None of this is legal or investing advice! I've tried my best to be accurate, but you should double check everything before spending your own money.

What is the builder's remedy?
Every city in California needs to update its map of what can be built where in the city, in a process called the "Housing Element." Each city gets an "allocation" - a target number of new homes - from the state government and they need to show they have sufficient spare capacity to meet at least the allocation from 2023-2031.

The "allocations" this cycle are much more aggressive than in 2013 - for example, SF's allocation in 2013 was about 30,000 homes and this year it's 82,000. HCD is also taking a much harder line with cities who have previously been allowed to "cheat" (claim impossible stuff like their city hall is going to become housing, or a very steep hillside etc). As a result, HCD is marking the Housing Element for many cities as "noncompliant" because they fail to meet the state's criteria.

A law passed in 1990 informally called the "builder's remedy" allows for *unlimited density in any city with a noncompliant Housing Element* as long as 20% of the units are deed-restricted affordable housing.

To date it has not been tested in court, but more people are starting to look at it because so many more cities are noncompliant. The most prominent Builder's Remedy case so far is in Redondo Beach where the owner of a power plant has proposed building about 2500 apartments. https://easyreadernews.com/pustilnikov-files-for-2320-housing-units-hotel-office-complex-park-at-aes/

What types of parcels would make good Builder's Remedy lots?
First off, you need to pick a city that has, or is going to have, a noncompliant Housing Element. In the Bay Area, Kevin Burke can give you a good estimate of which cities are likely and unlikely to have one. San Francisco is very unlikely to have a compliant Housing Element, for example; Alameda already has a compliant Housing Element. In Southern California, which had an earlier deadline, many cities are *currently* out of compliance, including Beverly Hills and Santa Monica.

Any parcel is in theory eligible for the Builder's Remedy.

I would avoid the "Coastal Zone" - see maps here - https://www.coastal.ca.gov/maps/czb/ which would preclude e.g. building a skyscraper on Ocean Beach, because Coastal Zone development also needs approval from the California Coastal Commission.

Based on trends in state law, I would also avoid parcels that have had a tenant in the last half-decade or so, which might make it more difficult to attract support.

What type of project should you propose?

There are basically two theories for how to go forward:

Go big or go home - propose the biggest economically feasible development for a given lot, like a skyscraper, or a 5 over 1. This may not have the *best* chance of succeeding based on case law, but the reward is the greatest, and could provide the most funds for completing an EIR, surviving court challenges, etc. Bigger projects are also more likely to be challenged, and need more environmental analysis. The bigger the risk, the bigger the reward.

Least Cost Zoning law: Chris Elmendorf has probably put the most amount of study into this. His theory is that a project that proposes 2x the density that is permitted on adjoining parcels will have the best chance of surviving a court challenge, due to something called the Least Cost Zoning Law. You should read his entire letter at A Primer on California's "Builder's Remedy" for Housing-Element Noncompliance - UCLA Lewis Center for Regional Policy Studies.

When should you submit the application?
As soon as the city's Housing Element is out of compliance. In the Bay Area, the day at which 5th Cycle Housing Elements expire is February 1, 2023, assuming that they don't get their 6th Cycle Housing Element certified before then.

You may have a narrow window of time to submit the application because the Builder's Remedy no longer applies as soon as HCD certifies the Housing Element. Be prepared to submit as soon as a deadline expires.

What do you need to submit?
The first thing you should submit, as soon as the city where you want to build is out of compliance (ie 2/1/2022 for most cities in the Bay Area) is submit an "SB-330 preliminary application." This is a 14-section application that "vests" your development rights on the day it is submitted, so that the city or county receiving your application can't later come into compliance and legally disapprove your project. It also prevents the jurisdiction from not accepting your application as "complete" and dragging their heels to delay taking action on your project, and delaying your ability to sue them if necessary. Once you've submitted your pre-application, you will have 180 days to submit a full application pursuant to your local jurisdiction's policies. If the local jurisdiction fails to provide an SB-330 preliminary application form to you or doesn't make one available on their website, you can always use the state's standard form at https://www.hcd.ca.gov/community-development/accountability-enforcement/docs/sb%20330%20preliminary%20application%20%20form_final.pdf

Either with the pre-application, or subsequent to it as described above, you will need to submit a complete application pursuant to your local jurisdiction's policies. The application will likely need to include plans. Typically an architecture firm will charge about 8% of the total project cost. You may be able to negotiate this down because right now all you care about is getting through the

city's application process - if there are steps that only need to be completed in detail when you are actually ready to build, you can skimp on those now and pay for them later.

