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

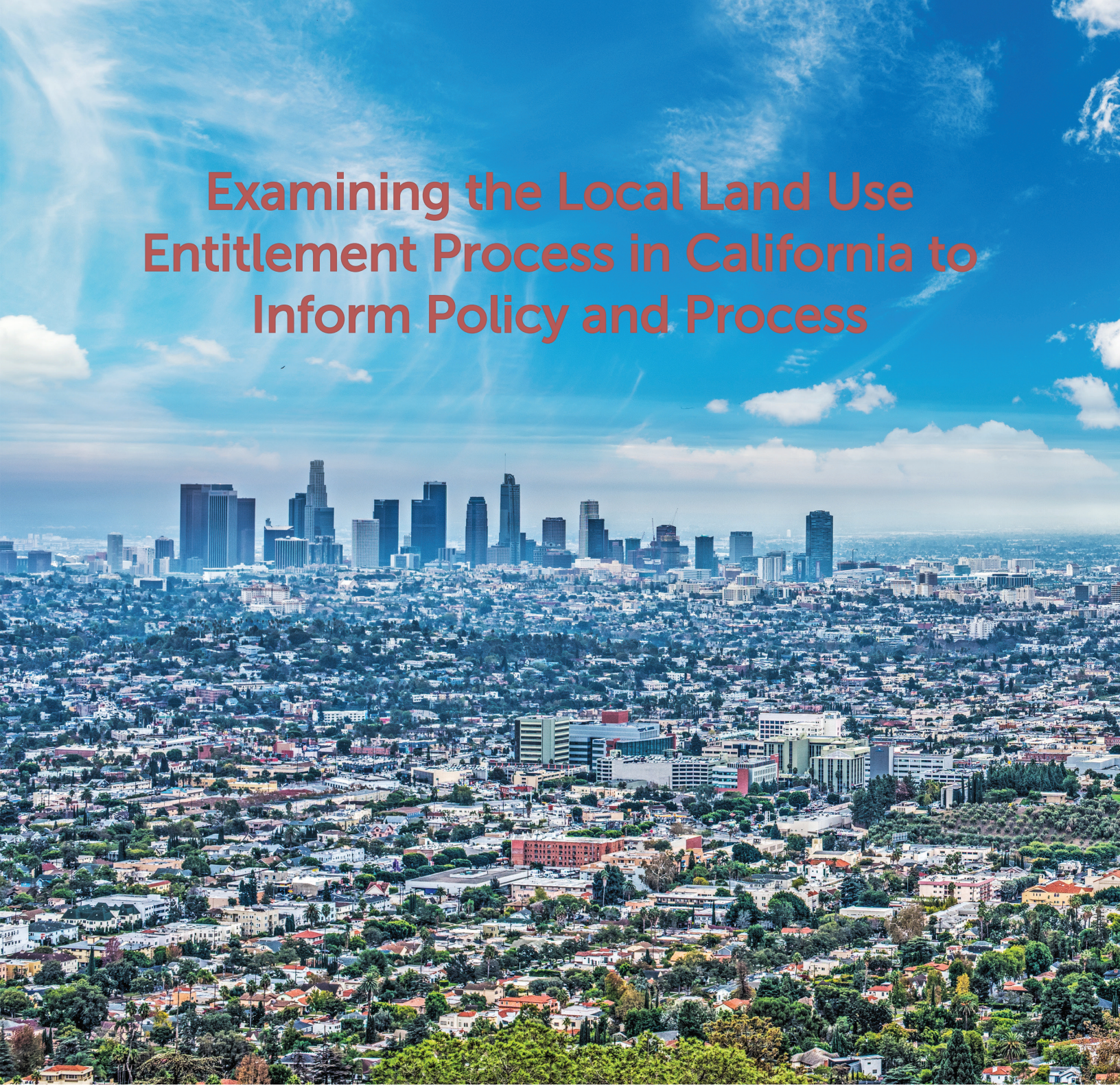

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TABLE OF CONTENTS

Figures

EXECUTIVE SUMMARY

As California's housing affordability crisis persists, an important question raised is: What laws or regulations might impede housing construction in high-cost areas? To help answer this question, we focused on the entitlement process (or the process that property owners move through to get a building permit) within selected cities across the state. We analyzed the law applicable to residential development projects, including the local zoning ordinances, and interviewed important actors in the residential development process in our selected cities. We also collected data on all residential development projects of five or more units over a three-year period within each city we studied. In this paper we focus on what we have learned within the cities of Los Angeles, Long Beach, Pasadena, and Santa Monica.

We found that across these four cities, only Los Angeles provides for as of right development for five or more units up to a 49-unit threshold. In the other three cities, residential development of five or more units must undergo discretionary review—and by extension, environmental review under the California Environmental Quality Act—before obtaining a building permit. All four cities impose discretionary review through diverse approval mechanisms. Application of CEQA also varies; however, on balance these jurisdictions are requiring few Environmental Impact Reports (EIRs).

Although all four cities require approximately the same number of approvals for proposed development that is subject to discretionary review, average timeframes varied significantly across the cities, with Long Beach approving developments the fastest (at 10.5 months) and Santa Monica the slowest (at 48 months). Within jurisdictions, timeframes did not always correlate with project size, nor did they directly relate to rates of entitlement. Long Beach had the fastest entitlement timeframe but the lowest rate of entitlements, likely indicative of underlying political and market conditions. Despite its long timeframes, Santa Monica entitled 60% more units per capita than Long Beach.

To understand the role that local opposition to new development might play in rates of entitlement, we analyzed CEQA litigation and administrative appeal rates. CEQA litigation rates ranged from no litigation in Santa Monica to 28% of units litigated in Long Beach. Administrative appeals rates varied; Santa Monica had the highest appeals rate despite having no CEQA litigation during our study years. Our results suggest that more research is needed to unpack the relationship between local opposition and residential entitlements.

Notably, we observed that Los Angeles' relatively generous as of right provision can foretell what we might expect from state-level enacted and proposed by-right legislation. We found that despite Los Angeles's as of right provision, rates of entitlement of as of right units were lower than expected, in part due to the overlay of state subdivision law and local specific plan initiatives that carve back the scope of as of right development. Future state proposals should contemplate how to address these complexities.

