; in short, ministerial review provides more certainty in the approval process. Discretionary review, in contrast, allows the government agency to impose conditions of approval and modify the proposed development even where the proposal to develop conforms to local regulation. Although the Housing Accountability Act (HAA) limits when and how local governments may deny proposals to build housing that conforms to local law (requiring findings in certain circumstances), discretionary review can impose uncertainty in the approval process even for projects covered by the HAA. Discretionary review can do this by imposing unexpected, expensive challenges to meet conditions of approval. Discretionary review also allows local governments deny proposals to build housing that ask for a variance or a rezoning in order to build. Discretionary review generates a requirement for a development approval before a developer or builder may even apply for a building permit. In California, local discretionary review also invokes a state-mandated environmental review process (Cal. Pub. Res. Code § 2108), and a developer carries the costs of satisfying environmental review. Discretionary review may trigger a public hearing requirement. Discretionary review can also allow for administrative challenges to the final approval, or even litigation to challenge the approval. Each of these features of discretionary review may impose time lags to development that a ministerial process would avoid.

Also, because the discretionary approval confers a right to apply for a building permit—but not a building permit itself—we cannot compare observations of discretionary approval processes against ministerial approval processes in the cities where we have observed use of a ministerial approval process. When measuring the impact of process, in terms of time lags, we only use observations of discretionary approvals with complete timeline information.

During our study years, five of our study cities did not allow for any residential development—including for single-family dwelling—to proceed through a ministerial process (see Table 5 Summary Analysis of Ministerial Processes in Local Ordinances below). These were Pasadena, Redondo Beach, Redwood City, Sacramento, and San Francisco. In several cities, aesthetic controls (such as design review or architectural review) impose a discretionary review process on proposed development that otherwise

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conforms to underlying base zoning and planning designations. That means that development proposals that comply with zoning and planning designations regarding use, size, and form still face uncertainty in the development approval process. In San Francisco, the City Charter (the constitution for that local government) imposes discretionary review on all building permits (S.F. Bus. And Tax. Regulations Code § 26(a)). In this way, San Francisco also imposes a discretionary review mechanism outside of the formalized planning and zoning process on all proposed development.

In contrast, four cities had ministerial processes to approve proposed development of five or more units of housing: Fresno, Inglewood, Los Angeles, and San Diego. Ministerial processes differed across these cities. Los Angeles allowed proposed development that conforms to underlying use and density controls up to 49 units to move through a ministerial approval process, so long as it is not located within a Community Design Overlay. Inglewood and San Diego do not have a specific unit count threshold for ministerial review. Fresno limits application of the ministerial process to proposed development meeting specific project characteristics located within its Downtown area only. Santa Monica offers a ministerial process exclusively for 100% deed-restricted affordable development only, up to 49 units. Notably, Sacramento has amended its local ordinances and as of 2020 applies ministerial review to proposed development of up to 200 units in specific infill locations. All three counties we studied provide for a ministerial process for at least some development that proposes more than five units of housing.

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Table 5: Summary Analysis of Ministerial Processes in Local Ordinances

	Did the local ordinances within jurisdiction allow for any "by-right" development in 2014, 2015, 2016, and 2017, and if so, at what density?	Did jurisdiction permit *any* projects of 5 or more units through a ministerial process (requiring no discretionary review) in 2014-2017?
Folsom	Yes; "by-right" up to 2 dwelling units (du)[1]	No
Fresno	Yes; "by-right" in specific downtown zones meeting specific project criteria[2]	No
Inglewood	Yes; "by-right" theoretically, with no limit to number of units as long as consistent with underlying zoning[3]	No
Long Beach	Yes; "by-right" up to 4 du if underlying zoning permits the proposed density[4]	No
Los Angeles	Yes; up to 49 du if underlying zoning permits proposed density[5]	Yes
Los Angeles County	Yes	Yes
Mountain View	Yes; up to 2 du[6]	No
Oakland	Yes; 1 du[7]	No
Palo Alto	Yes; up to 2 du[8]	No
Pasadena	No[9]	No
Placer County	Yes; up to 20 du in specific district	No
Redondo Beach	No[10]	No
Redwood City	No[11]	No
Roseville	Yes; up to 2 du	No
Sacramento	No during 2014-2019; as of 2020 yes up to 200 du in infill locations[12]	No
San Diego	Yes; "by-right" theoretically, with no limit to number of units as long as consistent with underlying zoning and development standards [13]	Possibly[14]
San Diego County	Yes; "by-right" theoretically, with no limit to number of units as long as consistent with underlying zoning and development standards	No
San Francisco	No[15]	No
San Jose	Yes; up to 1 du[16]	No
Santa Monica	No; up to 1 du or 100% affordable housing projects up to 50 du declared "ministerial" and subject to an administrative process that is exempt from CEQA but subject to design review[17]	No

1. Folsom Zoning Code § 17.06.030.
2. Fresno Municipal Code § 15.-5102(D).
3. Inglewood Municipal Code § 12-39.50 and 12-101 allows by-right development, but all projects of 5 or more units underwent discretionary review during 2014-2017.
4. Long Beach Zoning Code § 21.25.502.
5. Los Angeles Zoning Code §16.051.
6. Mountain View Municipal Code § 36.44.55 and 36.44.60.
7. Oakland Municipal Code § 17.136.025.
8. Palo Alto Municipal Code § 18.76.020(b)(1)(A).
9. Pasadena Municipal Code § 17.61.030(B).
10. Redondo Beach Municipal Code § 10-2.2500.
11. Redwood City Municipal Code § 45.2.
12. Sacramento Municipal Code § 17.808.160, 17.860.020 and 17.860.030.
13. San Diego does not provide a blanket discretionary review provision. Determination of whether ministerial review depends on review of each zone and permitted uses.
14. Local records indicate San Diego had 77 projects that may have been processed "by-right" or may have been subject to a discretionary review process, between 2014-2017. The City of San Diego was unable to provide data to determine whether these projects were processed as of right or through a discretionary process.
15. San Francisco Charter 4.106.

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16. San Jose Municipal Code § 20.100.610.
17. Santa Monica Municipal Code § 9.40.020(B). This ordinance suggests the City has a ministerial process. Review of 2018 and 2019 data, in which at least some proposed develoment navigated this process reveals that in fact that the City treated those developments as "ministerial" for the purposes of CEQA review, but applied a discretionary design review process. Each relevant staff report included the following qualifying language: The Architectural Review Board's approval, conditions of approval, or denial of this application may be appealed to the Planning Commission if the appeal is filed with the Zoning Administrator within ten consecutive days following the date of the Architectural Review Board's determination in the manner provided in SMMC9.61.100.

3. Local governments approve dense housing at very different rates across metros and within metros.

Table 6 shows how many proposed developments of five or more units each city approved in our study years with either a ministerial or discretionary process. This table also indicates how many units these cities approved and what percentage of these units were deed-restricted affordable units. Notably, some approvals were on the same parcel—in other words, developers had the same parcel entitled more than once in our study years. We counted each entitlement as an independent observation for the purposes of our measuring process even if a parcel received multiple entitlements in our study years. It is also important to note that not all approvals led to construction activity; this is not a measure of housing production but of potential housing production. Observations of approvals provide a direct objective metric of what the local government has allowed to make it past a major regulatory hurdle on the way to construction.

Table 6: Approvals of Proposals to Develop 5 or More Units of Housing, All Cities 2014-2017

	2014-2017 Total Approval Count[1]	2014-2017 Total Approved Units	2014-2017 Total Approved Affordable Units	% of All Units Approved that are Affordable
Folsom	6	1,364	12	0.88%
Fresno*	64	6,153	308	5.01%
Inglewood*	4	568	0	0.00%
Long Beach	27	2,604	374	14.36%
Los Angeles*	1,071	65,846	4,757	7.22%
Los Angeles County*	37	2,532	877	34.64%
Mountain View	33	2,767	268	9.69%
Oakland	136	14,399	1,073	7.45%
Palo Alto	7	351	75	21.37%
Pasadena	37	1,608	127	7.90%
Placer County	19	3,535	111	3.14%
Redondo Beach	7	211	2	0.95%
Redwood City	18	1,630	183	11.23%
Roseville	22	6,394	509	7.96%
Sacramento	68	5,794	53	0.91%
San Diego*	176	13,957	1,284	9.20%
San Diego County*	27	1,434	0	0.00%

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San Francisco	140	14,269	2,168	15.19%
San Jose	81	14,601	734	5.03%
Santa Monica	21	1,447	190	13.13%

*Jurisdiction provides a ministerial review process for development of five or more units of housing.

When comparing Table 5 Summary Analysis of Local Ordinances By-Right Provisions, above, with actual project approval data, we found that having a ministerial process "on the books" did not necessarily lead to observations of ministerial approvals within our study years. Los Angeles provided 286 observations of development of five or more units approved through a ministerial process, and Los Angeles County provided 3. Fresno, Inglewood, and the City of San Diego had no data to confirm developments of five or more units approved through a ministerial process in our study years. There were 77 proposed developments in the City of San Diego that may have gone through a ministerial process, but data limitations prevented both the city and us from confirming whether these projects were approved through a ministerial process or a staff level discretionary process.[57] This indicates that even where cities may have ministerial processes, most dense development is still subject to discretionary review.

Simple aggregate totals of approval rates are also not the best way to compare how much housing cities are approving. At the most basic level, Los Angeles is larger in area and population than all our other study cities and should have a higher total of housing approvals. There are different ways to scale housing approvals to facilitate comparisons across our cities. Scaling by land area considers the extent to which there is space for new development, at least in a rough way; however, cities may have large physical area but not much demand for housing. Scaling by population considers that larger population cities may also have more demand for housing. Similarly, the approval of housing as a percentage of housing stock shows the extent to which the city is expanding its overall housing supply to meet regional and statewide needs. Table 7 below shows approval rates standardized according to these different approaches. Roseville, Oakland, and Mountain View, generally, approved more housing relative to their sizes (measured by population).

[57] Specifically, San Diego had five approval pathways for developments of 5 or more units. The first is a ministerial process, or "Process 1." "Process 2" is a staff-level discretionary review process. We analyzed publicly available meeting minutes and staff reports for the approval bodies for any discretionary process, but these documents were not available for Process 1 and 2 projects as they were processed at the staff level. We pulled data on Process 1 and 2 developments using San Diego's building permit database, cross-checking that projects receiving building permits had not received a prior discretionary approval through Process 3-5. We determined that 77 projects might have undergone San Diego's Process 1 or 2 approval pathway in 2014-17, but data limitations make it impossible to identify which of the 77 projects are Process 1 (ministerial) or Process 2. San Diego was unable to provide more data to determine this, as well. We were also unable to locate environmental review notices in the state clearinghouse for any of these projects, but that is not conclusive of whether these projects went through environmental review as cities do not always submit notices to the state clearinghouse.

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Table 7: Standardized Approval Rates

Jurisdiction	2014-2017 Total Approvals Count	2014-2017 Units Approved Count	Units/ 1,000 people[1]	Units/square mile[2]	% Increase Total Housing Stock[3]	% of Units that are Deed-Restricted
Folsom	6	1,364	18.60	45.29	5.21%	0.88%
Fresno	64	6,153	12.16	53.04	3.53%	5.01%
Inglewood	4	568	5.11	62.49	1.47%	0.00%
Long Beach	27	2,604	5.56	51.78	1.48%	14.36%
Los Angeles	1,071	65,846	17.05	140.50	4.60%	7.22%
Los Angeles County	37	2,532	2.35	1.00	0.82%	34.64%
Mountain View	33	2,767	36.06	230.58	8.10%	9.69%
Oakland	136	14,399	35.79	258.09	8.43%	7.45%
Palo Alto	7	351	5.32	14.70	1.23%	21.37%
Pasadena	37	1,608	11.56	70.00	2.66%	7.90%
Placer County	19	3,535	32.30	2.69	5.97%	3.14%
Redondo Beach	7	211	3.13	34.03	0.69%	0.95%
Redwood City	18	1,630	20.44	83.93	5.45%	11.23%
Roseville	22	6,394	49.72	144.69	12.69%	7.96%
Sacramento	68	5,794	12.17	59.17	3.02%	0.91%
San Diego	176	13,957	10.40	40.75	2.69%	9.20%
San Diego County	27	1,434	2.91	0.82	0.82%	0.00%
San Francisco	140	14,269	17.21	304.44	3.74%	15.19%
San Jose	81	14,601	14.80	82.71	4.52%	5.03%
Santa Monica	21	1,447	15.79	171.85	2.80%	13.13%

[1]Calculated from Population counts as of January 1, 2014, using American Community Survey Data.
[2]Calculated in square miles with city boundary shapefiles pulled from individual city websites for all cities. All shapefiles were downloaded in 2019, but the year updated depended on how recently the city updated their Shapefile.
[3]Calculated from Housing Stock as of January 1, 2014, using American Community Survey Data for 2014, downloaded from American Fact Finder in fall 2019.

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4. Discretionary processes vary by jurisdiction, not by type of development or location in TOD areas; entitlement timeframes range from months to years depending on the city.

We compare how cities apply discretionary review by calculating approval steps to entitlement and mean and median timeframes to entitlement. We use the earliest application date and the final approval that confers the ability to apply for a building permit (the entitlement) to calculate timeframes. The earliest application date represents the beginning of the application process and captures the full timeframe to entitlement.[58] We count each discretionary approval required before entitlement, counting the environmental review determination as one approval step. We have no timeline data for Inglewood because they did not make application dates available.

Table 8 Entitlement Timeframes and Average Steps to Approval All Cities 2014-2017 below shows that San Francisco has the longest timeframes to approvals. The median timeframe to approval within San Francisco is nearly 27 months, 8 months longer than the next longest median approval timeframe in Palo Alto. San Francisco's timeframes represent an outlier not just within the group of cities in that metropolitan region, which had median time frames ranging from ~5 months (Oakland) to ~19 months (Palo Alto), but also across all our study cities.

Also significant is that in these study cities, the number of approval steps does not appear to correlate with median timeframes. Several cities with shorter median timeframes to approval are among those with the highest average number of approval steps per project. Similarly, cities with fewer steps to approval, such as San Francisco and Santa Monica, are among the cities with the lengthiest median timeframes. This result is in tension with prior scholarship that associates the number of approval steps with higher regulatory stringency (e.g., Joseph Gyourko, Albert Saiz, & Summers, 2008).

[58] The earliest application date is not the determined to be complete date (the date on which the jurisdiction determines the application for development is complete, and the date state law uses to limit approval time frames for development that meets specific criteria). During the data collection process, we did note that completeness determination dates were inconsistently available. Only the data from the City of Los Angeles consistently provided determined to complete dates.

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Table 8: Entitlement Timeframes and Average Steps to Approval All Jurisdictions 2014-2017

	2014-2017 Total Discretionary Approval Count	Median Timeframe (Months)[1]	Mean Timeframe (Months)	Standard Deviation of Timeframe	Average Number of Approvals per Project, including CEQA
Folsom	6	14.1[2]	14.1	3.1	5.00
Fresno*[3]	64	6.5[4]	12.0	16.5	3.25
Inglewood*	4	-[5]	-	-	4.25
Long Beach	27	7.6	10.6	6.6	3.15
Los Angeles*[6]	785	9.9[7]	13.2	13.9	2.89
Los Angeles County*[8]	35	16.0	27.2	38.0	3.44
Mountain View	33	13.0	13.08	4.3	5.58
Oakland	136	5.4[10]	8.67	7.8	4.38
Palo Alto	7	18.6	15.9	7.9	4.14
Pasadena	37	9.6	13.4	13.8	3.32
Placer County	19	12.8	16.1	14.7	4.00
Redondo Beach	7	2.2	8.8	14.9	5.00
Redwood City	18	7.5	15.1	23.7	4.78
Roseville	22	8.1[12]	13.0	11.7	4.41
Sacramento	68	6.4	8.8	9.7	4.21
San Diego*[13]	99	13.9[14]	21.1	21.0	3.68
San Diego County	27	14.9	29.2	42.2	2.74
San Francisco	140	26.6	31.4	18.8	3.36
San Jose	81	17.7	31.0	36.5	3.80
Santa Monica	21	16.5[15]	34.8	36.5	3.48

*Local ordinances allow for as of right development for five or more units

[1]30.42 was used as the conversion factor from days to months in timeframe calculations. These calculations are based on the entitlement timeframe for discretionary projects only.

[2]One project in Folsom did not have full timeframe information available and was not included in timeframe calculations.

[3] Fresno allows for as of right approvals of 5 or more units. Fresno did approve one project ministerially during our project years but information on this project was not available.

[4]20 projects in Fresno did not have full timeframe information available and were not included in timeframe calculations.

[5]No timeframe information was available for projects in Inglewood.

[6]Los Angeles permitted 286 ministerial projects and 4,585 ministerial units, 252 (5.50%) of which are deed-restricted affordable. Los Angeles entitled 785 discretionary projects with 61,261 units, 4,505 (7.35%) of which are deed-restricted affordable.

[7]One discretionary project in Los Angeles did not have full timeframe information available and was not included in timeframe calculations.

[8]Los Angeles County permitted 3 ministerial projects and 55 ministerial units, 46 of which are deed-restricted affordable. Los Angeles County entitled 34 discretionary projects with 2,477 units, 831 of which are deed-restricted affordable.

[9]In Los Angeles County, we could not determine the timeframe for 3 projects, so these projects were not included in the calculation.

[10]In Oakland, we could not determine the timeframe for 44 projects, so these projects were not included in the calculation.

[11]2 projects in Pasadena did not have full timeframe information available and were not included in timeframe calculations.

[12]One project in Roseville did not have full timeframe information available and was not included in timeframe calculations.

[13]San Diego allows for as-of-right approvals (also known as ministerial approvals) of 5 or more units as well as staff-level discretionary review. These review pathways are known as "Process 1" (as-of-right) and "Process 2" (staff-level discretionary review). While our primary method for data collection used publicly available meeting minutes and staff reports for the approval bodies for discretionary process, these were not available for Process 1 and 2 projects as they were processed at the staff level. Instead, we pulled this data from Open DSD, San Diego's building permit database, cross-checking that projects receiving building permits had not received a prior discretionary approval through Process 3-5. We determined that 77 projects comprise San Diego's Process 1 and 2 2014-17 approvals. Data limitations make it impossible to identify which of the 77 projects are Process 1 (as of right) or Process 2. Also, we do not have access to any Process 2 projects that did not apply for a building permit. The City of San Diego was unable to provide more data on Process 1 and 2 projects. We were unable to locate

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environmental review notices in the State clearinghouse for any of these projects, but that is not conclusive of whether these projects went through environmental review as cities do not always submit notices to the state clearinghouse. Process 1 and 2 projects, combined, account for 77 projects and 4,620 units, including 9.98% (461) deed-restricted affordable units. Process 3-5 account for 99 projects and 9,337 units, including 8.81% (823) deed-restricted affordable units.

[14]Timeframes for San Diego projects were calculated using Process 3-5 projects only, and 12 projects did not have full timeframe information available and were excluded from timeframe calculations.

[15]Full timeframe information was unavailable for one project in Santa Monica, and it was excluded from timeframe calculation.

5. New dense housing in our Southern California and Silicon Valley infill cities commonly demolishes old housing, potentially causing direct physical displacement in some places; in exurban areas, most development goes where there was no housing before—with some rezoning of agricultural land in San Diego County.

Multiple stakeholders care about where new housing is built—and what was there before. Where new housing is built matters for fair housing and climate policy. If new housing involves the demolition of existing housing, particularly multi-family housing and rent-stabilized housing, there is always a risk of direct physical displacement of tenants (O'Neill et al., 2020). If new housing involves subdivision on formerly agricultural land, that signals exurban sprawl—and depending on its location, that may undercut state climate policy.