You also may not need to pay as strict attention to city rules about setbacks etc. because you are already ignoring their density guidelines. So the architecture firm may be able to use "off the shelf" plans for a given building instead of doing extensive research into meeting local city rules.

What will happen after you submit the application?
My expectation is 99% of cities will try to do two things:

- Draw out the application process as long as possible by demanding things like a full environmental impact report, shadow studies, parking studies, etc. You may need to file suit at this stage if the city does not follow timelines in state law for certifying the environmental impact or marking the application as "complete."
- Deny the application. Your goal should be to try to force the city to vote on your application as quickly as possible.

Who should you hire as lawyers/consultants?
You should hire a lawyer for advice prior to submitting your application. After the city denies the application, you will need to file a lawsuit. There are several organizations that may be able to assist you with a suit:

- CARLA (https://carlaef.org) is a Bay Area legal nonprofit and is looking for Builder's Remedy test cases.
- YIMBY Law is a similar legal nonprofit
- California HCD may also be interested in arguing your side in court, though you would still likely need your own set of lawyers.

Holland and Knight are very good land use attorneys but they are also *very* expensive. Dylan Casey at CARLA may be able to make recommendations.

I would expect Silicon Valley types to be interested in funding/bankrolling a lawsuit; they would be the first people I would reach out to.

It will likely take a year or more to reach the trial stage. Then a judge will rule on the case. If you win, the city will likely try to appeal. At this phase you can ask them to post a bond equal to your costs. This number will run in the millions of dollars and may encourage them to drop the appeal.

It's impossible to say what will happen at trial. We have seen very bad trial rulings from likely NIMBY judges who were reversed on appeal (CARLA vs. San Mateo, the Vallco case).

How much is this all going to cost?

I think there are four main sources of costs:

- **Land -** You need to either own a property or own an *option to buy* a property so that you can develop it or sell a successful application if you win.

  An option to buy is basically an agreement with a property owner that you can buy them out of their property for $X at any point over the next 10 years. I'd expect it to cost in the tens of thousands of dollars, depending on the buyout price.
- **Plans** - You need to pay an architect to submit plans as part of your initial application. This may cost 8% of the construction cost; if we use $450 psf this would be $36 per square foot, times, say, 1000 square feet per unit, times the number of units in your project.
- **Environmental impacts** - The city might ask you to complete an environmental impact report, and/or to revise it, or submit any other studies like shadow studies or some other bullshit. An EIR can range from $200,000 to over $1M depending on the scope of work.
- **Lawyers -** I'd guess it would cost about $100,000 to get to trial, maybe more if you are proposing a larger project, are the recipient of a CEQA suit from a neighborhood group, or in a bigger, litigation hostile jurisdiction (San Francisco for example). NIMBYs might also sue you to stop your project under CEQA, so you may have to litigate at least two lawsuits simultaneously. If your case is appealed, total legal costs (before receiving attorneys fees if you win your case [es]) could be over $500k.

How much money can I make?
The biggest source of return comes from buying property at one zoned density and developing it at a much higher density. For comps, I would look at recent condo sales in the city/neighborhood you are targeting, and apply the price/square foot of those to your proposed project. You would want to subtract out your construction costs, plus the four sources of costs listed above.

If you win the court case, the easiest option would be to sell the land with the entitled project to a developer who could then build it, instead of needing to build it yourself.

For example, in Hillsborough, many parcels are a half acre or larger. If you proposed building 50 1000 square foot condos (100 du/ac on a half acre), you could hope to sell them each for $1 million based on comps in Burlingame. This would yield a return of $50 million. It would likely cost $4-5 million to acquire the land, and $450 psf construction cost ($22.5 million). This leaves about $20 million for fighting legal battles, conducting studies, and carrying costs. (Of course, the courts may decline to grant you a building permit).

Best of luck!
Feel free to reach out (kevin@burke.dev) with questions and I'll try my best to answer or direct you to someone who does.