Finally, the rate of entitlement of affordable housing was low across all jurisdictions during these three years, with the exception of Santa Monica. Also, despite heavy use of state and local density bonus programs coupled with the most generous as of right allowance, Los Angeles had the lowest rate of entitlement of affordable housing. This suggests that future process reforms may need to directly consider affordability—rather than assuming increasing market-rate supply overall will lead to affordability—to increase housing opportunities for low- and middle-income households.

INTRODUCTION

Housing costs within Los Angeles and neighboring cities continue to rise and the homelessness crisis persists. In 2017 the state legislature responded to the statewide housing crisis with key housing bills[1] meant to address escalating housing costs, while acknowledging much more is needed to address California's housing crisis.[2] Scholars, legislators and others often argue that land use law in California contributes to the state's housing crisis by increasing development approval timelines, which in turn drives up the cost of development.[3]

In particular, practitioners and policymakers have argued that state mandated environmental review under the California Environmental Quality Act (CEQA) is a primary driver of delay in residential development while others have focused attention on local land use regulations.[4] The approval process required to be eligible to obtain a building permit is referred to as the entitlement process, and whether CEQA applies to proposed development depends on whether the local government's entitlement process is discretionary or "as of right." If the development is "as of right"—meaning a development meets certain zoning and planning requirements and does not need any additional scrutiny to get a building permit—as a general matter, no CEQA compliance is required. In addition, CEQA can take a range of forms and impose different levels of burden on the developer. Local governments often have significant ability to shape the kinds of CEQA compliance that individual developments must satisfy.

We began case study research to explore how regulation of residential development in California, focusing on the entitlement process, might be contributing to the state's housing crisis. We entered this work with the assumption that regulation slows development timelines, but identified an open question in the existing research as to which specific regulations may be the primary drivers of delay or constrain infill residential development. Effective legal reform requires researchers to analyze how individual land-use regulations operate within local contexts.

After completing our initial work in the Bay Area region of California, we began studying the entitlement processes in Los Angeles, Santa Monica, Pasadena, and Long Beach. We share our initial findings from these four cities, focusing primarily on rates of entitlement and timelines, but with some discussion of litigation and administrative appeals. In future reports, we will also cover in more detail litigation and administrative appeals rates to understand how public opposition to development influences entitlements. We will also share in subsequent writing additional findings that more directly investigate the connections between the risk of displacement, preservation of affordability, and a deeper analysis of local opposition to proposed development.

RESEARCH APPROACH

We used a case study research method to examine how land use law might delay or constrain infill residential development.[5] We selected charter cities of various sizes within the same strong market region. After completing analysis of five Bay Area cities (Oakland, Palo Alto, Redwood City, San Francisco, and San Jose), we began work within Los Angeles, Santa Monica, Long Beach, and Pasadena. Similar to our work within Northern California, we selected a set of cities located within the same regional economy characterized by robust economic growth, high housing demand that outstrips supply, and acute affordability issues.[6] All of the cities we study have the capacity for Transit Oriented Development (TOD), and housing development within the region would promote sustainable growth goals.

We also analyzed this second set of cities because the California Legislative Analyst's Office has attributed high housing costs statewide in large part to the lack of housing supply in California's coastal communities.[7] That report identified Los Angeles as having the fourth highest rental costs and fifth highest housing prices within California. Similar to our first set of cities, all four of these cities have complex local land use ordinances that typify the type of stringent regulation called out by existing research. Because existing research has also identified Southern California, broadly, as being slightly less restrictive in regulation of development as compared with Northern California,[8] these four cities offered an ideal next step for this research.

Each of our case studies began with a summary of the planning code, followed by careful analysis of how each residential development of five or more units that was fully entitled in 2014, 2015, and 2016 navigated the entitlement process. We then conducted in depth interviews with city planners, market-rate and affordable housing developers, consultants, private counsel, city attorneys, and representatives from community-based organizations across these four cities.[9] These interviews uncovered local perceptions of the approvals process, the role of the community in the planning and public approvals process, and important project context (including the local political climate and market conditions) not immediately obvious in the specific project data. While we are continuing our research within these cities and adding another seven jurisdictions from other parts of the state to our data set, we present initial findings on these four cities below. These findings below are limited to data pulled from these four cities.

FINDINGS

Key Finding #1: 819 proposed projects of five or more units obtained entitlements or were as of right within our study years.

Figure 1 provides a simple count of the discretionary and ministerial projects of 5 or more units within these four cities, indicating these cities collectively approved 629 projects of 5 or more units through a discretionary process, and another 190 projects were as of right. The total unit count for these 819 projects (discretionary and as of right) across all cities is 51,168.

Figure 1. Discretionary and Ministerial Unit Counts for Development of 5 or more Units

Entitlement Types	Los Angeles	Santa Monica	Long Beach	Pasadena
Total Number of Projects	759	12	21	27
Total Number of As of Right Projects	190	—	—	—
Total Number of Discretionary Projects	569	12	21	27
Total Number of Units	47,072	729	2,149	1,218
Total Number of Units (Discretionary)	44,161	729	2,149	1,218
Total Number of Units (As of Right)	2,911	—	—	—

Key Finding #2: Only Los Angeles provides for as of right development for proposed development of five or more units.

Uniquely, Los Angeles provides for as of right development for residential development consistent with base zoning, provided that the development does not exceed 49 units. The other three Southern California jurisdictions we examined require discretionary review for all residential development of five or more units (which is similar to the first five Bay Area cities we studied). For these three cities, even if the proposed developments comply with the underlying zoning code, they require additional scrutiny from the local government before obtaining a building permit. The table in Figure 2, below, provides an overview.