We coded the observations for prior use. Prior use represents the existing use of the parcels to be developed at the time the property owner or developer applies for approval to develop. Notably, inland cities and counties like Fresno, Folsom, Placer County, Roseville, and Sacramento approved most of their dense development on what appears to be vacant land. Folsom and San Diego County stand out among jurisdictions that are more likely to approve greenfield development. Folsom and San Diego County entitled development on formerly agricultural land at a much higher rate than our other study jurisdictions (16.7% and 14.8%, respectively—compared with 0-3.1% everywhere else).

Hypothetically, a higher rate of agricultural prior use could signal a holding zone, where the jurisdiction aims to engage in deal-making to extract benefits from the developers for the community. Interviews, however, indicated that a notable number of entitlements in San Diego County during our study period were inconsistent with the County's General Plan (which focused on approving development in the county's Urban Villages). Research participants described that developing formerly agricultural land invited some of the most onerous discretionary review processes and often considerable community opposition from a well-organized group of climate policy activists—but that some developers will pursue this development strategy, even with uncertainty, because agricultural land costs are very low in an area that provides exponentially higher financial returns on single-family subdivision development. Also notable is that research participants did not describe the same development context in Los Angeles County, Placer County, or Roseville.

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Table 9: All Study Jurisdictions Prior Use

Jurisdiction	% Prior Residential Use	% Prior Commercial Use[1]	% Prior Agricultural Use	% Vacant Prior Use[2]	% Prior Use Unknown
Infill					
Folsom	0.0%	0.0%	16.7%	83.3%	0.0%
Fresno	14.1%	12.5%	3.1%	64.1%	6.3%
Inglewood	25.0%	25.0%	0.0%	50.0%	0.0%
Long Beach	0.0%	63.0%	0.0%	14.8%	22.2%
Los Angeles	60.0%	24.2%	0.0%	11.4%	4.4%
Mountain View	60.6%	33.3%	0.0%	6.1%	0.0%
Oakland	13.2%	52.9%	0.0%	28.7%	5.1%
Palo Alto	28.6%	57.1%	0.0%	14.3%	0.0%
Pasadena	67.6%	21.6%	0.0%	8.1%	2.7%
Redondo Beach	42.9%	57.1%	0.0%	0.0%	0.0%
Redwood City	16.7%	50.0%	0.0%	16.7%	16.7%
Sacramento	11.8%	30.9%	0.0%	57.4%	0.0%
San Diego	35.2%	31.8%	0.0%	30.7%	2.3%
San Francisco	3.6%	89.3%	0.0%	6.4%	0.7%
San Jose	32.1%	44.4%	1.2%	19.8%	2.5%
Santa Monica	38.1%	42.9%	0.0%	19.0%	0.0%
Infill Total	43.9%	33.8%	0.2%	18.1%	4.0%
Jurisdiction	**% Prior Residential Use**	**% Prior Commercial Use**	**% Prior Agricultural Use**	**% Vacant Prior Use**	**% Prior Use Unknown**
Los Angeles County	27.0%	37.8%	0.0%	32.4%	2.7%
Placer County	15.8%	15.8%	0.0%	63.2%	5.3%
Roseville	0.0%	4.5%	0.0%	95.5%	0.0%
San Diego County	37.0%	0.0%	14.8%	48.1%	0.0%
Greenfield Total	21.9%	17.1%	3.8%	55.2%	1.9%
All Jurisdictions Total	42.8%	32.9%	0.4%	20.1%	3.8%

[1]Includes all parking uses, including surface parking lots.
[2]Includes grazing or pasture uses.

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We also examined prior residential use to determine risk of direct displacement of tenants, which is relevant to equity considerations and fair housing goals (O'Neill et al., 2020). Prior residential use does not necessarily mean that new housing results in the demolition of existing housing (it could be that the new housing development retains existing units). However, higher rates of prior residential use signal the need for more analysis. We see in Table 9 above that some Silicon Valley and many southern California cities have high rates of prior residential use. Oakland and Long Beach have a split between approving new dense development on formerly commercial land and vacant land, though Long Beach also had a high rate of observations without information about prior use. Notably, most of San Francisco's approvals for dense development were on parcels that were formerly commercial—in short, San Francisco mostly approved dense housing where no housing existed.

We next examined rates of demolition; and, in cities with rent-stabilized housing, we also examined whether the demolition was of rent-stabilized units. Because cities were not always consistent when capturing demolition of rent-stabilized units, we also examined whether the units involved ***Ellis Act evictions***. Under the ***Ellis Act***, landlords can evict all tenants in a building in order to withdraw the units from the rental market for sale or conversion into condominiums. Cal. Gov't Code §§ 7060-7060.7.[59] Evictions under the Ellis Act are often a precursor to demolition and thus a good indicator that demolition has taken place.

To prevent double counting in our data analysis, if a unit was noted as both being rent-stabilized and having had an Ellis Act eviction, we counted it in the rent-stabilized column. Demolition of rent-stabilized units and/or units subject to an Ellis Act eviction prior to demolition and development indicates that the development likely involved direct physical displacement of tenants. We see that Los Angeles demolished a high number of units that likely resulted in direct displacement of tenants. We also see that the demolition resulted in exponentially more units, overall, but not necessarily a one-for-one replacement of deed-restricted affordable units. We discuss Los Angeles in more detail below in section V.B.2.

[59] The Ellis Act accomplishes this by preventing local governments from enacting ordinances that compel a landlord to stay in the rental business. See id. § 7060(a). Ellis Act evictions are commonly—but not exclusively—used to withdraw rent-stabilized units from the rental market because Rent Stabilization Ordinances (RSO) limit the circumstances under which a landlord may evict a tenant.

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Table 10: Rates of Demolition Associated with Housing Approvals All Jurisdictions

Jurisdiction	Projects Involving Residential Demolition	Demolished Units	Demolished Rent-stabilized Units	Demolished Ellis Act Only Units	Replacement Units	Replacement Market Rate Units	Replacement Affordable Units
Fresno	3[1]	2	—	—	23	23	0
Inglewood	1	5	—	—	12	12	0
Los Angeles*	570[2]	2,400	995[3]	643[4]	12,921	11,599	1,322
Mountain View*	20[5]	282	0	0	1,326	1,262	64
Oakland*	8[6]	6	0	0	56	56	0
Palo Alto	2	8	—	—	32	27	5
Pasadena	19[7]	70	—	—	513	440	73
Redondo Beach	3[8]	24	—	—	13	13	0
Redwood City	3	31	—	—	195	195	0
Sacramento	5[9]	430	—	—	587	587	0
San Diego	48[10]	136	—	—	674	614	60
San Francisco*	4[11]	1,381[12]	0	0	389	102	287
San Jose*	25[13]	320	0	0	2,448	2,226	22
Santa Monica*	6[14]	14	11[15]	0	25	22	3
Infill Total	717	5,109	1,006	643	19,014	17,178	1,836
Los Angeles County	6	10	—	—	136	58	78
Placer County	3	4	—	—	20	20	0
Roseville	0	0	—	—	0	0	0
San Diego County	4[16]	4	—	—	48	48	0
Greenfield Total	**13**	**18**	—	—	**204**	**126**	**78**
All Study Jurisdictions Total	**730**	**5,127**	**1,006**	**643**	**19,218**	**17,304**	**1,914**

*Has Rent Stabilization Ordinance

[1] 1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

[2] 15 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

[3] 3 projects with current residential use that were rent stabilized had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

[4] 1 project with current residential use that was Ellis Acted had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

[5] 1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

[6] 5 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

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[7]1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[8]1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[9]2 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[10]6 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[11]2 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[12]Two observations in San Francisco account for the 1,381 demolished units. Both observations were part of San Francisco's HOPE SF program. Two affordable housing complexes, one in Sunnydale (775 units) and one in Portrero Hill (606 units) were demolished.
[13]1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[14]2 projects with current residential use had unknown current unit count. We included the projects in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[15]1 project with current residential use that was rent stabilized had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.
[16]1 project with current residential use had unknown current unit count. We included the project in the Projects Involving Residential Demolition column, but not in the Demolished Units or Replacement Units columns.

6. No urban cities have permissive regulatory environments for housing and six are likely prohibitive.

Both climate policy and fair housing policy prioritize increasing infill housing supply in high opportunity metro areas. We therefore examine the relative stringency of only our infill study cities to determine if and whether local regulation could constrain dense infill housing (including deed-restricted housing) within these communities. We do this by comparing approval rates, relative process, and base zoning.

Whether a city approves more housing to be built is not the only determining factor as to whether housing gets built. Existing demand matters. We use analysis from the Legislative Analyst's Office (LAO) to determine demand. Most of our study cities are also in counties where, according to the LAO, housing demand outpaced the number of units built between 1980-2010 (Inglewood, Long Beach, Los Angeles, Oakland, Palo Alto, Pasadena, Mountain View, Redwood City, San Francisco, San Jose, Santa Monica), but some (Folsom, Fresno, and Sacramento) are in counties where units built exceeded demand during that period (Alamo et al., 2015). The LAO analysis indicated that San Diego County's estimated housing demand only slightly outpaced units built during that period. Grouping study cities by county enables us to evaluate standardized rates within the context of past market conditions. Where we do not have more than one city in a county, like San Francisco, we can compare cities within census metropolitan areas.

Table 11 below indicates that within metros with high demand, some cities approve relatively more housing than other cities. For example, in Santa Clara County, where demand severely outpaces supply, Mountain View approved much more housing than San Jose and Palo Alto. As another example, the City of Los Angeles approved much more housing than any of the other five study cities within Los Angeles County.

Although standardized approval rates do not tell us how much housing specific cities should be approving, it helps us identify cities where market conditions could be conducive to approving more housing—given the performance of neighboring jurisdictions with similar demand. Mountain View's approval rates, for example, suggest

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that based on market conditions, San Jose and Palo Alto could be approving more housing, based on market conditions. Similarly, Redwood City signals San Francisco could likely approve more housing. Los Angeles' approval rates tell us the same about Pasadena, Redondo Beach, and Santa Monica. However, the approval rates of Los Angeles, Redwood City, and Mountain View do not necessarily set a ceiling for approval rates of other study cities within their respective counties. Nothing in our data suggests that these cities could not approve more housing as well.

Table 11: Standardized Approval Rates Sorted by LAO Reporting on Metro Housing Costs, Demand, and Production

	2014-2017 Total Approvals Count	Units/1,000 people	Units/square mile	% Increase Total Housing Stock	% of Approved Units that are Deed-Restricted
San Francisco-Oakland-Hayward Metropolitan Statistical Area[60]					
Alameda County					
Oakland	136	35.79	258.09	8.43%	7.45%
San Mateo County					
Redwood City	18	20.44	83.93	5.45%	11.23%
San Francisco County					
San Francisco	140	17.21	304.44	3.74%	15.19%
San Jose-Sunnyvale-Santa Clara MSA[61]					
Santa Clara County					
Mountain View	33	36.06	230.58	8.10%	9.69%
San Jose	81	14.80	82.71	4.52%	5.03%
Palo Alto	7	5.32	14.70	1.23%	21.37%
Los Angeles-Long Beach-Anaheim MSA[62]					
Los Angeles County					
Los Angeles	1,071	17.05	140.50	4.60%	7.22%
Santa Monica	21	15.79	171.85	2.80%	13.13%
Pasadena	37	11.56	70.00	2.66%	7.90%
Long Beach	27	5.56	51.78	1.48%	14.36%
Inglewood	4	5.11	62.49	1.47%	0.00%

[60] Between 2013 and 2018 the Office of Management and Budget defined this as MSA as consisting of San Francisco, Alameda, Marin, Contra Costa, and San Mateo Counties.
[61] This MSA includes Santa Clara and San Benito Counties.
[62] This MSA included Los Angeles and Orange Counties.

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Redondo Beach	7	3.13	34.03	0.69%	0.95%

The differing approval rates among cities within the same counties invites the question: what aspects, if any, of these cities' regulatory environments might lead to these differences? To describe and compare the stringency of these diverse local regulatory regimes, we draw on what we conclude to be the two most critical dimensions of land use controls in these cities—base zoning (density and use restrictions) and process requirements measured by discretionary approval time frames. We focus on these two indicators of stringency because within our study cities the number of steps to approval is uncorrelated with discretionary approval timeframes.[63]

We also do not include litigation rates in this comparison. In the context of examining entitlement, litigation rates effectively measure opposition from a neighbor or opponent as a constraint on housing development and political context. We discuss this measure of community opposition to development in separate section below.

We narrow our analysis of process even more by focusing only on approval timeframes for proposed multi-family development that conforms to all zoning and planning requirements (code compliant proposals). Lengthy approval processes for code compliant proposals to develop are a particularly strong indicator of stringency. A code compliant proposal to develop multi-family housing means that a property owner is not asking the jurisdiction to deviate from any existing planning and zoning law—or even asking for a conditional approval.

Thus, we use (1) median entitlement timeline data for code compliant multi-family development to describe process requirements and (2) analysis of the percentage of zoned land area that has permissive base zoning to determine the restrictiveness of base zoning. These two metrics together allow us to sort our cities into four categories to describe relative stringency and exclusion. We calibrate the process axis by reference the WRLURI18 survey responses that determined that Average Delays Index. We interpret the ADI information from this survey as the planning professional's perception of how long approvals should take on average, in lightly, moderately, and highly regulated communities nationwide (J. Gyourko et al., 2019; Joseph Gyourko et al., 2008).

WRLURI18 responses indicate that planners perceived approval delays in communities that the WRLURI18 described as lightly regulated communities to be, on average, 3.7 months, 5 months in places with average regulation, and 8.4 months in highly regulated communities. We use 8.4 months as the marker for more process. We also use 5 months as a marker to identify potentially permissive regulatory environments. We likewise identify cities as having more process requirements where the median time to approval takes more than 15 months but less than 24 months; this range is the upward tail of findings from the WRLURI18 (J. Gyourko et al., 2019). When the median timeframe to approval for code compliant multi-family development exceed 24 months that exceeds even the upward tail of what planners perceive to be average delays to approvals in highly

[63] Presumably the number of steps to approval would increase the time to approval, but our interviews revealed that increasing steps to approval did not automatically create uncertainty or additional complexity for a developer. This is best illustrated in Redwood City, for example, which had among the highest number of steps to entitlement: study participants described the regulation as detailed but precise, providing more certainty about what each step required to reach approval when moving through discretionary review.

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regulated communities nationwide. We use the 24-month marker to identify process requirements that may be prohibitive.

Along the base zoning axis, we describe cities with more than 20% of the total zoned land area zoned for all income levels as having less restrictive base zoning. To determine this threshold, we relied on our own base zoning analysis and cross-referenced recent related work identifying patterns of single-family zoning in California cities (Mendendian et al., 2020). UC Berkeley's Othering and Belonging Institute found that over 80% of all residentially zoned land in the San Francisco Bay Area was zoned for single family only. These researchers categorized jurisdictions within the San Francisco Bay Area that had 0-80% of their land area zoned for single family only as having a "low" percentage of single family only zoning. They also found that "denser housing options are only permitted in less than one-fifth of residential areas in this region" (Mendendian et al., 2020). This latter finding is consistent with our own base zoning analysis.

Given our and other researchers' findings about the prevalence of single family only zoning, we conclude that if one of our study cities zoned more than 20% of its residentially zoned land area for all income levels, this would qualify as having comparatively "less restrictive" base zoning. In contrast, we interpreted a city zoning 5% or less of all zoned land for all income levels as "more restrictive" as this limits the amount of zoned land available for affordable development.

This approach to comparative analysis lent itself to generating typologies to describe our study cities, but not rankings. In this way our analysis is akin to Pendall et al's 2006 work that sorted jurisdictions into four regulatory clusters (Pendall, 2006). Also, after completing legal research in each—none of the cities can be described as lightly regulated. We thus constructed categories that capture degrees of stringency and whether a jurisdiction's application of its law was conducive to allowing multi-family development, particularly affordable development.

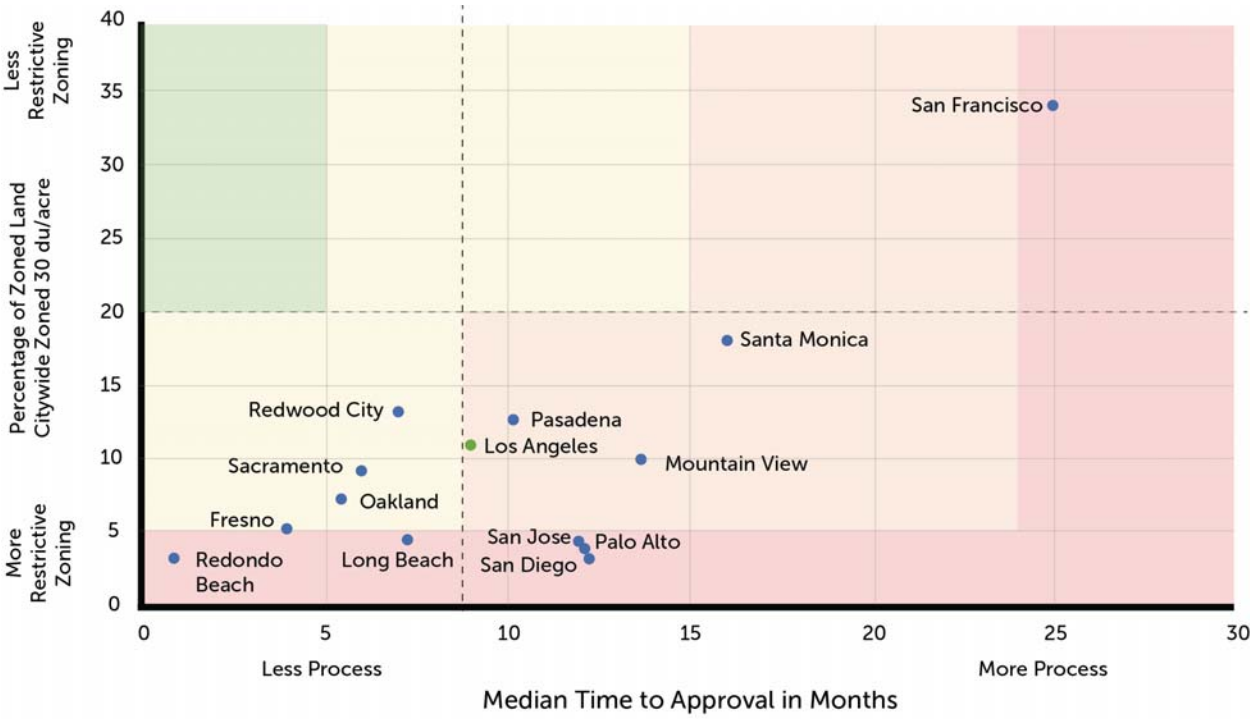
We have four categories. The first is **permissive** jurisdictions, with less process (medians at or under 5 months) and less restrictive base zoning (over 20% of zoned land area zoned for all income levels). The second is **moderately stringent** jurisdictions which can fall into one of two scenarios. Some of these jurisdictions have process timeframes at or under 5 months but have restrictive base zoning (greater than 5% but under 20% of zoned land zoned for all income levels). Others have less restrictive base zoning (greater than 20% of zoned land zoned for all income levels), but have process medians between 5 and 15 months. The third category consists of **very stringent** jurisdictions, which have greater than 5% but under 20% zoned land area for all income areas and median timeframes to approval between 8.4 months and 15 months. This third category also includes jurisdictions with more than 20% zoned land zoned for all income levels and median time frames between 15 and 25 months.