Figure 2. Discretionary Review of Developments Consistent with Zoning

Jurisdiction	Primary Discretionary Review Mechanism	Residential Developments Exempt from Discretionary Review
Los Angeles	Site Plan Review	Up to 49 units, except within certain Specific Plan or Community Design Areas[10]
Santa Monica	Architectural Review	Single-family homes in the R-1 district[11]
Long Beach	Site Plan Review	Up to 4 units[12]
Pasadena	Design Review	None[13]

Although the vast majority of proposed residential development of 5 units or more within Los Angeles were subject to discretionary review, we also found 190 proposed developments totaling 2,911 units of multi-family rental housing that went through a ministerial process (meaning they only required a building permit) during our study years. Compared to the other cities we have studied to date, it is significant that 2,911 multi-family rental housing units bypassed the planning department and went straight to the building department for permitting. However, these 2,911 units also represented only 7% of all proposed development of 5 or more units that was entitled or was permitted ministerially during our study years (see Figure 3).

The fact that so few units were as of right compared to discretionary units suggests that there may be issues with LA's base zoning controls (for example, height, density, setbacks and other design controls), which we discuss further in Finding #3. But it also suggests that the use of some as of right development for a moderate number of units (in Los Angeles it is less than 50) has not resulted in a substantial impact on discretionary review over most proposed development.

In addition, the ministerial process has provided a vehicle for at least some affordable housing development to bypass planning department review and associated regulatory burdens (further discussed below in Finding # 9). This suggests that jurisdictions could incrementally loosen discretionary control over smaller projects (defined as less than 50 units) to increase housing supply, while maintaining discretionary review over larger projects.

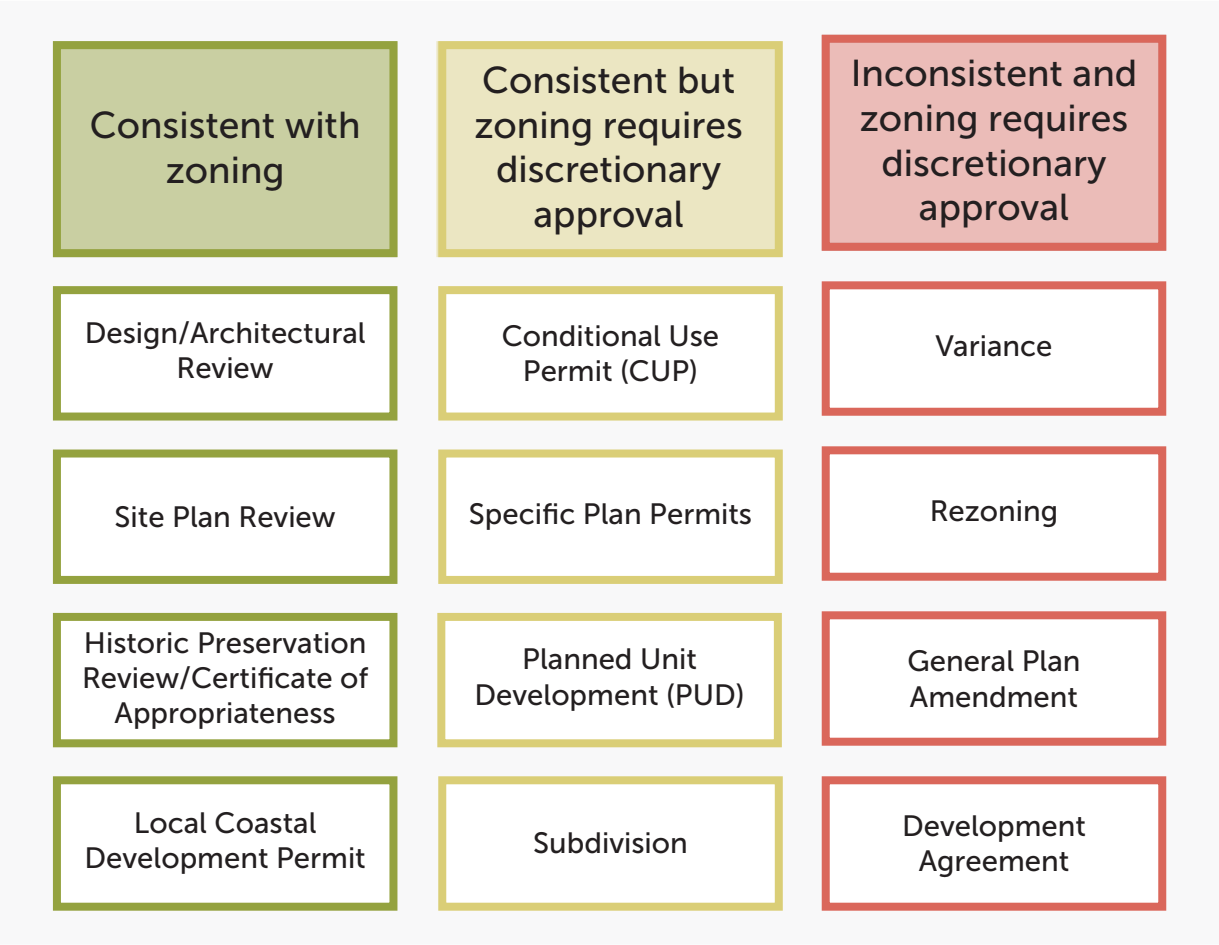
Figure 3. Discretionary and Ministerial Unit Counts for Development of 5 or more Units in Los Angeles

Discretionary Units Entitled	44,161
Ministerial Units Permitted	2,911
Total Units Entitled and Permitted	47,072

Key Finding #3: The mechanisms by which cities require discretionary review vary.

California land use law offers cities a range of tools to review and approve housing development. Cities typically choose among these tools to ensure discretionary review of residential development. Broadly, these four cities demonstrate how varied those choices are.

Figure 4. Types of Discretionary Review Mechanisms[14]



Santa Monica and Pasadena subject nearly all development to design review. Yet even within the category of design review, discretion sits at different levels. While smaller projects can obtain design review at the staff-level in Pasadena, larger projects of 10 or more units must go before a Design Commission.[15] In Santa Monica, outside of the R-1 zone, all projects are evaluated by the Architectural Review Board.[16] Long Beach and Los Angeles use a Site Plan Review process. In Los Angeles, Site Plan Review can be approved at the planning director level, without the need to go to a Planning Commission or a Design Review Board.[17] Developments of fewer than 50 units can be approved at the director-level in Long Beach; projects above that must go to Planning Commission.[18]

Outside of blanket discretionary provisions, types of discretionary approvals vary. Deviations from the zoning code—such as variances, rezonings, and General Plan Amendments—are more common in Los Angeles than in the smaller jurisdictions. Los Angeles and Pasadena both utilize state and local density bonus programs,[19] but Santa Monica and Long Beach did not. The high rate of density bonuses and rezonings in Los Angeles indicates the extent to which developers are requesting deviations from the base zoning. Qualitative interview data from Los Angeles also suggests that density bonuses have become a de facto source of variances in the city, enabling planners to grant code deviations without having to make the hardship findings legally required for a variance.[20]

Santa Monica is unique in that so many of its developments required Development Agreements—one-third of all projects. Development Agreements are utilized in other cities, but not as frequently. The prevalence of Development Agreements is likely a product of a zoning ordinance that Santa Monica has since modified. Before July 2015, Santa Monica required Development Agreements in order for developers to unlock the full potential of the base zoning in certain parts of the city.[21] Santa Monica has eliminated the Development Agreement requirement, and now requires a Development Review Permit instead in certain parts of the city.[22] This results in some projects having to obtain both Architectural Review permit and a Development Review Permit.

Because projects generally require more than one discretionary approval in our four cities, the total numbers of discretionary approvals are greater than the number of overall development projects proposed in our study years in each jurisdiction. A single project might need to obtain Design Review approval from the Director of the Planning Department, a rezoning from the City Council, and a Certificate of Compatibility from the Historic Resources Commission. On average, proposed residential development subject to discretionary review went through approximately 3 approvals within all four of these cities.

Figure 5. Instances of Discretionary Review across Jurisdictions for Developments with 5 or more Units

Entitlement Types	Los Angeles	Santa Monica	Long Beach	Pasadena
Total Number of Projects	759	12	21	27
Total Number of As of Right Projects	190	—	—	—
Total Number of Discretionary Projects	569	12	21	27
Site Plan Review/Design Review	123	14	21	27
Historic Preservation Permit/ Certificate of Appropriateness	9	—	2	—
Local Coastal Development Permit	5	—	5	—
Conditional Use Permit (CUP)	21	—	—	—
Specific Plan Permit	135	—	—	—
Tentative Tract Map (Subdivision)	246	6	7	13
Variance	113	2	1	5
Rezoning	84	—	1	—
General Plan Amendment	27	—	1	—
Development Agreement	3	4	1	1
State or Local Density Bonus	234	—	—	4
Other Approval	48	—	5	7
Total	1048	26	44	57
Non-CEQA Approvals per discretionary project	1.84	2.17	2.10	2.11
CEQA Approvals per project	1	1	1	1
Total approvals per discretionary project	2.84	3.17	3.10	3.11
Total approvals across all projects	2.38	3.17	3.10	3.11

Key Finding #4: Even in Los Angeles, which has meaningful by right development, state subdivision law and other local requirements provide another discretionary hook.

Although Los Angeles provides for as of right development for some residential development of 49 units or less, there are two[23] notable exceptions to this policy that bring projects that would otherwise be as of right under discretionary review. Some development would be as of right under Los Angeles local law but for the application of a Specific Plan or a Community Design Overlay (CDO), and some proposed development would be as of right but for the application of state-mandated subdivision approval processes. In certain specific plan areas, projects below 50 units are required to obtain a discretionary approval under the Specific Plan;[24] similarly, CDO areas require additional review to ensure that projects are built in accordance with community design policies.[25]

These are notable instances of where local law carves back the scope of as of right development. In our data years, 62 developments below the Site Plan Review threshold of 50 units required these specific plan or community design overlay approvals (some required both). 30 of these projects would have been entirely as of right but for the application of a Specific Plan or CDO. Recently enacted streamlining provisions under SB-35 would override these types of approvals,[26] provided that the project met the other qualifying criteria under that statute.

Subdivision presents the second notable exception to as of right within LA. State law requires various types of local discretionary review and approval of subdivision maps when a developer is dividing a single parcel of land into multiple units (the single-family home scenario) or dividing the airspace above the land into multiple units (the condominium scenario). As a result, most condominiums and for-sale single-family homes are automatically outside the scope of LA's by-right provision. 43% of all projects in Los Angeles required a tentative or vesting tentative tract map. 20% of all discretionary projects in Los Angeles had fewer than 50 units and required only a tract map, which means that but for the state subdivision requirement, an additional 114 projects would have been as of right. While recently enacted SB 765 makes the subdivision process for SB-35 projects ministerial, in our data years, only two projects that were not 100% affordable housing contained sufficient inclusionary units to qualify for SB-35 streamlining.