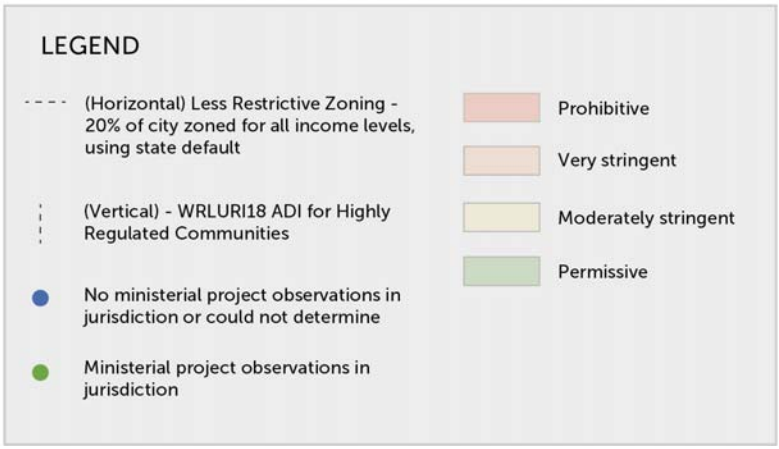
We describe a fourth category of jurisdictions as having **prohibitive** regulation. These cities zone less than 5 percent of their zoned land area citywide for all income levels. This category includes cities with timeframes under 5 months but the most restrictive base zoning. These base zoning limitations would signal a severe regulatory constraint on available land for dense multi-family development, including deed-restricted affordable development. In interviews with affordable developers, participants describe the unavailability of land suited to affordable development as being the first obstacle to

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increasing affordable supply. Prohibitive cities also include cities with less restrictive base zoning but process time lags that exceed 24 months for code compliant development. During interviews, affordable developers noted that extremely lengthy discretionary processes make forecasting and financing difficult and limit where they choose to propose affordable development.[64]

Chart 1: Comparative Analysis of Regulatory Types





[64] We have two cities with inadequate data to analyze them in this way (Folsom and Inglewood).

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Categorizing our study cities according to median timeframes for code compliant multi-family development and percentage of zoned land area citywide zoned for all income levels, we find that none of our study cities are in the permissive category. Fresno, Oakland, Redwood City, and Sacramento are moderately stringent. Los Angeles, Pasadena, Mountain View, and Santa Monica are very stringent. Redondo Beach, Long Beach, Palo Alto, San Diego, San Francisco, and San Jose are in the prohibitive group. Notably, three of those cities—San Diego, San Francisco, and San Jose—had local ordinances to promote inclusion and increase affordability through mandates and incentives. San Jose and San Diego are in the prohibitive group because of more restrictive base zoning. San Francisco's extreme process time lags—which may derive from the fact that San Francisco's charter makes all approvals discretionary— places San Francisco into the prohibitive group.

Table 12 below provides actual and standardized entitlement rates again and categorizes cities based on their process and base zoning. The cities in the prohibitive group entitled relatively less housing than their neighbors in other categories. For example, Oakland, a city within the moderately stringent group, approved more housing per capita than either Redwood City or San Francisco.[65] Redwood City, within the moderately stringent group, approved more housing per capita than San Francisco. Similarly, Mountain View approved more housing per capita than San Jose and Palo Alto, two study cities within the same high demand county that fall within the prohibitive group.

[65] Though each of these cities is in a different county, the three cities are in neighboring high demand counties and are in the same Metropolitan Statistical Area.

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Table 12: Standardized Approval Rates Sorted by LAO Reporting on Metro Housing Costs, Demand, and Production—with Stringency Category

	2014-2017 Total Approvals Count	2014-2017 Total Approved Units	Stringency Category	Units/1,000 people	Units/ square mile	% Increase Total Housing Stock	% of Approved Units that are Deed-Restricted
San Francisco-Oakland-Hayward Metropolitan Statistical Area							
Alameda County							
Oakland	136	14,399	Moderately stringent	35.79	258.09	8.43%	7.45%
San Mateo County							
Redwood City	18	1,630	Moderately stringent	20.44	83.93	5.45%	11.23%
San Francisco County							
San Francisco	140	14,269	Prohibitive	17.21	304.44	3.74%	15.19%
San Jose-Sunnyvale-Santa Clara Metropolitan Statistical Area							
Santa Clara County							
Mountain View	33	2,767	Very stringent	36.06	230.58	8.10%	9.69%
San Jose	81	14,601	Prohibitive	14.80	82.71	4.52%	5.03%
Palo Alto	7	351	Prohibitive	5.32	14.70	1.23%	21.37%
Los Angeles-Long Beach-Anaheim Metropolitan Statistical Area							
Los Angeles County							
Los Angeles	1,071	65,846	Very stringent (with ministerial observations)	17.05	140.50	4.60%	7.22%
Santa Monica	21	1,447	Very stringent	15.79	171.85	2.80%	13.13%
Pasadena	37	1,608	Very stringent	11.56	70.00	2.66%	7.90%
Long Beach	27	2,604	Prohibitive	5.56	51.78	1.48%	14.36%
Redondo Beach	7	211	Prohibitive	3.13	34.03	0.69%	0.95%

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Our data is consistent with the argument that less stringent regulation may be most effective at facilitating housing development in areas where demand is strongest. Fresno and Sacramento are within the moderately stringent group but have lower standardized entitlement rates than Oakland and Redwood City (both of which are in the moderately stringent group), and lower rates than cities with more stringent regulation. Notably, Fresno and Sacramento are in counties that the Legislative Analyst's Office determined generally kept up with demand in prior years—whereas Oakland and Redwood City are not. Interviews with some stakeholders in the Sacramento metro and in Fresno suggest that market conditions make infill development difficult. In the Sacramento metro, specifically, interview participants shared that there is more demand in the region for single-family housing. This interview data standing alone, however, does not confirm that the market for multi-family housing is too limited to support increased approvals. This should be tested against other data points such as vacancy rates for multi-family housing and rental price data. We will explore that in future research.

7. Generally there is little difference between entitlement timeframes and environmental review pathways in urban and exurban areas.

We next compare how urban and exurban jurisdictions implement discretionary and environmental review processes. When we think of sprawling development, we think of subdivision for single-family homes in exurban areas away from transportation and economic activity, possibly even developing on formerly agricultural land. It is possible that exurban jurisdictions enable sprawl through less stringent processes for approving projects, or because there are fewer neighbors to object to projects (Anderson, 2012), or because the local government supports the development (Fischel, 1985). If any of these are true, then entitlement of single-family subdivisions in our infill jurisdictions should take longer. Alternatively, if climate-friendly policy deters exurban sprawl, entitlement of single-family subdivisions in exurban areas should take longer. Relatedly, proposed exurban development may also encounter longer and/or more intense environmental review.

When we compare median timeframes for single-family subdivisions within our urban cities and exurban city and counties to see whether there are differences, in the aggregate, we find that there are not significant differences in timeframes. Single family subdivision in exurban jurisdictions takes about a month longer than in infill jurisdictions. There are extreme ranges between cities, however. Single-family subdivision in Silicon Valley jurisdictions, for example, had long median timeframes. When we examine how many units of housing exurban single-family subdivision produces, relative to infill subdivision, we find that in the aggregate, exurban subdivisions on average would also yield more than twice as many units as single-family housing.

Another related consideration is how exurban areas process approvals for multi-family housing. Again, we compare median timeframes for multi-family housing. We find that in the aggregate, multi-family housing takes about a month longer in exurban areas than in infill jurisdictions, but there are extreme ranges between jurisdictions. The shortest and longest median timeframes across all study jurisdictions (with timeframe data) for

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multi-family are both in exurban areas. Roseville had the shortest median timeframe for multi-family housing at approximately 4 months; San Diego County had the longest median timeframe at approximately 38 months, eclipsing even San Francisco with its remarkably long entitlement timeframes.

Table 13: Single-family Project Timeframes Across Jurisdictions[1]

Jurisdiction	Average Timeframe	Median Timeframe	# Discretionary Observations with full timeframe/Total Discretionary Observations	Average Project Size (units)[2]	Median Project Size (Units)[3]
Folsom	13.6	14.1	3/4	223	147
Fresno	17.5	14.3	23/28	88	91
Long Beach	23.9	23.9	2/2	86	86
Los Angeles	16.0	11.7	45/45	29	12
Mountain View	14.3	14.3	2/2	14	14
Oakland	6.6	6.6	2/3	462	462
Palo Alto	25.6	25.6	1/1	16	16
Redwood City	106.6	106.6	1/1	8	8
Sacramento	10.2	7.33	31/31	54	35
San Diego	31.9	18.9	13/13	49	24
San Jose	51.4	32.2	17/17	89	10.0
Urban Total	**21.4**	**12.6**	**140/148**	**64**	**20.0**
Los Angeles County	47.6	17.5	12/12	86	41
Placer County	19.6	17.0	10/10	128	16
Roseville	14.6	8.7	18/19	320	208
San Diego County	26.1	11.8	23/23	40	20
Exurban Total	**24.6**	**14.0**	**63/64**	**143**	**40**

[1]Includes single-family detached and mixed single-family product type. Some jurisdictions (Inglewood, Redondo Beach, Pasadena, San Francisco and Santa Monica) are not included in this table because no projects approved during our study years were single-family.
[2]Includes only projects with full timeframe. Unit values are rounded.
[3]Includes only projects with full timeframe. Unit values are rounded.

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Table 14: Multi-family Discretionary Project Timeframes Across Jurisdictions[1]

Jurisdiction	Average Timeframe	Median Timeframe	# Discretionary Observations with full timeframe/Total Discretionary Observations	Average Project Size[2]	Median Project Size[3]
Folsom	14.9	14.9	2/2	290	290
Fresno	5.5	4.6	19/36	101	74
Long Beach	9.5	7.3	25/25	97	94
Los Angeles	13.0	9.8	739/740	81	31
Mountain View	12.9	13.0	30/30	90	35
Oakland	8.7	5.4	90/133	121	54
Palo Alto	14.3	16.4	6/6	56	33
Pasadena	13.4	9.6	35/37	40	19
Redondo Beach	8.8	2.2	7/7	30	10
Redwood City	9.7	7.4	17/17	95	33
Sacramento	7.6	6.0	37/37	112	73
San Diego	19.2	13.2	74/86	83	21
San Francisco	31.4	26.6	140/140	102	56
San Jose	25.5	15.7	63/63	207	168
Santa Monica	34.8	16.5	20/21	69	36
Urban Total	**15.6**	**10.8**	**1,304/1,384**	**93**	**37**
Los Angeles County	18.3	13.5	19/22	54	42
Placer County	12.2	11.8	9/9	250	63
Roseville	3.7	4.2	3/3	186	201
San Diego County	47.3	37.7	4/4	129	113
Exurban Total	**18.8**	**11.8**	**35/38**	**124**	**56**

[1]Includes all projects with multi-family component including multi-family (including duplexes, triplexes, fourplex), single-family attached (including structures constructed under local small lot ordinances), mixed multi-family and single-family attached, and mixed multi-family and single-family detached

[2]Includes only projects with full timeframe. Unit values are rounded.

[3]Includes only projects with full timeframe. Unit values are rounded.

Tables 13 and 14 also show that there are far fewer multi-family housing development entitlements in the exurban jurisdictions compared with single-family subdivision entitlements. Though we are limited to approvals (rather than all proposals to development, including denials), interview participants that worked in exurban areas shared perceptions of a developer preference for pursuing single-family subdivision. Interview participants in Southern California and Northern California provided related but still different reasons for why developers might pursue more single-family subdivision over infill dense development in certain metros. In the Sacramento metro area, we heard that demand for single-family homes is comparatively higher than demand for more dense

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housing. Some participants that worked in both exurban and infill jurisdictions shared that it is difficult to make dense infill development "pencil out." Other participants shared that entitlement is "just easier" to navigate in Roseville as compared to the City of Sacramento.

In contrast, research participants from San Diego County described perceptions that the former County Supervisors favored proposals for single-family subdivision, inclusive of subdivision in locations outside of the urban villages designated for development in the General Plan. They also stated that while exurban entitlement process in those areas, relative to infill development, may require rezoning and general plan amendments for subdivision, single family subdivision is more lucrative.

Reviewing median timeframes, we do see that Roseville and Sacramento have similar median timeframes for single-family subdivision, but the median timeframe for the three multi-family developments in Roseville is 4.2 months, shorter than Sacramento's median of six months. It is also true that Roseville, Placer County, and Los Angeles County's median timeframes for multi-family housing are considerably shorter than each jurisdiction's timeframes for single-family housing—potentially indicating local policies favor climate-friendly development over sprawl. In Los Angeles County, a few multi-family developments moved through a ministerial process, eliminating the need for entitlement. The jurisdiction with the longest median timeframe for multi-family housing in Los Angeles County was Santa Monica, which also had the highest percentage of HQTA in its zoned land area among all our study cities in that county. San Diego County stood alone among our four exurban jurisdictions in its processing of multi-family housing—the median timeframe for multi-family housing was approximately 38 months, more than three times the median timeframe for single-family subdivision entitlement.

Table 15: Single-family Discretionary Subdivision Median Timelines Sorted by Metro[1]

Jurisdiction	Average Timeframe	Median Timeframe	# Discretionary Observations with full timeframe/Total Discretionary Observations	Average Project Size[2]	Median Project Size[3]
Folsom	13.6	14.1	3/4	223	147
Placer County	19.6	17.0	10/10	128	16
Roseville	14.6	8.7	18/19	320	208
Sacramento	10.2	7.3	31/31	54	35
Long Beach	23.9	23.9	2/2	86	86
Los Angeles	16.0	11.7	45/45	29	12
Los Angeles County	42.6	17.5	12/12	86	41
San Diego	31.91	18.9	13/13	49	24
San Diego County	26.1	11.8	23/23	40	20

[1]Includes single-family detached and mixed single-family product.
[2]Includes only projects with full timeframe. Unit values are rounded.
[3]Includes only projects with full timeframe. Unit values are rounded.

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Table 16: Multi-family Median Discretionary Timelines Sorted by Metro[1]

Jurisdiction	Average Timeframe	Median Timeframe	# Discretionary Observations with full timeframe/Total Discretionary Observations	Average Project Size[2]	Median Project Size[3]
Folsom	14.9	14.9	2/2	290	290
Sacramento	7.6	6.0	37/37	112	73
Placer County	12.2	11.8	9/9	250	63
Roseville	3.7	4.2	3/3	186	201
Long Beach	9.5	7.3	25/25	97	94
Los Angeles	13.0	9.8	739/749	81	31
Los Angeles County	18.3	13.5	19/22	54	42
Pasadena	13.4	9.6	35/37	40	19
Redondo Beach	8.8	2.2	7/7	30	10
Santa Monica	34.8	16.5	20/21	69	36
San Diego	19.2	13.2	74/86	83	21
San Diego County	47.3	37.7	4/4	129	112

[1]Includes all projects with multi-family component including multi-family (including duplexes, triplexes, fourplex), single-family attached (including structures constructed under local small lot ordinances), mixed multi-family and single-family attached, and mixed multi-family and single-family detached.
[2]Includes only projects with full timeframe. Unit values are rounded.
[3]Includes only projects with full timeframe. Unit values are rounded.

Most interview participants who worked in San Diego County shared their perceptions that a lot of approved development did not conform to prior planning efforts. If true, we should see more frequent use of general plan amendments or rezoning in our exurban jurisdictions as compared to our infill jurisdictions. We see that more entitlement in San Diego County required rezoning and general plan amendments compared to the City of San Diego. Los Angeles County also had a higher rate of rezoning and general plan amendments than the City of Los Angeles, and Roseville also had higher rates of rezoning than Placer County, Sacramento, or Folsom.

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Table 17: Prevalence of Rezoning and General Plan Amendments Sorted By Metro

San Diego Region				
Jurisdiction	*% Projects Rezone*	*% Projects GPA*	*% Units Rezone*	*% Units GPA*
San Diego County	14.8%	11.1%	66.6%	43.4%
San Diego	5.1%	4.0%	13.2%	12.0%
Los Angeles Region				
Jurisdiction	*% Projects Rezone*	*% Projects GPA*	*% Units Rezone*	*% Units GPA*
Los Angeles County	20.6%	11.8%	20.0%	7.1%
Los Angeles	14.0%	4.5%	24.4%	15.9%
Santa Monica	4.8%	4.8%	17.2%	17.2%
Long Beach	7.4%	7.4%	6.6%	6.6%
Pasadena	5.4%	0.0%	30.1%	0.0%
Inglewood	0.0%	0.0%	0.0%	0.0%
Sacramento Region				
Jurisdiction	*% Projects Rezone*	*% Projects GPA*	*% Units Rezone*	*% Units GPA*
Placer County	26.3%	10.5%	7.16%	3.31%
Roseville	36.4%	40.9%	23.5%	39.1%
Sacramento	13.2%	11.8%	13.7%	23.4%
Folsom	33.3%	16.7%	28.7%	20.2%

General plan amendments and rezoning require legislative action by the local government's legislature and thus necessarily involve at least one public hearing and are higher profile politically—all of which implies more intensive land use review of large-scale developments. Discretionary approval processes that involve local legislative approvals might offer exurban jurisdictions more leverage to require developers to provide affordable housing as part of their projects. Or they might simply signal the local legislators' willingness to approve development inconsistent with prior planning, as discussed above. Interviews in different metro areas indicate that the former might be true in the Sacramento metro area and Los Angeles County. Consistent with interviews, we find evidence in our observation data for both propositions with notable differences depending on the metro area. Exurban jurisdictions in the Sacramento metro area and Los Angeles County approved comparatively more affordable housing, suggesting the possibility that rezoning and general plan amendments might facilitate deal making and more affordability (particularly in Roseville and Los Angeles County). In contrast, in the

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San Diego metropolitan area, San Diego County has comparatively high rates of rezoning and general plan amendments (and is the only jurisdiction with residential development on formerly agricultural land) but no approvals for deed-restricted affordable development in our study years.

Table 18: Rate of Deed-Restricted Affordable Development Sorted by Metro

San Diego Region			
Jurisdiction	% Affordable Units	# Affordable Units	Affordable Units per capita
San Diego County	0.00%	0	0
San Diego	9.2%	1,284	0.96
Los Angeles Region			
Jurisdiction	% Affordable Units	# Affordable Units	Affordable Units per capita
Los Angeles County	34.6%	877	0.81
Los Angeles	7.2%	4,757	1.23
Santa Monica	13.1%	190	2.07
Long Beach	14.4%	374	0.80
Pasadena	7.9%	127	0.91
Inglewood	0.0%	0	0.00
Sacramento Region			
Jurisdiction	% Affordable Units	# Affordable Units	Affordable Units per capita
Placer County	3.1%	111	1.01
Roseville	8.0%	509	3.96
Sacramento	0.9%	53	0.11
Folsom	0.9%	12	0.16

The fact that higher rate of general plan amendments and rezoning in San Diego County, Placer County, and Roseville also suggest that the development would be less likely to benefit from less intensive environmental review processes like tiering (which depends on a prior applicable plan-level Environmental Impact Report, (EIR)). San Diego County and Roseville have high rates of tiering, though Roseville also has a relatively higher rate of EIRs compared to Sacramento—but not Folsom—whereas San Diego County also used EIRs *less* frequently than the City of San Diego. All of this suggests environmental review is not more intensive in the exurban jurisdictions, which is counterintuitive and inconsistent with our original hypothesis. This invites important questions about whether projects that might lead to high VMT are benefiting from CEQA

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exemptions, streamlining, and tiering that are intended for low VMT developments. Our current work indicates that there are likely high VMT developments benefiting from CEQA streamlining. This question requires more research and analysis, and the UCI team will continue working on this analysis.