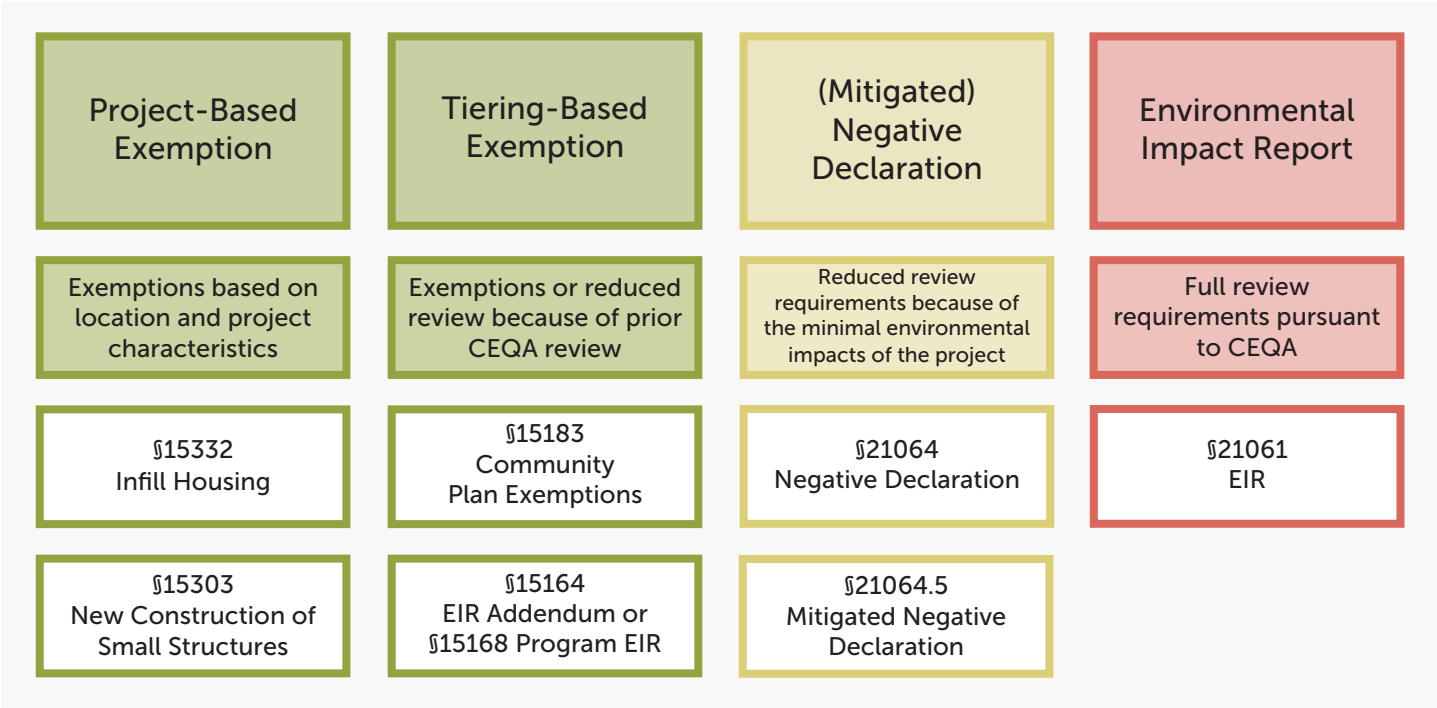
Key Finding #5: How these jurisdictions apply the California Environmental Quality Act varies.

CEQA applies to any residential development project that requires a public agency's discretionary approval,[27] and the local Planning Department usually makes the decision about whether a required approval is discretionary or ministerial (as of right).[28] Discretionary projects may still be exempt from CEQA through statutory exemptions and thirty-three categorical exemptions.[29] For example, a planning department can use the Class 32 infill exemption for infill development; if an urban infill project satisfies five conditions, it can bypass CEQA review.[30]

Tiering is another way to streamline environmental review under CEQA by allowing environmental review of a proposed project to focus on a narrow set of issues that have not already been evaluated in a prior environmental review document. If all the issues have been evaluated in that previous document, then no further study is necessary. Tiering necessarily requires a prior environmental review document (generally an Environmental Impact Report ("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.[31]

Alternatively, if the project will have a significant effect on the environment, but the developer can incorporate mitigations that reduce the significance of those effects, then the agency issues a Mitigated Negative Declaration ("MND").[32] Finally, a lead agency must prepare an EIR where there is substantial evidence that the project will have a significant effect on the environment[33] and where it is not clear from the Initial Study that these impacts can be mitigated below a significance threshold.[34]

Figure 6. Types of CEQA Review Mechanisms



The smaller cities we studied determined that nearly all proposed residential development projects were categorically exempt from CEQA whereas the City of Los Angeles frequently used MNDs to comply with CEQA. Relatively few projects within the four cities require a full EIR process. Santa Monica and Pasadena were outliers when compared with the other three cities. Qualitative data from Santa Monica suggests that developers often chose to perform a full EIR where legal challenges are anticipated; Santa Monica's relatively high rate of administrative appeals discussed in Finding #10 might support this explanation. Two large projects in Pasadena required full EIRs.

Figure 7. Instances of CEQA Review Across All Jurisdictions

CEQA Types	Los Angeles	Santa Monica	Long Beach	Pasadena
Exempt Total	134	11	16	21
Project-Based Exemptions	115	2	11	19
Tiering-Based Exemptions	19	3	5	1
Other Exemptions	0	6	0	1
Negative Declaration	2	0	0	0
MND	409	0	3	4
EIR	19	3	1	2
Total	565	14	20	27

Of these four cities, the data suggests that Long Beach appeared to be making good faith efforts to increase their supply of housing by engaging in specific planning strategies that link housing and jobs to transportation and facilitate environmental review for developers. The relatively low rate of housing entitlement in Long Beach, however, suggests that these efforts may be too geographically constrained within a certain area of the city to encourage more development. Finally, like the discretionary review mechanisms discussed above, many projects are receiving multiple CEQA exemptions, which could suggest overlap in CEQA review procedures.

Analyzing project size as a function of CEQA, our data shows that projects with EIRs in these cities generally tend to be larger relative to other projects proposed within the same city that undergo other types of CEQA review (with Long Beach presenting the only exception).

Figure 8. Total Number of Units Per CEQA Review Type[35]

CEQA Types	Exemption (Project, Tiering, or Other)	% Total Units	MND/ND	% Total Units	EIR	% Total Units	Total Units Entitled
Los Angeles	8,849	19%	26,345	60%	10,015	23%	44,161
Santa Monica	665	91%	0	—	449	62%	729
Long Beach	1,545	72%	424	20%	131	6%	2,149
Pasadena	492	40%	173	14%	553	45%	1,218

While EIR projects were generally larger, projects approved through exemptions were not small and generally exceeded 50 units. In Los Angeles, exempt projects were the same size as MND projects. Exempt projects in Long Beach were larger than MND projects in LA.

Figure 9. Mean Project Size (Units) by CEQA Review Type

Mean Project Size By CEQA Type	Los Angeles	Santa Monica	Long Beach	Pasadena
Exempt (Project, Tiering, or Other)	65	61	97	23
ND	43	n/a	n/a	n/a
MND	64	n/a	141	43
EIR	527	150	131	277

Because so many projects complete CEQA review through mechanisms other than EIRs, a large majority of all approved units did not require an EIR for project-level CEQA review. Santa Monica is the exception with over 60% of all units going through an EIR; in Pasadena, 45% of units went through an EIR. As shown in Figure 7, the smaller cities heavily rely on exemptions to reduce the burden of CEQA compliance, while Los Angeles overwhelmingly relies on MNDs. MNDs were relatively infrequent in the other three neighboring jurisdictions. Our review indicates that compliance routes other than EIRs are a key component of infill residential development in Southern California.