Table 19: CEQA Pathways Sorted By Metro

	San Diego Region								
	CEQA Pathways (% Projects)								
Jurisdiction	Exempt	Tiering	Addendum	Hybrid	ND	MND	EIR	Multiple	Unknown
San Diego County	0.0%	85.2%	0.0%	0.0%	0.0%	7.4%	7.4%	0.0%	0.0%
San Diego	34.3%	21.2%	8.1%	0.0%	2.0%	23.2%	9.1%	2.0%	0.0%
	Los Angeles Region								
	CEQA Pathways (% Projects)								
Jurisdiction	Exempt	Tiering	Addendum	Hybrid	ND	MND	EIR	Multiple	Unknown
Los Angeles County	14.7%	2.9%	0.0%	11.8%	26.5%	35.3%	8.8%	0.0%	0.0%
Los Angeles	32.2%	1.7%	1.4%	0.0%	0.3%	60.5%	2.9%	1.0%	0.0%
Santa Monica	33.3%	14.3%	0.0%	23.8%	0.0%	0.0%	9.5%	19.0%	0.0%
Long Beach	59.3%	18.5%	3.7%	0.0%	0.0%	11.1%	7.4%	0.0%	0.0%
Pasadena	78.4%	2.7%	0.0%	0.0%	0.0%	13.5%	5.4%	0.0%	0.0%
Inglewood	25.0%	0.0%	0.0%	0.0%	25.0%	50.0%	0.0%	0.0%	0.0%
	Sacramento Region								
	CEQA Pathways (% Projects)								
Jurisdiction	Exempt	Tiering	Addendum	Hybrid	ND	MND	EIR	Multiple	Unknown
Placer County	0.0%	21.1%	5.3%	0.0%	0.0%	57.9%	15.8%	0.0%	0.0%
Roseville	0.0%	50.0%	27.3%	0.0%	4.5%	9.1%	0.0%	9.1%	0.0%
Sacramento	52.9%	13.2%	5.9%	4.4%	0.0%	17.6%	4.4%	1.5%	0.0%
Folsom	0.0%	16.7%	33.3%	0.0%	0.0%	50.0%	0.0%	0.0%	0.0%
	San Francisco Bay Area Region								

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CEQA Pathways (% Projects)

Jurisdiction	Exempt	Tiering	Addendum	Hybrid	ND	MND	EIR	Multiple	Unknown
Mountain View	45.45%	12.12%	6.06%	0.00%	0.00%	33.33%	3.03%	0.00%	0.00%
Oakland	2.24%	19.40%	0.00%	0.00%	0.00%	0.00%	2.99%	75.37%	0.00%
Palo Alto	28.57%	0.00%	0.00%	0.00%	0.00%	42.86%	14.29%	14.29%	0.00%
Redwood City	22.22%	66.67%	0.00%	0.00%	0.00%	5.56%	0.00%	5.56%	0.00%
San Francisco	8.63%	71.94%	1.44%	0.00%	1.44%	6.47%	8.63%	1.44%	0.72%
San Jose	7.50%	1.25%	35.00%	0.00%	0.00%	32.50%	13.75%	10.00%	1.25%

Comparative analysis between urban and exurban jurisdictions is best when it is limited to metro areas. San Diego County's lengthy entitlement timelines for multi-family housing, no entitlement of deed-restricted affordable development, and considerably shorter timeframes for single-family subdivision during our study years signal that development approvals prioritized climate or affordability goals. (Tables 15, 16, and 18). That does not offer insight into other exurban jurisdictions, however. The other three exurban jurisdictions we studied processed multi-family entitlements even faster than single-family subdivisions—with Roseville having the shortest median entitlement timeline to multi-family development among all twenty of our study jurisdictions. Similarly, while the County of San Diego typically used less intensive environmental review pathways compared to the City of San Diego, Los Angeles County and Placer County both used more intensive environmental review pathways than cities within that metro area. Similarly, in Los Angeles County, we see high rates of affordable housing approvals compared to all jurisdictions within that County.

9. Less than 3% of all development approvals face community opposition through litigation, but litigation rates vary across jurisdictions.

We address some of the limitations in the prior research exploring litigation, particularly CEQA litigation. We compiled a census of approved projects in our jurisdictions across four years, allowing us to assess how many of those approved projects faced litigation. Litigation data comes from court records – which include reported and unreported judicial decisions, as well as the underlying petitions filed to challenge approved projects. In all, our data provides a complete picture of all lawsuits filed, all claims that are raised in challenging projects, and whether litigants brought those claims under state environmental law or other legal provisions.

Our most significant finding is that only 2.8% of all entitled projects within our observation dataset faced litigation, which amounts to 6.9% of all units entitled in our

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timeframe. One 100% affordable development in our dataset faced litigation.[66] Comparing the litigation rates of our four exurban jurisdictions with the other sixteen infill jurisdictions, we find that project litigation rates are almost identical, but the number of units impacted by litigation in the exurban jurisdictions is much lower than in the infill context at 1.28%. Variation in rates of litigation across local jurisdictions is not unique to the exurban context.

[66] This 100% Affordable Development was in Redwood City at 612 Jefferson Avenue. A business neighbor's opposition and subsequent litigation of Redwood City's approval of this 20-unit development, proposed by Habitat for Humanity, has received considerable press attention.

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Table 20: Share of Litigated Projects and Units for All Jurisdictions

Jurisdiction Group	Total # Projects	Total # Units	Litigated Projects	% Projects litigated	Litigated Units	% Units Litigated	Litigated Affordable Units	% Affordable Units
Urban Cities	1,896	147,569	52	2.7%	11,022	7.47%	727	6.3%
Exurban Cities and Counties	105	13,895	3	2.9%	182	1.31%	0	0%
All Jurisdictions TOTAL	**2,001**	**161,464**	**55**	**2.8%**	**11,204**	**6.9%**	**727**	**5.5%**

Table 21 below highlights that there are substantial variations in litigation rates across all study jurisdictions – sometimes relatively high in cities with few approvals given jurisdiction size (such as Long Beach). Litigation rates were higher in Southern California cities than in the rest of the state. For instance, our Southern California cities (study cities in Los Angeles County and San Diego) had 3.4% of their entitled projects litigated, constituting 1.6% of entitled units. At the high end, 5 out of 27 projects, representing 726 out of 2,604 total units, were litigated in Long Beach (18.5% projects litigated, and 27.9% units litigated).

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Table 21: Litigation Rates By Individual Jurisdictions

Jurisdiction	Total # Projects	Total # Units	Litigated Projects	Litigated Units	Percentage of projects litigated	Percentage of Units Litigated
Folsom	6	1,364	0	0	0.00%	0.00%
Fresno	64	6,153	0	0	0.00%	0.00%
Inglewood	4	568	0	0	0.00%	0.00%
Long Beach	27	2,604	5	726	18.52%	27.88%
Los Angeles	1,071	65,846	29	6,338	2.71%	9.63%
Los Angeles County	37	2,532	1	102	2.70%	4.03%
Mountain View	33	2,767	0	0	0.00%	0.00%
Oakland	136	14,399	1	47	0.74%	0.33%
Palo Alto	7	351	0	0	0.00%	0.00%
Pasadena	37	1,608	1	201	2.70%	12.50%
Placer County	19	3,535	1	56	5.26%	1.58%
Redondo Beach	7	211	0	0	0.00%	0.00%
Redwood City	18	1,630	2	111	11.11%	6.81%
Roseville	22	6,394	0	0	0.00%	0.00%
Sacramento	68	5,794	2	470	2.94%	8.11%
San Diego	176	13,957	7[1]	1,273	3.98%	9.12%
San Diego County	27	1,434	1	24	3.70%	1.67%
San Francisco	140	14,269	3	1,273	2.14%	8.92%
San Jose	81	14,601	2	583	2.47%	3.99%
Santa Monica	21	1,447	0	0	0.00%	0.00%

[1]In San Diego, two projects were litigated together as part of one lawsuit.

We use spatial analysis of our litigation data to test theories about which neighborhoods (based on opportunity classification) might be more or less likely to oppose dense development through lawsuits. Because we are working with such a small number of observations that faced litigation, we rely on the aggregated totals across all infill jurisdictions. Approximately 6.61% of all dense developments, or 17.75% of units, sited in Highest and High Resource census tracts faced litigation, in contrast to 5.86% of all dense developments, or 13.76% of units, sited in Low Resource or High Segregation and Poverty census tracts. We see that this trend of more litigation in High or Highest Resource Areas is more pronounced when examining the three lawsuits against development in our four exurban jurisdictions.

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Table 22: % Projects Litigated in TCAC Areas

Jurisdiction Group	% Projects in Highest Resource that faced lawsuits	% Projects in High Resource that faced lawsuits	% Projects in Moderate Resource that faced lawsuits	% Projects in Low Resource that faced lawsuits	% Projects in High Segregation and Poverty that faced lawsuits
Infill/Urban Cities	2.31%	4.46%	1.64%	3.30%	2.24%
Exurban Cities and Counties	5.12%	7.14%	0.00%	0.00%	0.00%

Table 23: % Units Litigated in TCAC Areas

Jurisdiction Group	% Units in Highest Resource that were Litigated	% Units in High Resource that were Litigated	% Units in Moderate Resource that were Litigated	% Units in Low Resource that were Litigated	% Units in High Segregation and Poverty that were Litigated
Urban Cities	8.76%	8.77%	6.43%	6.98%	8.07%
Exurban Cities and Counties	1.64%	5.26%	0.00%	0.00%	0.00%

Most litigation against projects in all study jurisdictions did not exclusively rely on state environmental law to challenge approvals, though most lawsuits did include a CEQA claim. Table 24 indicates that while only 29% of the projects in all twenty jurisdictions that faced litigation were challenged under CEQA alone, another 67% were challenged using claims under CEQA as well as under other laws—usually claims that the project violated the local government's general land use plan or provisions of the local government's zoning code. Comparatively, as the final column in Table 24 shows, less than four percent of projects in all twenty jurisdictions that faced litigation were challenged with claims that did not involve CEQA at all. This tells us that when litigation occurs, CEQA claims are common—but that most lawsuits (almost 3 out of 4) could proceed even if the plaintiff or petitioner could not bring a claim under CEQA.

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Table 24: Litigated Projects by Claim Type

Jurisdiction Group	CEQA Only Litigated Projects Count	CEQA Only % Litigated Projects	CEQA/Other Claims Litigated Projects	% CEQA/Other Claims Litigated Projects	Non CEQA Claims — litigated projects	% Non CEQA Claims — litigated projects
Urban Cities	16	30.8%	34	65.4%	2	3.9%
Exurban Cities and Counties	0	0	3	100.00%	0	0
TOTALS	16	29.1%	37	67.3%	2	3.6%

We next assessed how often litigants claimed that the approving jurisdiction inadequately analyzed the impacts of the proposed project on greenhouse gas (GHG) emissions or vehicles miles traveled (VMT). We included both GHG and VMT claims because VMT analysis was not the standard for CEQA analysis of traffic impacts during our study period; the revised CEQA guidelines requiring VMT analysis did not become effective until 2020 (SB 743 Frequently Asked Questions). Thus, we included claims of inadequate GHG analysis in our coding structure to capture those claims that often overlap with claims that the project will increase VMT, and GHG analysis was required by the CEQA guidelines during our study period.

Two-thirds of all litigated projects were challenged on the grounds that there was inadequate analysis of GHG or VMT. All three of the projects in exurban jurisdictions that were litigated had GHG or VMT claims raised against them.

Table 25: Litigated Units by Claim Type

Jurisdiction Group	CEQA Only Litigated Units	CEQA Only % Litigated Units	CEQA/Other Claims Litigated Units	% CEQA/Other Claims Litigated Units	Non CEQA Claims — litigated units	% Non CEQA Claims — litigated units
Urban Cities	4,290	38.9%	6,434	58.4%	298	2.7%
Exurban Cities and Counties	0	0.0%	182	100.0%	0	0.0%
TOTAL*	4,290	38.3%	6,616	59.1%	298	2.7%

*All Study Jurisdictions

Another striking pattern is that few project approvals within our dataset required an EIR, but projects that underwent the EIR process faced comparatively more litigation. Statewide, 23.3% of all entitled projects that went through an EIR were litigated,

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constituting 26.8% of all units in projects that went through an EIR. The percentage of projects and units that were litigated for any other CEQA pathway were much lower: 2.9% of projects that were approved through an MND were litigated, constituting 3.0% of units; 1.3% of tiered projects were litigated, constituting 1.0% of units; 0.9% of exempt projects were litigated, constituting 2.2% of units. This raises additional questions about whether EIRs are prepared in anticipation of litigation, or as a response to local political pressure or opposition to a project. Again, while the sample size is small, a comparison with the exurban jurisdictions reveals a very similar pattern: All three litigated exurban projects required an EIR.

Table 26: Litigation and Use of EIRs

	Projects that used EIRs[1]		Units that used EIRs[2]		Projects that used EIRs that were litigated		Units that used EIRs that were litigated	
	Number	%	Number	%	Number	%	Number	%
TOTAL*	90	5.5%	28,501	18.7%	21	23.3%	7,627	26.8%

[1]Some projects that used EIRs may have also gone through other CEQA pathways. One litigated project went through two CEQA pathways (MND and Hybrid Exemption).
[2]As a percentage of all discretionary projects.
*All Study Jurisdictions

Table 27: Litigation and Use of MNDs

	Projects that used MNDs[1]		Units that used MNDs[2]		Projects that used MNDs that were litigated		Units that used MNDs that were litigated	
	Number	%	Number	%	Number	%	Number	%
TOTAL*	629	38.5%	50,640	33.3%	18	2.9%	1,525	3.0%

[1]Some projects that used MNDs may have also gone through other CEQA pathways. One litigated project went through two CEQA pathways (MND and Hybrid Exemption).
[2]As a percentage of all discretionary projects.
*All Study Jurisdictions

Table 28: Litigation and Use of CEQA Tiering

	Projects that used CEQA Tiering[1]		Units that used CEQA tiering[2]		# projects that used CEQA tiering that were litigated		# of units that used CEQA tiering that were litigated	
	Number	%	Number	%	Number	%	Number	%
TOTAL*	374	22.9%	44,217	29.1%	5	1.3%	453	1.0%

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[1]Some projects that used tiering may have also gone through other CEQA pathways. One litigated project went through two CEQA pathways (MND and Hybrid Exemption).
[2]As a percentage of all discretionary projects.
*All Study Jurisdictions

Table 29: Litigation and Use of CEQA Exemptions

	Projects Exempt[1]		Units exempt[2]		# projects that were exempt and litigated		# of units that were exempt and litigated	
	Number	%	Number	%	Number	%	Number	%
TOTAL*	554	33.3%	20,095	13.2%	5	0.92%	432	2.2%

[1]Some projects that used a CEQA exemption may have also gone through other CEQA pathways. One litigated project went through two CEQA pathways (MND and Hybrid Exemption).
[2]As a percentage of all discretionary projects.
*All Study Jurisdictions

Higher-profile local land use approval processes, specifically rezoning, also faced comparatively higher rates of challenge in court. Table 30 indicates 7.4% of projects that received a rezoning faced legal challenges. In contrast, Table 31 indicates that 2.2% of projects requiring a variance, and 4.5% of projects requiring a conditional use permit, faced litigation. All other approval pathways had a litigation rate of 2.9% of projects. Again, while the sample size is small, a comparison with the exurban jurisdictions reveals a somewhat different pattern, with litigation more evenly distributed across different approval pathways: Of the three projects litigated, one was approved through a rezone and CUP process, while the other two were approved through alternative processes.

Table 30: Litigation and Land Use Approval Pathways

	Projects that received a rezoning	# Rezone projects that were litigated	% Rezone projects that were litigated	CUP projects	CUP projects that were litigated	% CUP projects that were litigated
TOTAL*	242	18	7.4%	242	11	4.5%

*All Study Jurisdictions

Table 31: Litigation and Land Use Approval Pathways

	Variance projects	# Variance projects that were litigated	% Variance projects that were litigated	# All Other Approvals	% All Other Approvals projects that were litigated	% All Other Approvals that were Litigated
TOTAL*	179	4	2.2%	1,095	32	2.9%

*All Study Jurisdictions

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In addition to few projects facing litigation, petitioners or plaintiffs rarely prevailed in court.[67] Petitioners were more likely to reach a settlement with the defendant (defined as either an explicit settlement between the parties that was filed with and/or approved by the court, or as a voluntary motion by a petitioner to dismiss a lawsuit, which is often associated with a private agreement between the parties to resolve the lawsuit). Of all lawsuits, more than half were settled. As shown in Tables 32 and 33, these success rates did not vary significantly depending on whether the lawsuit contained GHG or VMT claims.

Table 32: Litigation Success Rates

	Litigated Projects[1]	Litigated Units	# Projects litigation Success	Overall % success for litigation	# Projects litigation settled	% Projects Litigation Settled	# Projects Defendant Wins	% Projects Defendant Wins
TOTAL*	55	11,204	4	7.3%	30	54.5%	20	36.4%

*All Study Jurisdictions
[1] 1 project had unknown litigation outcome.

Table 33: Litigation Success Rates and GHG/VMT Claims

	Litigated Projects	Litigated Units	# Projects litigation Success	Overall % success for litigation	# Projects litigation settled	% Projects Litigation Settled	# Projects Defendant Wins	% Projects Defendant Wins
GHG or VMT Claims	40	9,349	3	7.5%	22	55.0%	14	35.0%
No GHG or VMT Claims	15	1,855	1	6.7%	8	53.3%	6	40.0%
TOTAL	55	11,204	4	7.3%	30	54.5%	20	36.4%

*All Study Jurisdictions, 1 project has a unknown outcome.

Though less than 3% of all developments faced litigation, litigation adds substantial time to the overall development timeline. As shown in Table 34: Entitlement Timeframe and Litigation, for projects that are litigated, the litigation process adds almost two years to overall timeframes. The litigation process is particularly drawn out for projects where there is an appeal of the initial trial court decision on the lawsuit. For these projects, the additional step of an appeal to the Court of Appeal adds on average almost two and half years to the timeframe compared to projects where the initial lawsuit is not appealed beyond the trial court. These extended timelines only apply to a limited number of projects; only 13 out of 55 total projects that were litigated had the lawsuit taken to the

[67] We calculate these percentages based on the number of projects challenged by lawsuits, rather than the number of lawsuits, since some projects were challenged by more than one lawsuit. If we looked at the number of lawsuits, the success rates would be lower.

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Court of Appeal, but for these projects overall timeframes extended to over six years. In addition, in the few instances where the plaintiff succeeded in their challenge to the project approval, the end of litigation did not allow the project to proceed until after the local jurisdiction completed additional process, adding even more time to the overall approval process.

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Table 34: Entitlement Timeframe and Litigation

Jurisdiction	Total Number of Entitled Projects	Median Entitlement Timeframe for all Projects	Total Number of Litigated Projects	Average Entitlement Timeframe for Litigated Projects	Median Entitlement Timeframe for Litigated Projects	Entitlement Process + Lawsuit Completion Average Timeframe (Months)	Entitlement Process + Lawsuit Completion Median Timeframe (Months)
Long Beach	27	7.6	5	14.79	9.93	18.34	15.09
Los Angeles	790	9.7	30	24.50	12.36	47.13	40.37
Oakland	136	5.4	1	2.96	2.96	14.00	14.00
Pasadena	38	9.9	1	unavailable	unavailable	unavailable	unavailable
Redwood City	18	7.5	2	10.70	10.70	23.29	23.29
Sacramento	68	6.4	2	38.54	38.54	76.94	76.94
San Diego	176	13.9	7	29.92	22.58	49.64	55.49
San Francisco	140	26.6	3	53.75	47.83	89.55	88.46
San Jose	81	17.7	2	31.72	31.72	57.50	57.50
Placer County	19	10	1	10.85	10.85	25.61	25.61
San Diego County	27	11.4	1	161.74	161.74	198.98	198.98
Los Angeles County	34	17.5	1	176.53	176.53	208.84	208.84
Infill Total	1,539	11.0	53	25.87	15.88	47.14	39.25
Exurban Total	102	12.8	3	116.37	161.74	144.48	198.98
Statewide Total	1,641	11.0	56	30.90	16.10	52.31	39.81

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Table 35: Appeals and Litigation Timeframes

Jurisdiction	Total Number of Litigated Projects where Trial Court Decision was Not Appealed	Total Number of Litigated Projects where Trial Court Decision was Appealed	Average Entitlement + Litigation Timeframe for Litigated Projects where Trial Court Decision Was Not Appealed	Median Entitlement + Litigation Timeframe for Litigated Projects where Trial Court Decision Was Not Appealed	Average Entitlement + Litigation Timeframe for Litigated Projects where Trial Court Decision Was Appealed	Median Entitlement + Litigation Timeframe for Litigated Projects where Trial Court Decision Was Appealed
Long Beach	5	0	18.34	15.09	-	-
Los Angeles	25	5	46.06	36.06	49.79	47.24
Oakland	1	0	14.00	14.00	-	-
Pasadena	1	0	unavailable	unavailable	-	-
Redwood City	2	0	23.29	23.29	-	-
Sacramento	0	2	-	-	76.94	76.94
San Diego	6	1	47.01	45.81	65.45	65.45
San Francisco	1	2	92.37	92.37	88.13	88.13
San Jose	1	1	14.92	14.92	100.07	100.07
Placer County	0	1	-	-	25.61	25.61
San Diego County	0	1	-	-	198.98	198.98
Los Angeles County	1	0	208.84	208.84	-	-
Infill Total	42	11	41.18	31.92	67.69	65.45
Exurban Total	1	2	208.84	208.84	112.29	112.29
Statewide Total	43	13	45.26	32.41	74.55	65.45

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We also analyzed if and whether the litigation and appellate review processes prevented development activity for a particular project from proceeding. To do this, we examined media coverage of litigated projects, where available. Media reports indicate that one project was definitively canceled as a result of litigation, whereas nine projects proceeded to construction after litigation. Media coverage of the litigated projects indicated that project opponents shared a range of concerns, though scale was the most frequently cited concern, followed by historical preservation issues, gentrification, traffic, and health concerns.

The variability of litigation across jurisdictions suggests that local politics and context drive these outcomes, rather than state-level mandates. Notably, lawsuits frequently rely on claims based on local law and state environmental law; this indicates most lawsuits in our dataset might still proceed, producing delay and uncertainty. There are high rates of lawsuits among projects with particular approval pathways, even if they are infrequent (e.g., EIR versus other CEQA compliance options), pathways that might reflect contentious approval processes at the local level. It may be that local political opposition, rather than state mandates, determines whether some projects undergo more intensive environmental review pathways, though this would require additional research. Finally, we note that although lawsuits rarely succeed on the merits (and are more likely to either settle or result in a defendant victory) they likely add substantial time to the final approval of a project.

Comparing litigation rates across infill and exurban jurisdictions, we do not observe notable differences in litigation rates at the project level between infill and exurban jurisdictions, though litigation rates calculated by percentage of units litigated are much lower in exurban jurisdictions.

Our interviews indicate a need for additional research to inform all litigation analysis in both infill and exurban jurisdictions. Our interview data indicated that in the exurban context for large multi-stage, single-family subdivision development, litigation generally focused on the specific plan or other plan-level documents that lay out the overall staged process for the development. Our research methods for this study focused on litigation associated with each individual entitlement observation. We therefore may have underestimated the amount of litigation associated with specific plans in either the infill or exurban context. Research that assesses the litigation rates for specific plans used to approve individual projects in our datasets for both our exurban and infill jurisdictions is outside the scope of this study but would be an appropriate next step.

10. Approximately 11% of development approvals are challenged through local administrative appeals, with variable rates across jurisdictions.

Administrative appeals are important indicators of local opposition to project approvals. Local objectors can challenge project approvals through administrative appeals processes. Local governments set up these processes as part of their zoning codes to allow appeals of adverse zoning decisions by lower bodies (e.g., the Planning Commission) to higher levels of local government (e.g., the City Council). As Table 35 below indicates, administrative appeals occur at higher rates than litigation. Across all our

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study jurisdictions, around 10.84% of all observed projects faced administrative appeals, constituting 18.40% of approved units. Three 100% Affordable Developments faced opposition through local administrative appeals.[68] But there are also variations in administrative appeal rates across cities that are even more extreme than the variation of litigation rates we observed in Table 20. Notably, exurban jurisdictions in the aggregate had lower rates of administrative appeals, in terms of both projects (7.62%) and units (6.26%). This difference may be due to either infill projects facing a larger number of potential neighbors who might oppose the project in the infill context and/or that infill jurisdictions make administrative appeals easier to pursue.

This variation in administrative appeal rates is consistent with how local control over administrative appeals operates. Local governments develop and control administrative appeal processes, including whether and how projects can be appealed and whether appellants must post bonds or pay fees and the amount of bonds. Therefore, administrative appeal rates reflect both how local governments choose to encourage (or discourage) opposition through administrative appeals, as well as how local politics might impact land use approvals.

In contrast to litigation, administrative appeals were more focused on conditional use permits (CUP)—with 12.8% of rezoning projects administratively appealed, 19.3% CUP approvals administratively appealed, and 9.5% of all other approvals administratively appealed.

[68] One of these was the 20-unit Habitat for Humanity development at 612 Jefferson Avenue in Redwood City. Another was a 94-unit development in the Mission neighborhood of San Francisco (1296 Shotwell), and the third was an 81-unit development in downtown Oakland at 1415 Harrison Street.

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Table 36: Opposition to Approvals Through Administrative Appeals in All Jurisdictions[1]

Jurisdiction	Number of Approvals	Number of Units	Appealed Approvals	Appealed All Units	% Appealed Approvals	% Appealed All Units	Appealed Affordable Units	% Appealed Affordable Units
Folsom	6	1,364	0	0	0.0%	0.0%	0	0
Fresno	64	6,153	2	260	3.1%	4.2%	90	29.2
Inglewood	4	568	1	310	25.0%	54.6%	0	0
Long Beach	27	2,604	1	315	3.7%	12.1%	0	0
Los Angeles	1,071	65,846	138	17,887	12. 9%	27.2%	974	20.5
Mountain View	33	2,767	0	0	0.0%	0.0%	0	0
Oakland	136	14,399	16	2,149	11.8%	14.9%	81	7.5
Palo Alto	7	351	1	180	14.3%	51.3%	0	0
Pasadena	37	1,608	2	163	5.4%	10.1%	8	6.3
Redondo Beach	7	211	4	183	57.1%	86.7%	0	0
Redwood City	18	1,630	4	863	22.2%	52.9%	55	30.1
Sacramento	68	5,794	3	377	4.4%	6.5%	0	0
San Diego	176	13,957	9	661	5.1%	4.7%	29	2.3
San Francisco	140	14,269	20	3,477	14.3%	24.4%	649	30.0
San Jose	81	14,601	6	1,631	7.4%	11.2%	0	0
Santa Monica	21	1,447	2	387	9.5%	26.7%	39	20.5
INFILL TOTAL	**1,896**	**147,569**	**209**	**28,843**	**11.0%**	**19.6%**	**1,925**	**16.6%**
Los Angeles County	37	2,532	5	800	13.5%	31.6%	91	10.4
Placer County	19	3,535	2	51	10.5%	1.4%	0	0
Roseville	22	6,394	0	0	0.00%	0.00%	0	0
San Diego County	27	1,434	1	19	3.7%	1.3%	0	0
EXURBAN TOTAL	**105**	**13,895**	**8**	**870**	**7.6%**	**6.3%**	**91**	**6.1%**
TOTAL*	**2,001**	**161,464**	**217**	**29,713**	**10.8%**	**18.4%**	**2,016**	**15.4**

*All Study Jurisdictions

[1]Note that ministerial approvals (included in the project and unit counts above in jurisdictions that allow for ministerial development) are not subject to administrative appeals. However, we calculate appeal rates as a % of both discretionary and ministerial projects and units.

Table 37: Administrative Appeals and Rezoning

Jurisdiction	Total # Projects	Total # Units	Rezone projects	# Rezone projects that were appealed	% Rezone projects that were appealed
TOTAL*	**2,001**	**161,464**	**242**	**31**	**12.8%**

*All Study Jurisdictions

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Table 38: Administrative Appeals and CUPs

	Total # Projects	Total # Units	CUP projects	CUP projects that were appealed	% CUP projects that were appealed
TOTAL*	**2,001**	**161,464**	**243**	**47**	**19.3%**

*All Study Jurisdictions

Table 39: Administrative Appeals and Variances

	Total # Projects	Total # Units	Variance Projects	Variance projects that were appealed	% Variance projects that were appealed
TOTAL*	**2,001**	**161,464**	**179**	**24**	**13.4%**

*All Study Jurisdictions

Table 40: Administrative Appeals and Other Land Use Approval Pathways

	Total # Projects	Total # Units	All other approvals # projects	All other approvals # projects that were appealed	% all other approvals projects that were appealed
TOTAL*	**2,001**	**161,464**	**1,460**	**139**	**9.52%**

*All Study Jurisdictions

When we analyze project approvals across all sixteen infill jurisdictions that faced opposition through administrative appeals to the local government, we see that 26.61% of all dense developments sited in Highest and High Resource neighborhoods faced opposition through an administrative appeal, considerably higher than the 17.23% of dense developments that faced opposition in Low Resource and High Segregation and Poverty neighborhoods. Breaking out city-specific rates, however, we see that the rates of opposition vary considerably across neighborhoods depending on the city. In San Francisco, for example, 21.51% of all dense developments sited in Highest and High Resource neighborhoods faced opposition through an administrative appeal, a share of projects considerably lower than the 44.17% of projects that faced opposition in Low Resource and High Segregation and Poverty neighborhoods. By contrast, in Los Angeles, the percent of all dense developments sited in Highest and High Resource neighborhoods that faced opposition through an administrative appeal was greater than those sited in

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Low Resource and High Segregation and Poverty neighborhoods: 35.81% and 18.96% respectively.

The trend is different in exurban areas—but that is likely due in part to the fact that some exurban areas do not have areas classified as High Segregation and Poverty. Los Angeles County, which is the only exurban jurisdiction with all five classifications has a more pronounced difference in opposition rates relative to opportunity. 66.67% of projects in Highest Resource areas Los Angeles County faced opposition through administrative appeals, as compared to 16.67% of projects in High Segregation and Poverty areas.

We also examined the extent to which administrative appeals were based on CEQA versus non-CEQA claims. We were able to determine the basis of an administrative appeal in about two-third of the appeals (152 out of 217 total appeals), and of those, 21 (9.7%) involved a CEQA claim.

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Table 41: % Projects Appealed in TCAC Areas[1]

Jurisdiction	% Projects appealed in Highest Resource	% Projects appealed in High Resource	% Projects appealed in Moderate Resource	% Projects appealed in Low Resource	% Projects appealed in High Segregation & Poverty
Folsom	0.00%	-[2]	-	-	-
Fresno	2.94%	0.00%	0.00%	0.00%	9.09%
Inglewood	-	-	-	25.00%	-
Long Beach[3]	-	0.00%	-	5.88%	0.00%
Los Angeles[4]	20.59%	15.13%	10.27%	11.11%	7.62%
Mountain View	0.00%	0.00%	0.00%	-	-
Oakland	-	0.00%	20.69%	8.11%	12.50%
Palo Alto	16.67%	0.00%	-	-	-
Pasadena[5]	0.00%	5.26%	0.00%	0.00%	20.00%
Redondo Beach	57.14%	-	-	-	-
Redwood City	0.00%	-	0.00%	28.57%	-
Sacramento[6]	0.00%	8.33%	4.35%	0.00%	8.33%
San Diego[7]	0.00%	7.79%	13.64%	0.00%	0.00%
San Francisco[8]	25.00%	5.88%	19.05%	11.11%	0.00%
San Jose[9]	25.00%	0.00%	7.14%	6.82%	0.00%
Santa Monica	5.00%	100.00%	-	-	-
Infill Totals	**14.74%**	**12.07%**	**11.09%**	**9.62%**	**7.37%**
Los Angeles County	66.67%	0.00%	14.29%	8.33%	16.67%
Placer County[10]	8.33%	0.00%	0.00%	100.00%	-
Roseville	0.00%	-	0.00%	-	-
San Diego County[11]	0.00%	0.00%	7.14%	0.00%	-
Exurban Totals	**7.69%**	**0.00%**	**8.33%**	**9.09%**	**16.67%**
All Jurisdictions Totals	**14.03%**	**11.65%**	**10.96%**	**9.59%**	**7.55%**

[1]Rate of appeals per project includes ministerial and possibly ministerial projects, which are not subject to administrative appeal, in Los Angeles, Los Angeles County, and San Diego.
[2]No intersection between jurisdiction and TCAC category, or no approved projects in that TCAC category
[3]In Long Beach, 4 projects that were litigated were not administratively appealed.
[4]In Los Angeles, 3 projects that were litigated were not administratively appealed.

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[5]In Pasadena, one project that was litigated was not administratively appealed.
[6]In Sacramento, one project that was litigated was not administratively appealed.
[7]In San Diego, two projects that were litigated were not administratively appealed.
[8]In San Francisco, one project that was litigated was not administratively appealed.
[9]In San Jose, one project that was litigated was not administratively appealed.
[10]In Placer County, one project that was litigated was not administratively appealed.
[11]In San Diego County, one project that was litigated was not administratively appealed.

B. Assessing regulatory constraints on achieving fair housing goals.

California's new AFFH rule and recent legislative reform to the Housing Element law may operate together to require local governments to identify and correct for local regulatory constraints on housing development that obstruct fair housing goals. Assessing whether a city's regulatory environment potentially constrains housing development that promotes fair housing goals requires evaluating how a city's regulatory environment compares with its neighbors within a metro area, and whether its planning and zoning controls might promote racial and income residential integration within its own city boundaries. The latter is particularly true in racially and ethnically diverse larger cities that might be segregated, particularly by income, at a neighborhood level. Large diverse cities can be comprised of distinct neighborhoods—some of which offer tremendous access to economic and educational opportunity and others with long histories of disinvestment and present-day concerns about gentrification and displacement. To evaluate whether land use regulation advances fair housing goals within cities, we use our data to identify where approved housing of different types is located within city boundaries in relationship to transit and existing opportunity metrics.

This deep-dive into local regulatory environments also provides useful analysis for aspects of state-level policymaking. As discussed above, Housing Element law has primarily used base zoning (use and density) as the tool to measure whether a jurisdiction is zoning to accommodate housing for all income levels, but process constraints may also operate to exclude. Our data uniquely allows us insight into process constraints, even in cities that make a lot of zoned land available for all income levels. We illustrate this by comparing two very different local regulatory environments in terms of geography, size, and percentage of residentially zoned land in in a HQTA—San Francisco and Los Angeles.

1. Analyzing the impact of onerous process on achieving fair housing and climate goals in San Francisco.

San Francisco's acute need for deed-restricted affordable development outpaces its available public subsidies for affordable development (Elmendorf et al., 2020b) and it is one of the most expensive cities to live in among our study group. San Francisco's local housing policy in many ways indicates an intent to promote inclusion and fair housing goals. San Francisco has inclusionary zoning, rent stabilization, and tenant protections. After the dissolution of Redevelopment Agencies, San Francisco created one of the only independent successor agencies statewide that selects, entitles, and funds projects in former redevelopment areas. The HOPE SF redevelopment (included among our observations) prioritized multi-year community engagement and public health, developing

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temporary housing to keep low-income tenants in place during demolition and rebuilding to avoid displacement associated with past public housing renovations (Fullilove, 2004).

But our above analysis of the city's land use regulatory environment suggests that San Francisco has a prohibitive regulatory environment. San Francisco, the city with the most permissive base zoning among all cities in our study, is also an extreme outlier in terms of timeframes to entitlement, generally. Notably, the city charter's discretionary permit provision creates a blanket discretionary review requirement applicable to all projects, including those that are consistent with base zoning.

We now examine San Francisco's 140 project observations in depth to understand whether approval pathways, product types, or project siting correlate with longer approval delays. Nearly everything San Francisco approves is in HQTA and is multi-family housing. In this way, San Francisco's entitlement patterns support climate policy. But entitlement timeframes in San Francisco can make it difficult for at least some developers to proceed (particularly affordable developers); only 5% of all the 140 project observations were entitled in 12 months or less. We sort the projects by timelines into quartiles, with the upper quartile of 36 projects compared against the lower quartiles (totaling 104 projects) to explore differences between these groups in local zoning pathways, state mandated environmental review pathways, project attributes such as size, affordability defined by market rate, mixed income, and 100 percent deed-restricted affordable housing.

Table 42: San Francisco Timelines Percentiles and Median—All Projects

Maximum	~134 months
75th Percentile	~38 months
Median	~27 months
25th Percentile	~21 months
Minimum	~3 months[1]

N = 140 Projects
[1]3.48 months

Processes we expect would take longer—such as rezoning and completing a full Environmental Impact Report—are relatively infrequent but slightly more represented in the upper quartile. That is unsurprising. What is surprising is the number of code-compliant observations in in the upper quartile. We examined the ten code compliant observations in the upper quartile for timeframes and found that nine are in the same Eastern Neighborhoods Specific Plan in the Mission, Central Waterfront, and East SOMA areas. This should prompt San Francisco to explore why proposed developments conforming to underlying base zoning and located within a specific plan area would be in a group with timeframes of at or over 38 months. It may be that at least some are located within neighborhoods with a history of contentious politics around new development (Hutson, 2016).

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Table 43: San Francisco Prevalence of Zoning Actions in Timeline Quartiles

	Rezoning	GPA	Variance	CUP	Code Compliant
Upper Quartile	3	1	11	6	10
	8.82%	2.94%	32.35%	17.65%	29.41%
Lower Quartiles	6	5	39	34	32
	5.66%	4.72%	36.79%	32.08%	30.19%

Note: Percentages for these discrete pathways will not total to 100% as some observations will require more than one of these discretionary review approvals (which is why the number total more than 140 observations).

Table 44: San Francisco Prevalence of California Environmental Quality Act Review Pathway by Timeline Quartiles

	Exemption	ND	MND	Tiering	EIR	Addendum	Unknown
Upper Quartile	1	1	2	23	7	0	0
	2.94%	2.94%	5.88%	67.7%	20.59%	0.00%	0.00%
Lower Quartiles	11	1	7	77	7	2	1
	10.38%	0.94%	6.60%	72.64%	6.60%	1.89%	0.94%

[1]Projects in multiple CEQA pathways included in the more intensive CEQA pathway only.

The upper quartile has a higher percentage of developments that are over 75 units, which might suggest that these projects present more difficult issues for land use approvals and environmental review.

Table 45: San Francisco Project Size Sorted by Timeline Quartiles

	5 to 24 units	25 to 49 units	50 to 75 units	over 75 units
Upper Quartile	10	6	2	16
	29.41%	17.65%	5.88%	47.06%
Lower Quartiles	30	20	11	45
	28.30%	18.87%	10.38%	42.45%

There is also a higher percentage of mixed income developments in the upper quartile. Given that San Francisco relies on its inclusionary ordinance for affordable development, and mixed income development would theoretically support economic integration, this may be a point of concern for the City of San Francisco and demand further research.

Table 46: San Francisco Affordability Sorted by Timeline Quartiles

	Market-Rate	Mixed Income	100% Affordable
Upper Quartile	15	19	0
	44.12%	55.88%	0.00%
Lower Quartiles	47	54	5
	44.34%	50.94%	4.72%

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Geocoding the approval observations then allows for analysis of median timelines in relationship to product type (affordability) and access to opportunity. We use the California's ***Tax Credit Allocation Committee (TCAC)***[69] Shapefiles for the 2019 classifications to analyze median timelines in neighborhoods sorted by opportunity classifications. There is a higher percentage of developments sited in Highest Resource areas in the upper quartile, and a lower percentage in Low Resource neighborhoods compared with the lower quartiles. This is consistent with research in other states that finds that residents of high resource neighborhoods may use the land use review process to object to housing projects (Einstein, 2019).

Table 47: San Francisco Opportunity Classifications Sorted by Timeline Quartiles

	Highest Resource	High Resource	Moderate Resource	Low Resource	High Segregation & Poverty
Upper Quartile	3	4	16	10	1
	8.82%	11.76%	47.06%	29.41%	2.94%
Lower Quartiles	1	13	47	44	1
	0.94%	12.26%	44.34%	41.51%	0.94%

Comparing median timeframes across affordability type and neighborhood opportunity classification produced similar results, and the details raise important implications for fair housing. Median timeframes for market rate development in the Highest Resource areas timelines took the longest (at approximately 90 months), and mixed income housing in the Highest Resource and High Segregation and Poverty neighborhoods were the next longest timelines (one entitlement in each that took approximately 39 months). There were also no 100% Affordable Developments entitled in High or Highest Resource areas in our dataset. Most all market rate development is sited in Moderate Resource areas and most mixed income development is sited in Low Resource areas.