Key Finding #6: There are significant variations in timeframes for entitlements across jurisdictions even for projects that share similar characteristics.

Figures 10 and 11 show the mean and median approval timelines for projects of varying sizes in each jurisdiction. Projects subject to an interim zoning ordinance within Santa Monica that required a Development Agreement process for proposed development that met specific criteria in terms of building form (e.g., density and height) experienced unusually slow timelines. We also observed long delays in processing of proposed development in Santa Monica that did not require Development Agreements (although the one project in Santa Monica that was 100% affordable took slightly less than 12 months for entitlement). These timeframes may be due to lingering impacts of the Great Recession or could be explained in part by the local political context;[36] however, we were unable to determine the cause of delay for any project with certainty because of the way data is tracked in the city's online permitting system.

Figure 10. Mean Approval Time of Discretionary Projects by Project Size Measured in Months

Mean Approval Time By Project Size	Los Angeles	Santa Monica	Long Beach	Pasadena
5-25 units	11.3	55.8	11.9	15.4
26-50 units	12.0	19.2	10.9	13.0
51-100 units	12.0	34.9	8.8	13.0
101-150	16.2	n/a	11.6	27.9
151+ units	22.0	101.7	9.3	26.6
Across All Project Types	13.1	48.30	10.53	16.25

For proposed development subject to discretionary review, Pasadena and Santa Monica tend to have longer approval time frames across all project sizes than do Los Angeles and Long Beach. As discussed above, Santa Monica and Pasadena also rely primarily on design review. In both jurisdictions, a single project goes through multiple design review milestones—either a preliminary, intermediate, and then final review stage, or various iterations of review based on individual building design components (building colors, landscape, signage, etc.) to ensure compliance with prescriptive design standards.

In Santa Monica for example, the Architectural Review Board analyzes the building at the component level in multiple convenings. In contrast, Site Plan Review findings in Los Angeles and Long Beach are limited to a single point in time and focus on the aesthetics of the building generally, not the component level. For example, Site Plan Review in Los Angeles requires that a planning director make three findings: that the proposed development conforms to applicable zoning and planning, that building form is compatible with existing development, and that there are amenities and minimal impacts to existing neighbors.[37] In contrast, the use of design or architectural review can allow for an undetermined number of public hearings before a panel of design experts with different approvals required for each design landmark (e.g., structure, color, landscape, signage).[38]

The time lags observed in Santa Monica and Pasadena suggest that Site Plan Review processes might move more efficiently in Long Beach and Los Angeles. Also notable, Los Angeles and Long Beach have the most permissive as of right residential allowances among the four cities—49 and 4 units respectively—which could also suggest that these cities employ a more permissive process for all proposed residential developments, lowering the average review times for projects subject to discretionary review.

Figure 11. Median Approval Time of Discretionary Projects by Project Size

Mean Approval Time By Project Size	Los Angeles	Santa Monica	Long Beach	Pasadena
5-25 units	8.2	43.6	10.9	14.3
26-50 units	9.5	19.2	6.6	12.6
51-100 units	9.9	44.6	6.2	13.0
101-150	10.3	n/a	7.2	27.9
151+ units	13.0	101.7	9.9	26.6
Across All Project Types	9.5	38.8	7.2	14.33

Analyzing approval times as a function of project size (in units), in Los Angeles, larger projects take longer to approve than smaller projects. In Long Beach, however, the smallest subset of projects (5-25 units) appear to take longer to approve than the largest projects entitled in that jurisdiction. Given that larger projects have the potential to have more environmental and aesthetic impacts than a smaller project, this result is counter-intuitive. Interviews suggest one possible explanation—developers building smaller projects tend to have less capital to hire a team of design and legal experts necessary to guide the project through the process efficiently.

Santa Monica has the largest deviation between median and mean approval timeframes—nearly 10 months. As described above, this likely owes to the transitions and variability in the zoning code during our study years, and may not be reflective of the process as it stands today. To answer this question, we are currently gathering 2017 project-level data.

Key Finding #7: The substantial variation in entitlement timeframes across these four cities does not appear to correspond with the number of approvals required by either local or state level processes.

Most of these cities apply approximately the same number of approvals per proposed residential development project, but have significant variations in the timelines for entitlement. Los Angeles had the lowest average number of project approvals among the group, but had a significantly slower timeline than Long Beach, which required more approvals per project. Los Angeles's low number of approvals is in part due to the high 50-unit threshold to trigger Site Plan Review. Intuitively, Santa Monica required the greatest number of approvals per project and had the slowest timelines; however, the difference in approval numbers between Santa Monica and Pasadena and Long Beach is marginal while the difference in average timeframes is great.

Figure 12. Mean Approval Time (Months) by CEQA Review Type

	Los Angeles	Santa Monica	Long Beach	Pasadena
All Exemptions	10	39	8	15
Negative Declarations (ND)	5	—	—	—
Mitigated Negative Declarations (MND)	13	—	17	16
Environmental Impact Reports (EIR)	43	77	23	28

Approval times in Santa Monica are likely increased by the relatively high rate of EIRs, which took longer than projects that were categorically exempt.[39] Pasadena also relies more heavily on EIRs and has longer time frames than Los Angeles or Long Beach. Exempt projects took the same amount of time in Los Angeles and Long Beach, but 5-7 months longer in Pasadena.

Unfortunately, because of local process—in these jurisdictions the CEQA findings are typically adopted contemporaneously with the approval of the entitlement—it is difficult to disentangle the time it takes to complete CEQA review from the time it takes to complete the other required discretionary review processes without access to internal permitting software and workflows.

Despite interjurisdictional variation, the relationships between the type of CEQA review and timeframes is more linear within each respective jurisdiction. In all jurisdictions, exemptions were faster than MNDs and EIRs, and MNDs were faster than EIRs in all jurisdictions.

Figure 13. Median Approval Time (Months) by CEQA Review Type

	Los Angeles	Santa Monica	Long Beach	Pasadena
All Exemptions	7	33	7	14
Negative Declarations (ND)	5	—	—	—
Mitigated Negative Declarations (MND)	10	—	17	15
Environmental Impact Reports (EIR)	31	77	23	28

Key Finding #8: There is significant variability across jurisdictions in terms of total projects entitled, total number of units entitled, total number of units entitled per capita, and density of dwellings entitled per square mile.