Four of the five 100% affordable developments were among the entitlements below the ~27 months median. But of 140 entitlement observations, there were only seven proposed developments that took 12 or fewer months to entitlement and only one of the seven was a 100% affordable development. The 100% affordable development took ~11.9 months to entitle, was in a Low Resource area, and received a general plan amendment and rezoning. The observation with the shortest timeframe to entitlement in our San Francisco data—a HOPESF project in a Moderate Resource area would redevelop a public housing complex into 222 new residential units, 120 of which would be deed-restricted affordable.

[69] The California Tax Credit Allocation Committee administers the federal and state Low-Income Housing Tax Credit Program. These are programs to promote private investment in affordable rental housing for low-income Californians. For more information, see California Tax Credit Allocation Committee (CTCAC), https://www.treasurer.ca.gov/ctcac/.

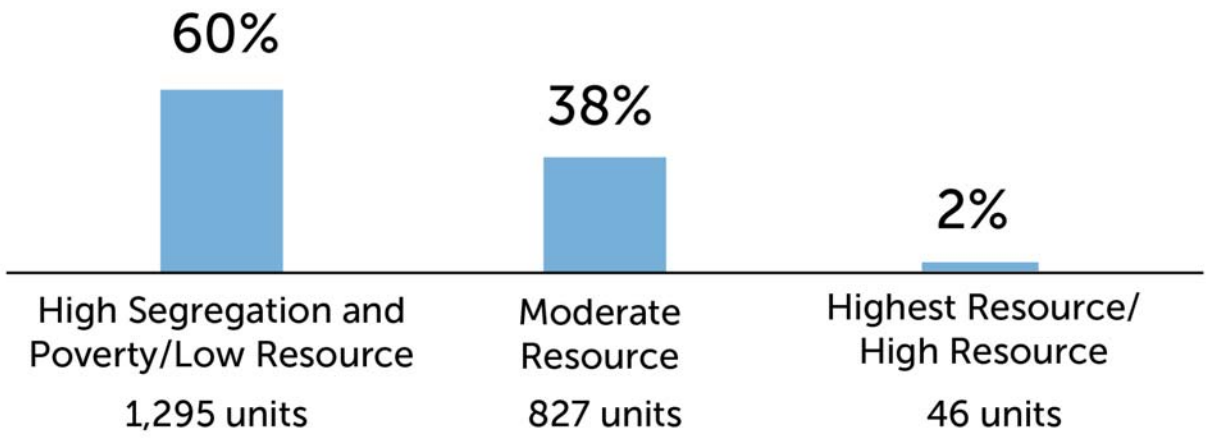
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Table 48: San Francisco Median Timelines Measured by Affordability and Access to Opportunity

Highest Resource	Projects	Units	Median Time	Mean Time
Market Rate	3	69	89.97	79.67
Mixed Income	1	41	38.69	38.69
100% Affordable	0	0	-	-
High Resource	Projects	Units	Median Time	Mean Time
Market Rate	9	196	25.05	24.50
Mixed Income	8	390	25.31	36.67
100% Affordable	0	0	-	-
Moderate Resource	Projects	Units	Median Time	Mean Time
Market Rate	32	2,864	26.17	33.48
Mixed Income	30	3,890	30.67	30.26
100% Affordable	1	94	12.06	12.06
Low Resource	Projects	Units	Median Time	Mean Time
Market Rate	18	1,175	23.98	26.72
Mixed Income	33	5,000	31.23	30.90
100% Affordable	3	306	15.28	14.86
High Segregation & Poverty	Projects	Units	Median Time	Mean Time
Market Rate	0	0	-	-
Mixed Income	1	77	39.35	39.35
100% Affordable	1	167	34.48	34.48

Also critical to fair housing policy is the distribution of deed-restricted units across the city—relative to access to opportunity. The entitlement observations within this data indicate that only 2% of entitled affordable units are in Highest and High Resource areas, and 60% are in Low Resource or High Segregation & Poverty areas.[70] Translating the numbers above into a chart demonstrates the extreme problem with current distribution of entitled units in our study.

Chart 2: Distribution of Deed-Restricted Affordable Housing Units in Relationship to Opportunity Classification in San Francisco



[70] 14 projects in San Francisco had an unknown number of deed-restricted units and were not included in this calculation.

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This data highlights how onerous local process constraints within San Francisco during our study years may not have advanced the City's fair housing goals. First, approval processes in in San Francisco took far longer than any of our other study cities, including those cities that are similar in size (such as San Diego or San Jose), even though San Francisco was more resourced in planning staff than much larger cities (Mawhorter & Reid, 2018). Second, approval delays were not easily attributable to typically intensive processes such as full environmental review or rezoning, as most proposed development does not require a full Environmental Impact Report or require a rezoning. Third, lengthy timelines persisted for development that conformed to underlying base zoning proposed within specific plan areas. Fourth, timeframes were disproportionately longer in highest resource neighborhoods. Finally, these entitlements would yield very little affordability in higher opportunity areas. The first four findings indicate that neighborhood level politics, not state mandates or planning department staffing or resources, likely influenced how land use regulation operated in San Francisco during these years. The last finding raises concerns for fair housing goals.

In sum, San Francisco had more permissive base zoning, generally, then any other city we studied, but that was insufficient to overcome the prohibitive nature of its overall regulatory environment. Permissive base zoning, limited to specific sections of the city with a history of disinvestment or industrial use (O'Neill et al., 2020), now overlaps with high opportunity areas. Generally, permissive base zoning would invite opportunities for low-income housing. But the discretionary review process was exceptionally onerous (particularly in Highest Resource areas), taking years to get to entitlement for code compliant development, with markedly longer timeframes in different neighborhoods and for different types of housing. This typically increases uncertainty in the development process, limiting development to investors that can manage the risk and handle holding costs that span years. In the context of San Francisco, this regulatory environment may have promoted development of extremely expensive housing with a small (and likely inadequate) number of deed-restricted units—particularly in Highest or High resource neighborhoods. Also, the process constraints likely prevented increasing housing supply for the working poor that do not qualify for below market rate housing and middle-income households. In this way, San Francisco's local regulation appears to have operated in an exclusionary manner and did not promote fair housing goals of affirmatively furthering fair housing.

The next level of research in this area would look critically into qualitative data associated with proposed developments in the upper quartile for timelines, to understand whether there were commonalities across why those developments took more than three years to entitlement—particularly code compliant mixed income housing. Additional research should also explore if and how these 140 developments proceeded to certificate of occupancy, the rental and purchase prices of the housing units in the entitlement data, and in and out migration of different demographic groups in relationship to locations of these proposed developments. This is outside the scope of this study.

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2. Analyzing whether climate policy and fair housing policy are in tension in the City of Los Angeles.

If compared to San Francisco, the City of Los Angeles has a less stringent regulatory environment. The City of Los Angeles provides for ministerial review of dense development. It is also unique among all our cities as the only study city with a substantial number of developments in our study years approved through a ministerial process. Within Los Angeles County, the City of Los Angeles approved far more housing than the other jurisdictions we studied, even when standardized for city population. Although only 26% of the city's zoned land area is HQTA, approximately 81% of all approved dense development is in a HQTA (O'Neill et al., 2020). That pattern generally supports state policy aims of placing more density in locations where residents can access public transit.

Determining whether housing approvals are likely to further fair housing goals requires a more searching analysis of Los Angeles housing approvals using TCAC mapping, to start. Los Angeles approved housing development in all five neighborhood classifications, but the highest percentages of proposed dense housing units in Los Angeles are sited in Moderate Resource (28.61%) or High Segregation and Poverty neighborhoods (28.48%). This is significant because citywide, only about 20% of the land area was classified as Moderate Resource, and 11% of the land area was classified as High Segregation and Poverty. Standing alone this fact does not necessarily indicate that these dense development approvals worked against fair housing goals. What is more concerning is that although 27% of the City's zoned land area citywide was classified as Highest Resource, less than 9% of all units were approved in Highest Resource neighborhoods. In contrast, ~10% of the City's zoned land area is classified as High Segregation and Poverty, and ~28% of units were approved in High Segregation and Poverty areas. Fair housing analysis invites questions about why this is and would require more research to explore potential impacts.

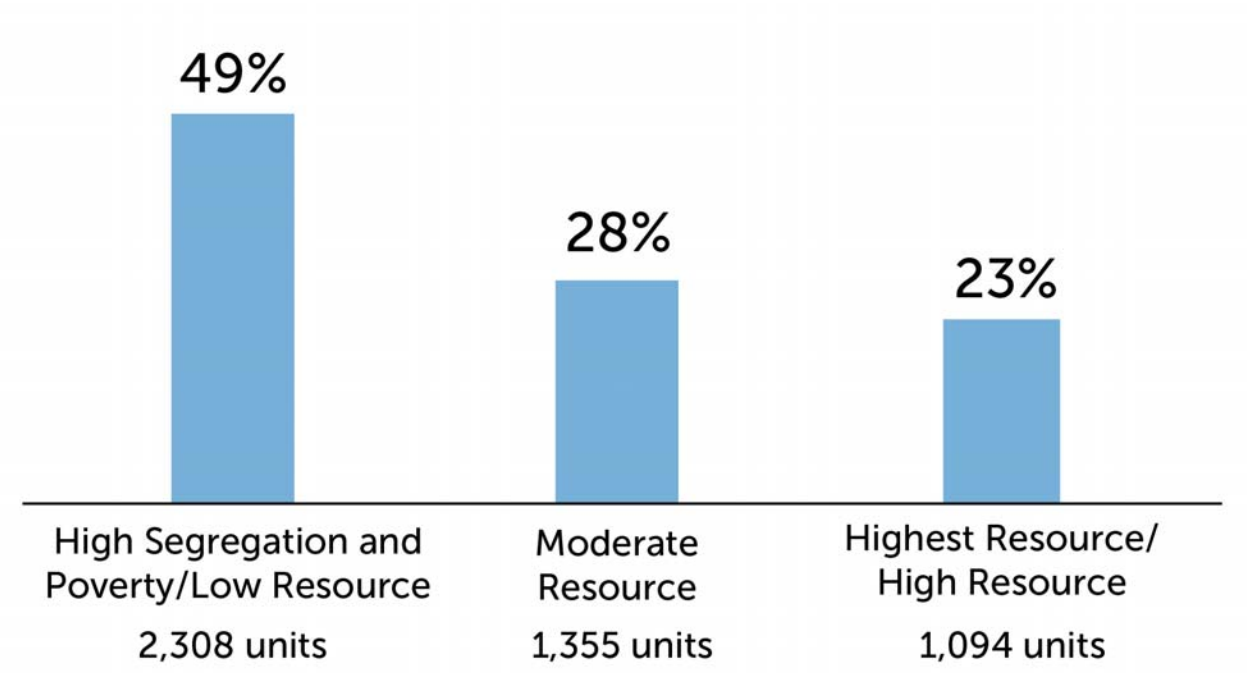
Table 49: Percentage of Los Angeles Entire City Zoned Land Area by TCAC Classification and Percentage of Units Entire City by TCAC Classification

% Zoned Land in Highest Resource	% Zoned Land in High Resource	% Zoned Land in Moderate Resource	% Zoned Land in Low Resource	% Zoned Land in High Segregation and Poverty	% Zoned Land in Uncategorized
27.4	15.7	18.8	13.0	9.8	15.3
% Units Approved in Highest Resource	% Units Approved in High Resource	% Units Approved in Moderate Resource	% Units Approved in Low Resource	% Units Approved in High Segregation and Poverty	% Units Approved in Uncategorized
8.65	18.24	28.65	16.01	28.34	0.12

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One challenge that the City of Los Angeles must grapple with is how little land area is HQTA to begin with and where existing transit investment exists in relationship to opportunity. If the aim is to support climate policy, TOD requires siting in the HQTA. 100% affordable development also often depends on finding locations near transit to secure financing. During our study years, the City of Los Angeles approved affordable units at a comparatively lower rate than every other jurisdiction we studied within the County, except Redondo Beach—which approved less than 1% affordable housing. The highest percentage (approximately 35%) of deed-restricted affordable units (units that are legally required to be offered below market rate) were in High Segregation and Poverty neighborhoods. Chart 3 highlights that nearly half of all affordable housing, if built, would be in areas of reduced opportunity. If we combine the amount of affordable development going into Highest Resource areas with High Resource areas, we also see that less than a quarter of all affordable units, if built, would be in areas with the most opportunity. In sum, the location of affordable housing units approved in these years may have limited access to opportunity for low-income households. The disproportionate rate of affordable development in High Segregation and Poverty neighborhoods, and low rate of affordable development in Highest and High Resource neighborhoods, raises questions about how current zoning, particularly residentially zoned land in HQTA contributes to these outcomes.[71]

Chart 3: Siting of Deed-Restricted Affordable housing units in relationship to TCAC Los Angeles



[1]3 projects in Los Angeles had an unknown number of deed-restricted units and were not included in this calculation.

[71] The City of Los Angeles' Department of City Planning is examining how zoning and planning obstruct fair housing goals based on available 2021 publicly available memoranda to the City Council. (See, for example the May 21, 2021 Report Relative to Citywide Equitable Distribution Of Affordable Housing (CF 19-0416) (City of Los Angeles, 2021), acknowledging that little affordable housing has been developed in higher opportunity areas, and multi-family zoning is not equitably distributed throughout the City.)

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Whether and where new dense development involves demolishing existing residential development is another important fair housing issue. Displacement from demolition is evident in Los Angeles' housing approval data from prior years. The City issued housing approvals in our study years that would demolish existing residential units, including 1,642 units of rent-stabilized housing.[72] These approvals could signal direct physical displacement of households if these approvals proceeded to construction (O'Neill et al., 2020). Not all demolitions of rent-stabilized housing had a 1:1 replacement with deed-restricted affordable housing; but a 1:1 replacement with deed-restricted affordable housing would not have resolved the displacement issue. Rent stabilized units and deed-restricted units are not equivalencies, and the households that occupy each may be completely different. Deed-restricted affordable housing stays below market for the duration of the term of the deed. But not everyone can access deed-restricted housing, even if they are low-income and in need of affordable housing. Tenancy is limited to qualifying households based on a set of criteria, including but not limited to income levels and immigration status. In contrast, there are also no income caps or immigration status eligibility requirements to access rent-stabilized housing. In sum, replacement of rent stabilized housing with deed-restricted affordable units may not directly address physical displacement of existing tenants.

Table 50: Demolition Rates and Replacement Rates for the City of Los Angeles

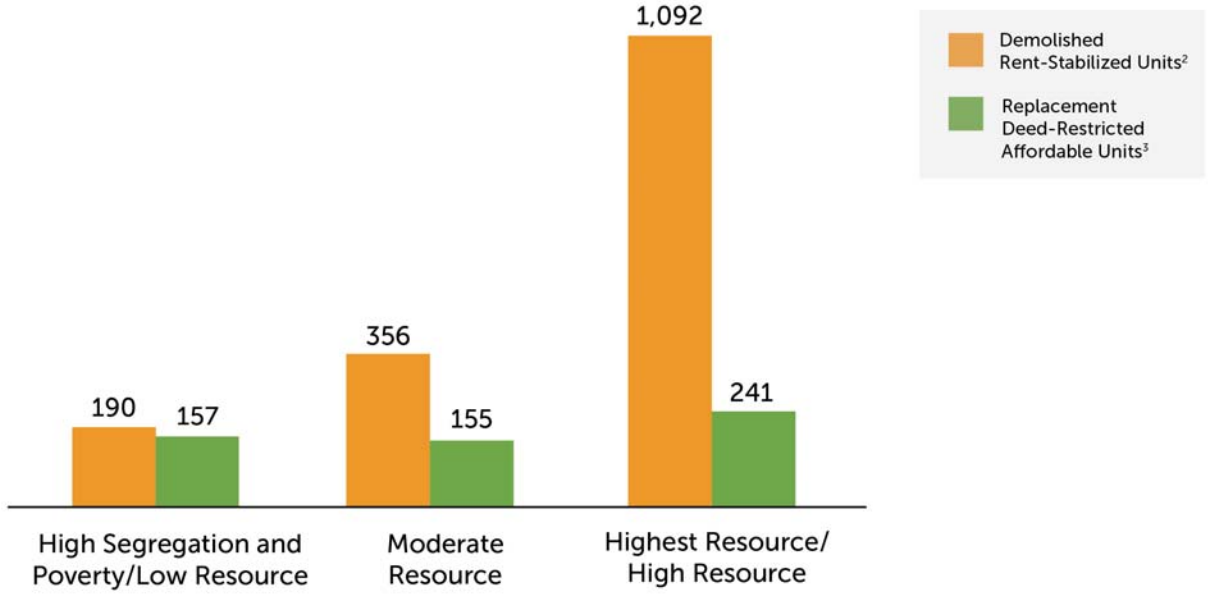
Total Residential Units	HQTA	Non-HQTA	Entire City
All Housing Units Demolished	1,661	739	2,400
Ellis Act or Rent-stabilized Demolished	1,132	506	1,638
Total Replacement Market-Rate Units	8,735	2,864	11,599
Total Replacement Affordable Units	1,185	137	1,322

At least some of the approvals to demolish rent-stabilized units were in the City's Highest or High Resource Areas, and comparatively little affordable development was approved in these same neighborhoods. Chart 4 demonstrates that housing approvals during our study years would lead to more demolition and less affordability going into the higher opportunity areas in Los Angeles.

[72] We include units subject to Ellis Act evictions in this count that were not otherwise noted as rent-stabilized units.

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Chart 4: City of Los Angeles Rate of Demolition of Rent-Stabilized Units in Relationship to Replacement by Deed-Restricted Affordable, Sorted by TCAC Classifications[1]



[1]Demolished and replacement unit counts reflect only known instances of demolished rent-stabilized units. In our data collection for 1 observation, we could not determine whether demolition occurred, or whether a partial demolition included the residential component on the site, although existing units on site were rent-stabilized. For another 26 observations, current use information provided in staff reports indicated that current use was another use besides residential or unknown, but elsewhere in the city's database, we noticed the site was listed as having Rent Stabilized/Ellis Act units. Additionally, another 5 observations had prior residential use and demolition of residential units, but we could not determine whether the demolished units were subject to RSO.
[2]4 projects with unknown number of demolished rent-stabilized units (2 in High Segregation/Poverty, 1 in Moderate Resource, 1 in High Resource), so these units and replacement units were not included in the chart above.
[3]2 projects with unknown number of new affordable units (1 in High Resource, 1 in Highest Resource). We included the demolished units above, but not include any number of replacement units in the chart above.

Demolition of rent-stabilized housing in these places to increase housing stock could displace long-time tenants who may have benefited from rent stabilization in these higher opportunity areas. Although we do not have household level occupants' demographic data, this trend raises the concern that some displaced tenants may have been lower-income tenants who would not otherwise have had access to a high opportunity neighborhood.[73] This concern is reflected in contemporaneous news reports describing displacement events in the higher opportunity neighborhoods where we observed the highest demolition rates but few approvals of affordable units. Specifically, news articles and reports described how demolition of rent-stabilized units impacts specific communities of color in Sawtelle-Japantown, Hollywood, and North Hollywood—reporting, for example, that demolition of rent-stabilized housing is displacing and erasing Latinx culture from Hollywood and North Hollywood neighborhoods (Kiszla, 2019; Cabral, 2018; Barragan, 2020), and that new development and gentrification in the Japantown-

[73] It is also possible that the displaced tenants may have been more affluent at the time of demolition. California law does not allow for vacancy control measures in local rent stabilization ordinances: when a tenant departs rent-stabilized housing, the landlord can raise the rent to market rent for the next incoming tenant (referred to as vacancy decontrol). It is possible that at the time of demolition, a tenant of a rent-stabilized unit may have been paying market rent.