Measuring the time it takes to entitle a project is one way to understand how entitlement processes enable development in a jurisdiction. Counts of actual projects and units are another. The table below provides a summary of how many projects and how many units these five cities entitled in 2014, 2015, and 2016.

Project and unit count alone cannot convey a complete picture of how entitlement processes operate within each city. By calculating how many units each city is entitling per capita,[40] we can get a better sense of how many units each city is entitling relative to their respective sizes measured by population. Interestingly, Los Angeles—the largest city—is entitling the most units per capita while Long Beach—the second largest city in terms of population—is entitling the least number of units per capita. Santa Monica and Pasadena are the closest among the four in population size and have similar entitlements per capita.

Figure 14. Project and Units Entitled Per Capita

	Population	Entitled Units	Units per 1,000 people over 3 years
Los Angeles	3,976,000	44,161	11
Long Beach	469,450	2,149	5
Santa Monica	92,306	729	8
Pasadena	142,647	1,218	9

Calculating both the mean and median number of dwelling units per square mile in each jurisdiction can also allow us to compare projects entitled in each jurisdiction in terms of the jurisdiction's overall land area and existing population density.[41] As a measure of land area, Los Angeles entitles the most development. Los Angeles also has the highest concentration of population per square mile. Santa Monica is second, despite it having the longest approval time frame. Santa Monica also has the densest existing development when measuring population as a function of land area.

Figure 15. Dwelling Units Per Square Mile

	Land Area (mi^2)	Total Entitled Units	Entitled Units per Square Mile	Population	Population Per Square Mile
Los Angeles	469	44,161	94	3,976,000	8,484
Long Beach	50	2,149	43	469,450	9,335
Santa Monica	8.42	729	92	92,306	10,963
Pasadena	23	1,218	53	142,647	6,210

Our methodological choices also impact entitlement counts. To accurately track the typical entitlement process, we do not include developer-initiated modifications to previously entitled developments.[42] Developments with more than 50 units that received a subdivision approval in our project years but did not obtain Site Plan Review approval are not counted in our database. To capture the full scope of discretionary review processes, we do not include projects that received an entitlement in 2016 but did not receive a tentative tract map until 2017. While these choices impact counts, they enable us to make consistent comparisons across regions.

Key Finding #9: Affordable housing entitlement rates vary, and these rates do not appear to be directly tied to the presence of an inclusionary housing ordinance; however, state and local density bonuses appear to yield less affordable housing than do inclusionary housing ordinances.

Tracking the entitlement of deed-restricted affordable housing units[43] is important to ensure that new development advances equity goals. In these jurisdictions, deed-restricted affordable housing came through a variety of avenues—local inclusionary housing ordinances, local and state density bonuses, and 100% affordable housing developments financed through various levels of local, state, and federal finance.

Two of our jurisdictions—Santa Monica and Pasadena—have inclusionary housing ordinances. Santa Monica had the highest rate of affordable housing entitlement; Pasadena had one of the lowest rates of entitlement. Los Angeles and Pasadena were the only two jurisdictions to utilize state and local density bonus programs.

Figure 16. Count and Percentage of Affordable Units Entitled and 100% Affordable Developments Entitled

	# of Affordable Units	# of Total Units	# of 100% Affordable Housing Developments
Los Angeles (Discretionary Projects)	3,234	7%	22
Los Angeles (Ministerial Projects)	176	6%	4
Santa Monica	151	21%	1
Long Beach	280	13%	2
Pasadena	71	8%	1

Over 40% of all discretionary developments in Los Angeles utilized a state or local density bonus program; 18% of all ministerial developments utilized a density bonus program. Despite the high utilization of the density bonus, Los Angeles had the lowest rate of affordable entitlement overall (measured by percentage of total units entitled), even when combining the discretionary and ministerial units. Because 11 of the 27 projects entitled in Pasadena contained less than 10 units—the trigger for Pasadena's inclusionary housing ordinance—affordable housing entitlement rates in Pasadena were low.[44] Some of the larger developments subject to the inclusionary ordinance also opted to pay the in lieu fee. Long Beach's high rate of affordable housing stems from two 100% affordable housing developments that were entitled in these years.

It is also notable that the ministerial process in Los Angeles yields about the same percentage of affordable units as the discretionary process. Interview data indicates that affordable housing developers benefit from a ministerial process in terms of shorter permitting timelines and the cost savings associated with avoiding having to navigate a discretionary process (such as consultants, carrying costs, and similar expenses).

Given these advantages, one could expect the ministerial process to yield a higher rate of affordable housing entitlements than a discretionary process. Additional interview data helps explains why this is not the case. One often-cited explanation is Los Angeles's Affordable Housing Managed Pipeline—which enabled the city to oversee and select which affordable housing developments it wanted to fund—and its requirement of a local councilperson letter of support.[45] Participants noted that this letter of support operated as a silent veto to prevent affordable housing from being sited in certain neighborhoods; even if ministerial permitting was available, the lack of city funding might prevent projects from being initiated.

The availability and location of appropriately zoned land was another cited factor in the similar rates of affordable housing entitlements for ministerial and discretionary processes. Affordable housing developers might opt into a discretionary process because of the location of the project. For example, a project could be below the 50-unit threshold and compliant with base zoning, but subject to a discretionary process because of the project's location in a Specific Plan or a CDO area. Six of the 22 affordable housing projects entitled were located within a Specific Plan.

Or, a project could require a deviation from the standards in the base zoning—for example, height, FAR, parking, setbacks, and open space variances—that forces it into a discretionary process. In Los Angeles, 54% of total rezonings occurred for projects of 49 units or less—meaning these projects were below the Site Plan Review threshold. This suggests that the density of the underlying zones might not be calibrated to maximize developer use of the relatively generous as of right provision; lack of density available through base zoning accordingly requires developers to opt into a discretionary process.