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Sawtelle neighborhood has decreased the presence of Japanese culture (Huang et al., 2015). We also found reports that tenant advocacy groups in Koreatown and Pico-Robertson neighborhoods were concerned about the adverse impacts on lower and moderate-income households evicted from rent-stabilized units to make way for new development (Barragan, 2016; TRD Staff, 2018). As some of those same reports note, increasing overall housing supply in these neighborhoods may require demolishing older, smaller, multi-family housing, and some of the older housing stock may be of poor quality.

Our data cannot confirm the media reports; we do not have household income information about the occupants of the units approved for demolition. But our data does show that housing approvals during our study years would contribute to a loss of rent-stabilized units in these areas without an equivalent number of deed-restricted affordable housing units. This raises potential fair housing concerns.

Our data also shows that the approved demolition of existing residential units in the City of Los Angeles, overall, would allow for the construction of significantly more housing units than were demolished. The increased supply of new housing, overall, may have advanced fair housing goals because inadequate supply overall drives up housing costs. Demolition may have been a necessary trade-off to increase housing stock citywide and support climate policy—but it should be a trade-off that is explicitly considered in all housing policy discussions.[74] Recent state law now provides a no net loss requirement, which prohibits the local approval of proposed housing that would demolish existing or vacant protected units, inclusive of rent-stabilized units that meet specific criteria (SB 330, 2019). The City of Los Angeles' implementation of SB 330, effective January 1, 2020, requires the City to also collect household income information to determine whether a unit is a protected unit. Lower income and very low-income households receive a first right of refusal and location assistance to mitigate the displacement risk associated with demolition. Though tracking the data related to this aspect of SB 330 requires additional local level data collection and analysis, this will be important both for fair housing policy and to measure how effectively state law prevents displacement related to new development going forward.

C. Ongoing work to assess how CEQA exemptions and tiering may be used in higher VMT locations and higher wildfire hazard areas.

We are also exploring the data to determine whether environmental review streamlining provisions appear to support climate policy by incentivizing infill development. This work is incomplete and ongoing, as it is outside of the scope of this study. We are sharing how we have begun this work because of its relationship to this study.

[74] The Los Angeles Times also tracked demolition activity for years, and some of that work overlapped with our own study years. Prior to state legislative intervention, the City Los Angeles' City Council also reconsidered the issue of rates of demolition of rent stabilized housing and replacement with affordable housing in 2017 and strengthening the affordability replacement requirements. Media reports at the time indicated that even with more strict replacement rules, city staff noted that demolished units may not be replaced with affordable units 1:1 (Reyes, 2017).

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1. Some urban infill developments that benefited from CEQA exemptions are in higher VMT locations.

One topic for ongoing work is the use of CEQA categorical exemptions for urban infill developments (CEQA Guidelines, § 15332). Within several study cities, our preliminary spatial analysis indicates that at least some of our approval observations that moved through a 15332 CEQA exemption for urban infill developments are in what might be higher VMT locations—or locations that are outside of the urban core infill areas. While these are not necessarily greenfield developments, we think these might be better described as "fringe infill developments." We began our work to create a measurement for when an observation was a fringe infill development by first using CEQA guideline definitions of what would constitute an infill development. We next defined "fringe infill" development to describe development proposed outside of a 5-mile radius of a downtown or central business district area in cities that are centered around a traditional downtown area or central business district. This allows us to identify proposed developments that are typically sited far from daily services and employment centers but are not necessarily considered greenfield development because they are surrounded by urban uses. With mapping, we found that some of our observations appeared to fit this description. This working definition for "fringe" infill development is insufficient, so the UCI Team is currently working to develop an alternative VMT-based metric to distinguish "core" and "fringe" infill. The UCI Team is collecting infill definitions, including relevant VMT metrics, from local jurisdictions, and it is also surveying MPOs to determine the availability and consistency of regional VMT measures at the traffic analysis zone (TAZ) and block-group level.

2. Residential development sited in Fire Risk Zones had expedited CEQA review or no CEQA review.

Severe wildfire seasons in California over the past few years have brought public and policy attention to the issues of fire risk, including the siting of residential development in areas of high fire risk. As described earlier, CEQA generally does not require environmental review to consider the environment's impact on a project with one exception—when the project would exacerbate existing environmental conditions.

We mapped our observations of project entitlements with California Fire Hazard Severity Zone Maps[75], and fire hazard maps available at the local level for cities that assume responsibility. We then examined what CEQA pathways those projects used to achieve entitlement in relationship to their siting in fire risk zones. We found that most of the proposed and approved development in unincorporated San Diego County was sited in a very high- or high-risk fire hazard zone, and had environmental review based on tiering. (Most often the project used a 15183 Notice of Exemption, where the projects tiered off of a 2011 General Plan EIR). Over four years, San Diego County entitled 1,434

[75] We mapped our projects with CalFire Fire Hazard Severity Zone State Responsibility Area (SRA) and Local Responsibility Area (LRA) data. In addition to mapping CALES observations with FHSZ areas, we also analyzed the percentage of land area within high fire risk zones in the exurban jurisdictions we studied. We noted that 51% of zoned land was within a very high fire risk SRA or LRA in the City of San Diego, 37% in San Diego County, and 34% in Los Angeles County. We did not have access to fire risk data for federal responsibility areas, so we were not able to include this in our analysis. We discuss this area of analysis further in our forthcoming "Building to Burn" article in Ecology Law Quarterly.

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units of housing (27 proposed developments) in the unincorporated land in our study period. Eleven proposed developments, with ~62% of the 1,434 entitled units of housing over a four-year period, are sited in "Very High" Fire Hazard Severity Zones. Two proposed developments, with ~20% of the 1,477 entitled units of housing over that four period, are sited in "High" Fire Hazard Severity Zones. Of these 13 projects, which site more than ~80% of these 1,434 entitled units of housing Very High or High Fire Hazard Zones, only two projects (with 304 units) had an EIR.

We found similar issues outside of unincorporated counties. In the City of Los Angeles there were 45 proposed developments located in Very High Fire Hazard zones. Among those 45 proposed developments, 39 were discretionary and while most used MNDs, 7 used CEQA exemptions (4 Class 32, 1 Class 1, 1 Class 3, and 1 unknown based on project documents). The ministerial observations reflect the complexity of trying to address climate impacts while also addressing other policy needs. All seven ministerial developments approved in Very High Fire Hazard areas were multi-family developments that would add 105 units of housing primarily in Highest Resource areas (when examining TCAC classifications).

We did not find developments in Folsom, Fresno, Roseville, Sacramento, or Pasadena sited in High or Highest Fire Hazard zones. One project in Oakland (5 units) was sited in Very High Risk Fire Hazard zone, and one project in San Jose (7 units) was sited in a High Risk Fire Hazard zone. We also did not find any deed-restricted affordable development sited in High or Highest Fire Risk Zones.

Wildfires can spread from house to house, so adding housing to an area can exacerbate fire risks. In addition, new development in high fire risk areas makes use of prescribed burns more difficult, and prescribed burns are a primary approach to reducing fire risk (Calkin et al., 2014). And increased residential development in high fire risk areas also increases the risks of ignition of fires by human-caused activities (Radeloff et al., 2018). Yet, we observed limited or no environmental review associated with these project approvals in very high and high fire hazard zones. During data collection, we encountered denials of major subdivisions on the grounds that the proposed project would exacerbate fire risk. The amendments to the CEQA guidelines in 2019 (mandated by state legislation) to consider the impacts of residential development exacerbating fire risk, particularly in the Safety Element of the planning process, may address this issue. Determining whether the new guidelines impact CEQA review requires data collection outside of our study timeframe, but follow-up on this specific question is important.[76]

[76] We completed additional data collection and preliminary analysis in San Diego County only, and will provide that writing in a separate forthcoming article.

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Table 51: Distribution of Projects and Units by Fire Risk (Cal Fire FHSZ (Fire Hazard Severity Zone) State and Local Responsibility Areas)

Jurisdiction	Total Projects	Projects in Very High Fire Risk	Projects in High Fire Risk	Projects in Moderate Fire Risk	Total Units	Units in Very High Fire Risk	Units in High Fire Risk	Units in Moderate Fire risk
City of Los Angeles	1,071	46	0	0	65,846	1,099	0	0
City of San Diego	176	31	0	0	13,957	2,100	0	0
Los Angeles County	37	2	0	0	2,532	585	0	0
Placer County	19	6	0	4	3,535	138	0	1,135
San Diego County	27	11	2	3	1,434	889	301	34
Total	**1,330**	**96**	**2**	**7**	**87,304**	**4,811**	**301**	**1,169**

Table 52: Distribution of % Projects and % Units by Fire Risk (Cal Fire FHSZ State and Local Responsibility Areas)

Jurisdiction	% Projects in Very High Fire Risk	% Projects in High Fire Risk	% Projects in Moderate Fire Risk	% Units in Very High Fire Risk	% Units in High Fire Risk	% Units in Moderate Fire risk
City of Los Angeles	4.30%	0.00%	0.00%	1.67%	0.00%	0.00%
City of San Diego	17.61%	0.00%	0.57%	15.05%	0.00%	0.06%
Los Angeles County	5.41%	0.00%	0.00%	23.10%	0.00%	0.00%
Placer County	31.58%	0.00%	21.05%	3.90%	0.00%	32.11%
San Diego County	40.74%	7.41%	11.11%	61.99%	20.99%	2.37%
Total	**7.22%**	**0.15%**	**0.53%**	**5.51%**	**0.34%**	**1.34%**

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Table 53: Project CEQA Pathways by Fire Risk in Placer County

	% of Projects	Projects	Exempt	Tiering	Addendum	MND	ND	EIR	Multiple Pathways
Very High	31.58%	6	0	0	0	4	0	2	0
High	0	0	-	-	-	-	-	-	-
Moderate	21.10%	4	0	1	1	2	0	0	0
Not in Fire Risk Zone	47.37%	9	0	3	0	5	0	1	0

Table 54: Project CEQA Pathways by Fire Risk in San Diego County

	% of Projects	Projects	Exempt	Tiering	Addendum	MND	ND	EIR	Multiple Pathways
Very High	40.74%	11	0	8	0	2	0	1	0
High	7.41%	2	0	1	0	0	0	1	0
Moderate	11.11%	3	0	3	0	0	0	0	0
Not in Fire Risk Area	40.74%	11	0	11	0	0	0	0	0

Table 55: Project CEQA Pathways by Fire Risk in the City of San Diego

	% of Projects	Discretionary Projects	Process 1-2 Projects	Exempt	Tiering	Addendum	MND	ND	EIR	Multiple Pathways
Very High	17.61%	25	6	5	8	4	6	0	2	0
High	-	0	0	-	-	-	-	-	-	-
Moderate	-	0	0	-	-	-	-	-	-	-
Not in Fire Risk Area	82.39%	74	71	29	13	5	17	2	7	2

Table 56: Project CEQA Pathways by Fire Risk in the City of Los Angeles

	% of Projects	Discretionary Projects	Ministerial Projects	Exempt	Tiering	Addendum	MND	ND	EIR	Multiple Pathways
Very High	4.30%	39	7	7	2	0	28	0	1	1
High	-	-	-	-	-	-	-	-	-	-
Moderate	-	-	-	-	-	-	-	-	-	-
Not in Fire Risk Area	95.84%	746	279	246	11	11	447	2	22	7

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Table 57: Project CEQA Pathways by Fire Risk in Los Angeles County

	% of Projects	Discretionary Projects	Ministerial Projects	Exempt	Tiering	Addendum	MND	ND	EIR	Multiple Pathways
Very High	5.41%	2	0	0	0	0	1	0	1	0
High	-	-	-	-	-	-	-	-	-	-
Moderate	-	-	-	-	-	-	-	-	-	-
Not in Fire Risk Area	94.60%	32	3	9	1	0	11	9	2	0

Summary and Conclusions

Scholars, lawmakers, and commentators have deliberated for years on what California's city and state governments need to do to address the state's persistent housing crisis. Communities across the state are also confronting disruptive and deadly climate events—including annual wildfire seasons that increase in length and severity. Experts and policymakers agree that increasing the supply of dense infill housing near transportation and economic opportunity is critical to combating climate change. Affordable housing advocates warn that housing policy needs to prioritize increasing affordability within the state's high-cost cities, or rising prices will push low-income populations out of cities to the detriment of the state's climate and fair housing goals.

The aim of this study was to collect housing approval and litigation data in urban and exurban jurisdictions to explore how well existing land use regulation and enforceable climate policy serves California's climate or fair housing goals to inform active housing policy debates. We identified 20 differently sized jurisdictions across the state for mixed method case study research to gain insight into how these jurisdictions regulate land and process development proposals to add dense housing supply. We conducted legal research on how our study jurisdictions plan and regulate land for housing, gathered data on all approvals issued in one of four years post-Great Recession for development that would add five or more units of housing, and challenges to those approvals through local administrative proceedings and litigation. We then interviewed 85 stakeholders, inclusive of planners, lawyers, developers (market rate and affordable) and community and housing advocates with experience and knowledge of how housing development processes operate within our study jurisdictions.

Our findings indicate that none of our urban study cities have permissive regulatory environments. Most of our urban study cities have moderately to very stringent local land use regulations. A few of these cities may use stringency to promote dealmaking to increase affordable development in conjunction with market rate development. But if the primary tool to increase affordability rests on inclusionary ordinances, for example, long entitlement timelines may still impact market rate and affordable development supply—particularly in higher cost regions. Six of our urban cities appear to have regulatory environments that are best described as prohibitive; these regulatory environments are unlikely to effectively serve either fair housing or climate goals at a local, metro, regional or state level. The way each city restricts housing development varies, though aside from

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San Francisco, the other five study cities we would describe as prohibitive zone very little land for dense housing.

City-specific analysis can illuminate how different types of local land use regulations may obstruct fair housing and climate goals, and the importance of identifying the potential impacts of these local regulatory environments at the neighborhood level. In San Francisco, for example, the onerous discretionary review process imposes years to entitlement for proposed multi-family development that otherwise conforms to all its local ordinances. This likely imposes high costs on developers in the form of holding costs—possibly limiting who can even propose development in San Francisco. And despite its inclusionary ordinance, San Francisco entitled very little deed-restricted housing in higher opportunity areas. The City of Los Angeles, in contrast, has much faster process times for discretionary review and ministerial processes for some dense development, but a lower percentage of zoned land available for all income levels. In Los Angeles, our data indicated that housing approvals involved development that would require repurposing land where lower density housing already existed, often necessitating demolition. This included approving demolition of rent stabilized housing—which signals physical displacement of existing tenants. Although too little deed- restricted affordable housing is approved in Highest and High Resource areas in Los Angeles, Los Angeles approved a significantly higher percentage of approved deed restricted housing in higher resource areas when compared with San Francisco.

Overall, we found that the differences between study cities in the same metro or across metros are more significant than differences between urban jurisdictions and exurban jurisdictions. In comparing infill and exurban jurisdictions with respect to land use review pathways and timeframes for approval, generally, exurban development did not take longer than urban infill development to get entitled. We also did not find consistent differences between infill and exurban jurisdictions in terms of environmental review pathways or timeframes—nearly all jurisdictions heavily used environmental review streamlining tools. In the exurban context, this also meant that single-family subdivisions benefited from environmental review tiering and streamlining.

Although entitlement timelines were not significantly different from infill jurisdictions, exurban jurisdictions appear to be more likely to use general plan amendments and rezoning to approve new projects compared to infill jurisdictions. Frequent use of general plan amendments and rezoning could indicate that the local government is approving development inconsistent with planning that may often codify local level fair housing and climate policy. It could also signal that existing planning and zoning does not adequately accommodate population growth and housing demand. Alternatively, it could indicate that the jurisdiction routinely uses “holding zones” to negotiate with developers. Exploring why these exurban jurisdictions are so frequently approving general plan amendments and rezoning would be a fruitful line for future research.

Our litigation data showed both that less than 3% of approvals (comprising about 7% of units) end up litigated, but also offers a reminder that land use regulation creates opportunities for opposition to housing projects through litigation. Exurban and infill jurisdictions had similar levels of litigation for approved projects, though fewer units were litigated in exurban jurisdictions. Consistent with other findings, neither infill nor exurban

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jurisdictions as a group had substantial differences between litigation rates; there are more variations among groups of exurban jurisdictions or infill cities in terms of litigation rates than there are differences between the two types of jurisdictions.

Though litigation rates are less than 3 percent across all development in all jurisdictions, in the aggregate, litigation was most frequent in High or Highest Resource Areas in both infill and exurban areas—possibly indicating that communities with more resources were more likely to oppose development, which would be consistent with the relevant literature on this topic. In the urban cities where approved development is sited in Highest, High, Moderate, Low Resource, and High Segregation and Poverty areas, there was also a noticeable amount of litigation in Low Resource and High Segregation and Poverty Areas.

Over 95% of litigated projects included CEQA claims, but two-thirds of all litigated developments also faced claims under local land use law. This indicates that local regulation provides an opportunity for opposition through litigation in two ways. Local regulation generates a significant basis for litigation regardless of the possibility of CEQA claims *and* local regulation renders a development approval vulnerable to a CEQA claim by making the approval process discretionary in the first place.

Developments that used more intensive local and environmental review processes, specifically rezonings or an EIR, had higher rates of litigation as compared to developments that used other local and environmental review process pathways. EIRs are generally infrequent in our data across all jurisdictions; rezonings are infrequent in our urban cities but more common in our exurban jurisdictions. Higher rates of litigation among developments requiring either rezoning and/or EIRs requires more analysis specific to the context of the development. In an urban infill context, where EIRs are typically uncommon, but more frequently associated with litigation, that raises questions about whether our urban infill jurisdictions are choosing more intense environmental approval pathways in response to local or neighborhood politics.

Plaintiffs rarely won lawsuits (regardless of claim type), and most cases settled. About two-thirds of all litigated projects faced claims of inadequate analysis of GHG or VMT. Success rates for plaintiffs did not vary depending on whether GHG or VMT claims were raised.

For projects that were litigated, litigation extended the timeframes for projects by almost two years—and for projects where the initial trial court decisions was appealed, litigation extended timeframes by almost four years. These extensions likely impose serious costs on these projects in terms of uncertainty and financing, though our review of the media coverage of litigated projects found that for a number of them, development was ultimately able to proceed. Media coverage did not allow us to get significant information about the extent to which projects that went through litigation may have shifted in terms of units proposed, affordability, rental/sale, or other major product characteristics over the course of the litigation (particularly post resolution). We found that scale was one of the most frequently basis cited in media coverage by those challenging litigated projects. Depending on the capacity to complete VMT related analysis, we may also identify potential VMT for litigated developments relative to VMT for developments that did not face litigation.

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Across urban and exurban jurisdictions, administrative appeals—which involve challenges to discretionary land use decisions using the local jurisdiction's own administrative process—are more likely than litigation. Administrative appeal rates were also highly variable across jurisdictions, again showing the importance of local government choices as to the structure for land use regulation, particularly given that administrative appeal systems are primarily a function of local ordinances.

All three exurban counties, and the cities of Los Angeles and San Diego, approved housing development in high fire-risk areas. Among this group, San Diego County stood out as about two thirds of its approvals are for housing developments in high fire-risk areas with minimal CEQA review; the most common environmental review pathway was use of tiering from the County's 2011 General Plan EIR. The prevalence of approving housing in high fire risk areas in San Diego County, which primarily approved single-family subdivisions, raises questions about the adequacy of state environmental law in preventing sprawling development that might increase fire risk. Recent changes to the CEQA Guidelines may have addressed these concerns by providing local governments the means to require additional consideration of these risks for all development approvals going forward, but this would require data collection in selected jurisdictions with more land area within fire risk zones to assess this issue.

Recommendations

Our findings indicate that local land use regulations in at least some of our study jurisdictions do not appear to support California's climate or fair housing goals. Few jurisdictions had sufficient land area zoned for dense housing, and even fewer have ministerial processes in place to support sustainable and affordable infill development during our study period. Changes to state and local law may address some of these issues. Sacramento has made notable changes to local law to incorporate a ministerial process for more dense development. Fresno created a Focused Infill District in 2020. Santa Monica created a ministerial process for 100% affordable development. State efforts to address regulatory constraints on sustainable development—particularly affordable development—have gone into effect as well. SB 35 went into effect at the close of our initial study period. More recently, the state has taken incremental steps towards reducing the prevalence and constraint of single-family only zoning (SB 9) and offered support for cities that want to pursue rezoning (SB 10). Despite these milestones, advancing infill development that is equitable, affordable, and supports state climate goals likely will require local governments to rezone and implement ministerial review for development that meets fair housing and sustainability goals, or additional state intervention in the local land use regulatory process. Meaningful state oversight of existing local land use regulation and planning through Housing Element law may encourage cities to address local regulatory constraints.

We recommend that housing policy research continue to prioritize improving local housing data reporting. Quality local level housing data is critical to understanding recent legislative changes and modifying or building on those efforts. With the passage of AB 1483, the new data now provided through annual progress reports is a helpful and important step in that direction. But more is needed. During our own research, we

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observed considerable differences between local data management practices. Housing data research should prioritize identifying opportunities and obstacles to improving local level data management within the public sector to allow for state oversight of local regulation and planning. Housing data research should also support augmenting existing housing approval data that local governments currently make available through annual progress reports. The latter could identify necessary improvements to local data reporting while also simultaneously support measuring the effectiveness of recent changes to Housing Element law over the next several years.

The predominance of tiering and similar streamlining mechanisms for environmental review in several of our infill cities suggests that specific plans and similar streamlining efforts by local governments may offer a promising way to advance additional housing production in infill cities without undermining public participation or important environmental review. It is possible, however, that a primary challenge to greater use of these tools is that they require local governments to fund the planning and environmental review, rather than imposing the costs on developers. State grants to support this planning (like what is occurring for a limited period under the funding from SB 2, which imposed a real estate transaction fee to support housing production) on an ongoing basis would be helpful. In addition, identifying ways in which local governments could require contributions from project proponents that benefit from specific plan streamlining in ways that are consistent with state constitutional limits on taxes and fees would be another important option. Both would require additional research to identify implementation options and feasibility.

Relatedly, we observed minimal to no environmental review on sprawling subdivision in high fire hazard areas. Recent changes to CEQA guidelines may resolve this issue—but assessing this requires focused and continued data collection to determine the efficacy of those regulatory changes.

We also observed that less than three percent of all project-level approvals faced litigation. Our interviews suggest, however, that in certain contexts specific plans and community plans also face litigation and that this may need to be an area of focus. This is outside the scope of our current study but would be a natural extension of the work that we have completed in these jurisdictions.

For the projects that were litigated, litigation added significant time to the review process. These timeframes were particularly long for the minority of litigated projects where the initial trial court decision was appealed to the Court of Appeal. As noted above, extended timeframes as a result of litigation can create significant impacts on projects in terms of cost and uncertainty. The state legislature has attempted to address the delays that can be caused by litigation through legislation that requires resolution of lawsuits within a limited time period. While courts have generally complied with these timeframes, they are not likely enforceable against the courts, as the state constitution probably limits the ways in which the state legislature can control litigation in this manner. In other words, more aggressive efforts to address litigation delays (for instance, enforceable deadlines for resolution of cases, allowing cases to be determined in the first instance at the Court of Appeal to reduce lengthy appeals, or using specialized courts to resolve cases expeditiously) would probably require an amendment to the state constitution.

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Finally, with respect to CEQA litigation, specifically, to the extent that CEQA litigation poses an obstacle to dense infill development, one strategy to address the problem of litigation without diminishing the notice, participation, and mitigation benefits of CEQA would be to address the legal concept of standing. The legislature could require that petitioners challenging projects demonstrate a connection between the harms they claim to suffer from the project and the environmental harms that CEQA is intended to protect against. In general, individuals filing lawsuits must have standing to sue—and demonstrating standing requires showing that the petitioner filing the lawsuit has suffered an injury from the action challenged in the lawsuit. The California Supreme Court has articulated one of the broadest conceptions of standing for suing under environmental laws in the country, allowing economic harms unrelated to the environment to support lawsuits under CEQA. In contrast, at the federal level, lawsuits challenging projects under the National Environmental Policy Act (NEPA), the federal analogue to CEQA, often (though not always) require demonstration of environmental harm by the plaintiffs in order to be able to establish standing. Narrowing standing under CEQA might reduce some of the lawsuits that are not related to environmental harms, including frivolous claims, while still allowing claims that directly relate to the environment to proceed. The federal standing requirement does not appear to be overly burdensome, as it does allow many challenges to federal actions to proceed. Additional research on this approach and its feasibility would also be helpful.

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Glossary of terms, abbreviations, and symbols

*Accessory Dwelling Unit (*ADU): State law defines ADUs as "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).

Administrative appeal: Refers to the local government administrative process by which a party can appeal a determination made by the local government in a discretionary review process. Unlike litigation, administrative appeals are not decided by a court, but rather by a local agency. For example, once a discretionary project is entitled, there may be a 30-day window for a member of the public or applicant to file for an appeal, which obligates the approval body to reevaluate the project and determine whether the permits shall be revoked or if the appeal shall be rejected. Projects can be appealed based on the decisions under local regulatory requirements or on CEQA determinations.

Affirmatively Furthering Fair Housing (AFFH): California Government Code § 8899.50 defines Affirmatively Furthering Fair Housing as taking meaningful actions, in addition to combating discrimination, that: overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected

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characteristics; address significant disparities in housing needs and in access to opportunity; replace segregated living patterns with truly integrated and balanced living patterns; transform racially and ethnically concentrated areas of poverty into areas of opportunity; foster and maintain compliance with civil rights and fair housing laws. (For more information, see also “Do cities’ Housing Element sites Affirmatively Further Fair Housing? The AFFH Sites Score” Paavo Monkkonen et al., 2020.)

As-of-right/ministerial development: This is another term used to describe ministerial review processes, where a local government must approve a proposed development so long as it conforms to certain objective standards; environmental review is not applicable in as of right processes.

*Berkeley Land Use Regulation Index (*BLURI): The Berkeley Land Use Regulation Index is a study that relies on 2007 survey responses from building officials to measure a variety of factors impacting housing development, including land use regulations. More information can be found in “Measuring Land-Use Regulations and Their Effects in the Housing Market.”

Base zoning: By “base zoning” we mean the underlying zoning district and use designations (residential, commercial, or industrial) provided for in the text of the ordinance and zoning map. Base zoning is distinguishable from process requirements. 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. 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.

*California Environmental Quality Act (*CEQA): The California Environmental Quality Act (CEQA) mandates environmental review for projects undergoing discretionary review. CEQA imposes notice and information requirements that involve documentation and public engagement processes around potential environmental impacts, and mitigation of potentially significant environmental impacts below a significant level where feasible. Projects must either complete a CEQA document, supplementary CEQA document or can be issued an exemption if the project fulfills certain criteria.

California Fair Housing Task Force Opportunity Mapping Methodology – The opportunity map classifications (referred to as TCAC classifications) and the methodology that supports them can be found on the state treasurer’s website. The methods consider several different indicators of opportunity including rates of poverty, adult educational achievement, employment rates, geographic proximity to jobs, median home values, environmental quality, math and reading proficiency levels, high school graduation rates, and student poverty.

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*California Land Use Regulation Index (*CaLURI): The CaLURI is an Index that relies on underlying data comes from a land use survey that asked planners about affordable housing requirements and perceptions as to which groups wield the most political influence and as to the main drivers of development regulation. The researchers who designed the survey then aggregated these possible indicators of stringency to create an index of stringency. This is distinguishable from the CALURI, which is a study that uses data from the national Wharton Land Use Survey (the WRLURI) for a California specific analysis.

*Comprehensive Assessment of Land Use Entitlements Study (*CALES): This is the title of the UC Berkeley led land use study that predates this contract. This contract extended the scope of the CALES.

Deed-restricted housing: Refers to housing where a deed restriction maintains affordability by setting income requirements for renters or by restricting the resale price.

Dense housing development: Development that proposes five or more residential units. This number is derived from state law, which uses the five-unit threshold to require more substantial review for the subdivision of parcels for development and defines "housing development" as "five or more residential units" in the state Density Bonus law (Cal. Gov't. Code § 65915(i)).

Density Bonus: Density Bonus is a state provision that allows denser development in return for provision of affordable housing. See Cal. Gov't Code §§ 65915–65918. Specifically, 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.

Discretionary review: Discretionary review, or local discretion over land use, refers to a local government's authority to impose subjective standards when deciding on whether to approve proposed development; environmental review applies to projects subjected to discretionary review.

Displacement: Varying definitions of displacement inform legal reform debates. We typically refer to four different definitions of displacement that are in the urban planning literature: (1) exclusionary displacement (the inability to move into a neighborhood because of reasons outside of a household's control—like high housing costs); (2) direct physical displacement (eviction or demolition); (3) direct economic displacement (when price increases force an individual or a family's departure from home); and (4) symbolic or cultural displacement (when transitions in the physical and social environment of gentrifying neighborhoods cause a once familiar place to become

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unfamiliar, resulting in long-term residents feeling politically/socially marginalized or unsafe).

*Ellis Act eviction***:** The Ellis Act permits a landlord to evict all the tenants in a building in order to withdraw the units from the rental market for sale or for conversion into condominiums. Cal. Gov't Code §§ 7060-7060.7. The Ellis Act prevents local governments from enacting ordinances that compel a landlord to stay in the rental business. See id. § 7060(a). Ellis Act evictions are commonly—but not exclusively—used to withdraw rent-stabilized units from the rental market because Rent Stabilization Ordinances (RSO) limit the circumstances under which a landlord may evict a tenant.

Entitlement: See Residential Entitlement.

Environmental review: mandated by the California Environmental Quality Act (CEQA), projects undergoing discretionary review imposes notice and information requirements that involve documentation and public engagement processes around potential environmental impacts, and mitigation of potentially significant environmental impacts below a significant level where feasible. Projects must either complete a CEQA document, supplementary CEQA document or can be issued an exemption if the project fulfills certain criteria.

Environmental impact report (EIR): a California Environmental Quality Act (CEQA) document created to inform stakeholders and community of the potential environmental impacts presented by a new project as well as possible mitigation strategies and substitutes for the project.

Exurbs: Areas lying beyond the suburbs of a major urban center where a significant portion of the population commute to work in an urbanized area and housing density is low.

*Fire Hazard Severity Zone (*FHSZ): These zones are defined by CalFire to describe the fire risk in each area in California. Broken into federal, state, and local responsibility areas, they are categorized as: Very High Fire Hazard, High Fire Hazard, Moderate Fire Hazard, and not categorized (not in a fire risk area).

*Greenhouse Gas Emissions (*GHG emissions): The state legislature directed in 2006 that the CEQA guidelines mandate analysis of greenhouse gas emissions (GHG) from proposed projects (California Public Resources Code Section 21083.5). Several provisions of the CEQA guidelines provide for this analysis (14 California Code of Regulations Sections 15064.4, 15126.4(c), 15183.5,15364.5). The adequacy of CEQA GHG emissions analysis has been the subject of a significant body of caselaw in the state courts, indicating the potential for litigation based on the issue.

One key issue for GHG analysis under CEQA is the extent to which a project might increase automobile use for transportation, and therefore increase GHG emissions from

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gasoline-powered automobiles. CEQA guidelines used to mandate that CEQA analysis of the transportation impacts of a project focus on traffic congestion and level-of-service -- i.e., whether a project would cause increased delays and congestion for automobiles. This created an incentive for project proponents to increase the capacity for automobile use for a project in order to mitigate traffic impacts -- but this form of mitigation can increase automobile use.

Greenfield development: Development in exurban areas; often results in a low-density housing product.

*High Quality Transit Area (*HQTA): We define HQTA as referring to areas within ½ mile of major transit stop (MTS) or ¼ mile of a high-quality transit corridor (HQTC). MTS means 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 interval of fifteen minutes or less during the morning and afternoon peak commute periods (Cal. Pub. Res. Code Sec. 21064.3). HQTC means a corridor with fixed route bus service with service intervals no longer than fifteen minutes during peak commute hours (Cal. Pub. Res. Code Sec. 21155(b)). We chose the ¼ mile buffer for the HQTC instead of the ½ mile buffer to be consistent with proposed state laws that would have allowed significant increases in allowable density near transit, like SB 827 and SB 50 (SB 50, Cal. Reg. Leg. Sess. 2019-2020 (2019); SB 827, Cal. Reg. Leg. Sess. 2017-2018 (2018)).

*High Quality Transit Corridor (*HQTC): HQTC means a corridor with fixed route bus service with service intervals no longer than fifteen minutes during peak commute hours (Cal. Pub. Res. Code Sec. 21155(b)). We chose the ¼ mile buffer for the HQTC instead of the ½ mile buffer to be consistent with proposed state laws that would have allowed significant increases in allowable density near transit, like SB 827 and SB 50 (SB 50, Cal. Reg. Leg. Sess. 2019-2020 (2019); SB 827, Cal. Reg. Leg. Sess. 2017-2018 (2018)).

Infill development: We use this term to describe housing development in cities that are within the urban core of strong economic regions.

Lead agency: In environmental review, the lead agency is the public body that gives final discretionary approval for the project.

Metropolitan Statistical Area (MSA): As defined by the United States Census Bureau, "[t]he general concept of a metropolitan or micropolitan statistical area is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core. Currently delineated metropolitan and micropolitan statistical areas are based on application of 2010 standards (which appeared in the Federal Register on June 28, 2010) to 2010 Census and 2011-2015 American Community Survey data, as well as 2018 Population Estimates Program data. Current metropolitan and micropolitan statistical area

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delineations were announced by OMB effective March 2020." For more information, see discussion at U.S. Census Bureau, https://www.census.gov/programs-surveys/metro-micro/about.html.

Mitigated negative declaration (MND): a California Environmental Quality Act (CEQA) document created to inform stakeholders and community that the proposed project's potential impacts to the environment can be mitigated by certain strategies and describes how the developer will implement these strategies.

*Negative Declaration (*ND): a California Environmental Quality Act (CEQA) document created to inform stakeholders and community that the proposed project will not have a significant effect on the environment.

*National Environmental Policy Act (*NEPA): The National Environmental Policy Act (NEPA) mandates environmental review for all projects managed by federal agencies or sited on federal land. NEPA imposes notice and information requirements involving documentation around potential environmental impacts, and mitigation of potentially significant environmental impacts below a significant level where feasible. Projects must either complete a NEPA Environmental Assessment, Environmental Impact Statement, or can be issued a Categorical Exclusion if the project fulfills certain criteria. California provides a joint CEQA/NEPA process for some projects.

Permissive density: We define permissive density in relationship to base zoning as base zoning that allows for new residential or mixed-use development at a density that meets state default standards to accommodate all income levels. In urban cities, that default is 30 dwelling units or higher as a "permitted use" in the zone. We define "permitted use" as a use that does not trigger additional discretionary approvals aside from regulations already in place citywide.

*Regional Housing Needs Assessment (*RHNA): RHNA is the total amount of housing a metropolitan area is required to plan for under state law in order to meet housing needs over the next planning cycle (usually eight years). Using Department of Finance (DOF) demographic data, the RHNA is determined by the California Department of Housing and Community Development (HCD). Then the councils of governments (COGs) – in consultation with HCD – allocate the RHNA to their individual local governments.

Residential entitlement: Refers to a final approval for a proposed development subject to discretionary review that precedes the application for a building permit. Entitlement typically requires a series of approvals and documentation to proceed to apply for a building permit application. Typically the first step towards constructing new development, the specific procedural steps and amount of time required to obtain such approval varies between jurisdictions, affecting whether and how much new development is likely to occur.

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Sprawl: Low-density residential and commercial development that occurs at the outer edges of urban areas. Sprawl can impose significant environmental and economic costs in the form of increased vehicle mileage, paving over agricultural or undeveloped land, placing greater strain on infrastructure and public services. Smart Growth America examined the impact of sprawl in its 2014 report, Measuring Sprawl 2014, available at https://smartgrowthamerica.org/resources/measuring-sprawl-2014/.

Streamlining: refers broadly to accelerating environmental review processes for proposed development on an individual project level. Streamlining can refer to "tiering" whereby cities can streamline or accelerate the environmental review process on the individual project level by developing an Environmental Impact Report for an area within the city where development is anticipated, from which individual projects can be 'tiered,' or to predetermined CEQA exemptions for classes and types of proposed development.

*Tax Credit Allocation Committee (*TCAC): The California Tax Credit Allocation Committee administers the federal and state Low-Income Housing Tax Credit Program. These are programs to promote private investment in affordable rental housing for low-income Californians. For more information, see California Tax Credit Allocation Committee (CTCAC), https://www.treasurer.ca.gov/ctcac/.

Tiering: We define "tiering" as the process by which cities can streamline or accelerate the environmental review process on the individual project level by developing an Environmental Impact Report for an area within the city where development is anticipated, from which individual projects can be 'tiered' to satisfy environmental review requirements, or qualify for predetermined CEQA exemptions for classes and types of proposed development.

Transit-oriented development (TOD): Development that takes place nearby public transit resources, often results in a medium or high-density housing product. The aim of transit-oriented development is to reduce car traffic and greenhouse gases while also creating neighborhoods that contain a variety of uses.

*Vehicle Miles Traveled (*VMT): The state legislature in 2013 directed amendments of the CEQA guidelines to require the use of vehicle miles traveled (VMT) to assess the transportation and GHG impacts of a proposed project (SB 743). Using VMT as the assessment of the impacts of a project encourages mitigation measures that decrease automobile use and therefore GHG emissions, and also can incentivize projects that are located in dense urban settings (projects that might otherwise increase traffic impacts). The CEQA guideline revisions were completed in 2018 (14 California Code of Regulations 15064.3).

Wharton Residential Land Use Regulatory Index (WRLURI): This refers to a national land use survey developed in 2006 and reissued in 2018 that uses a survey instrument to measure regulatory restrictiveness. The findings from the WRLURI asses the

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“average” degree of land use regulation in the nation by focusing on process and outcomes, rather than just the presence of regulatory constraints (Joseph Gyourko, Albert Saiz, & Summers, 2008).

Zoned for all income levels: We refer here to areas within jurisdictions zoned to allow for what state law (Housing Element law) provides as a default to ensure density sufficient to accommodate all household income levels. Although not a complete representation of the feasibility of developing affordable housing in a given jurisdiction, the amount of land zoned for all income levels is a key indicator of whether a jurisdiction is creating or eliminating a fundamental regulatory barrier to affordable housing. The standard of 30 or more dwelling units per acre—applicable to our study cities—is derived from the Housing Element law, which set this as the default standard for density to allow for all income levels is 30 dwelling units per acre in urban jurisdictions. (Cal. Gov. Code Section 65852.2).

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PROOF OF SERVICE
Superior Court of California, County of San Francisco
Case No.: CPF-22-517661

I, Tiffany Stamper, declare that:

I am employed in the County of San Francisco, State of California. I am over the age of 18 and am not a party to this action. My business address is 601 Montgomery Street, Suite 400, San Francisco, California 94111.

On **November 21, 2022**, I served:

1. **VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER EXTRAORDINARY RELIEF AND COMPLAINT FOR DECLARATORY RELIEF**

in said cause addressed as follows:

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/XX/ **(BY E-SERVICE)** I served the above documents through File & ServeXpress in accordance with the Court's Local Rule 2.11 requiring all documents be served upon interested parties via File & ServeXpress e-Service System.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **November 21, 2022**, at San Francisco, California.

TIFFANY STAMPER