Finally, affordable housing developers might need to build more than 49 units in some instances to take advantage of economies of scale to make overall development less costly on a per unit basis. The average affordable housing development in Los Angeles was 83 units—35 units above the Site Plan Review threshold. Of the 22 affordable housing developments entitled in our project years, only 4 contained fewer than 49 units. Only one of these four developments contained fewer than 40 units. This contrasts sharply with total development patterns across Los Angeles where 68% of all entitled projects contained fewer than 50 units.

While SB-35 may address some of these issues by overriding local Specific Plan and CDO permits for code-compliant projects,[46] it does not streamline approvals around zoning code deviations, particularly those outside the scope of the ministerial density bonus.

Key Finding #10. Appeals rates and litigation rates within these cities vary.

Examining rates of appeals and litigation can help illuminate how much opposition developers face to proposed residential development within each city and what types of projects face opposition. The variability in rates of both local administrative appeals and CEQA litigation among these four cities is great, and it appears that in the smaller cities larger projects face more opposition.[47] Our analysis only addresses rates of CEQA litigation; rates of non-CEQA litigation (for example, alleged violations of planning and zoning law) will be analyzed in future writing.[48]

Figure 17. Percentage of Discretionary Projects and Units Appealed and Percentage of Projects and Units Subject to Litigation

Jurisdiction	Appeals rate (% of projects)	# of projects	Appeals rate (% of units)	# of units	# projects litigated under CEQA	CEQA litigation rates (% of projecs)	# of units litigated under CEQA	CEQA litigation rates (% of units)
Los Angeles	20%	113	36%	16,059	20	4%	4,885	11%
Santa Monica	17%	2	53%	387	0	0%	0	0%
Long Beach	5%	1	15%	315	3	14%	609	28%
Pasadena	0	0	0	0	1	4%	201	17%

In Los Angeles, for example, 20 developments (or 4% of all proposed residential developments subject to discretionary review and CEQA) faced CEQA related lawsuits. The project characteristics of proposed development within Los Angeles also varied: 11 of the 20 projects that faced CEQA litigation were under 50 units, and among those 11 projects 7 proposed developing 10 units or less. In contrast, 1 project in Pasadena that proposed 201 units and 3 in Long Beach that ranged between 131 to 351 units faced CEQA lawsuits. Because these cities had much lower rates of entitlement, the percentage of projects and entitled units subject to CEQA litigation is much greater than in Los Angeles.

While no projects entitled in Santa Monica in our dataset faced CEQA related litigation, the largest project entitled in Santa Monica faced opposition through an administrative appeal.[49] This project involved the proposed demolition of 99 rent-controlled spaces in a trailer park near the Metro's Expo Line station and the construction of a mixed-use project with 161 apartments and 216 condominiums.[50] Local media reports that opposition (through a discretionary process) appears to have significantly changed the proposed development to increase affordability, with the entitled project resulting in all units being rental units (rather than condominiums), 38 affordable units, 61 price-controlled units, and the retention of 10 trailer park spaces.[51] Despite increasing the number of affordable units, this opposition also resulted in a down-sizing of the project from 438 to 377 units.[52]

While litigation rates on a project-basis were generally low, Long Beach has atypically high rates of litigation relative to the other jurisdictions. Long Beach also had the lowest rate of entitlements on both a per capita and land area basis. Though market conditions likely play a role in entitlement rates as discussed in Discussion Point #1, there may also be a link between legal challenges and entitlement rates in Long Beach. This pattern, however, is not necessarily consistent across all jurisdictions. Pasadena, for example, had the second highest rate of entitlements and the second highest litigation rate on a per unit basis.

DISCUSSION

1. In some cities, process timelines may not be the strongest constraint on rates of entitlement, and in turn, production or housing supply, but process reform that considers affordability may still be helpful in those cities.

Much of the debate around legislative reform to increase housing supply focuses on process and suggests reforms to expedite approvals by reducing local discretion and environmental review. Some of these proposals suggest exempting code-compliant developments from the scope of discretionary review entirely. What we observe in this data, however, would suggest that while process reforms in some places might shorten entitlement timelines and in turn increase entitlement rates, those changes would not address critical constraints on supply in other markets—such as supply of appropriately zoned land or construction costs.

For example, unlike Los Angeles, Santa Monica, Pasadena, and Long Beach granted relatively few variances or exceptions to the zoning code during our data years, implying that either existing base zoning can accommodate much proposed development in these cities or that deviations from base zoning in these cities is not as politically feasible as it is in Los Angeles. In cities like these three, state-level intervention that overrides blanket discretionary review requirements (design review, site plan review, or specific plan permits) for projects otherwise consistent with base zoning (such as SB-35) may be effective in facilitating development, as long as there is adequate zoned land to meet market demand (for example, smaller units with less parking and and fewer required setbacks).

But in a city like Los Angeles, the comparative rates of discretionary versus as of right projects suggests that an increase in supply is also heavily dependent on whether an adequate supply of appropriately zoned land exists within specific neighborhoods in the first place; in this context, to the extent that these state-level reforms override local discretion but depend on compliance with base zoning to shorten timelines and facilitate more supply, they may not be as effective.

In addition, in Long Beach we observed short approval times for discretionary projects that are atypical within this group of cities but also overall low rates of entitlement. Short approval times combined with low entitlement rates may indicate market barriers to development unrelated to entitlement processes. Interview data suggests that the inability to command similar market rents as compared to neighboring jurisdictions, combined with high construction costs, heavily influences the amount of proposed development within Long Beach.

In stark contrast to Long Beach, Santa Monica had the lengthiest approval timeframes among the four cities. Unlike the other three cities, Santa Monica was also more likely to require a full EIR, which imposes an exponentially greater cost on developers as compared to the use of MND or categorical exemption. Still, Santa Monica for its size had one of the higher rates of entitlement (measured by number of units per capita and by land area), and Santa Monica also had the highest rate of entitlement of affordable units. Interview data suggests that developers in Santa Monica can command high rents (distinguishable from Long Beach). While the majority of the proposed development within these study years would yield production of market-rate housing, this potential for high rents appears to subsidize the inclusionary housing requirements.

The contrast between these two cities suggests that legislation focused on process reform might have limits in its ability to address increasing supply in cities like Long Beach that have comparably less favorable market conditions but are still impacted by high construction costs. Persistent reliance on the market to subsidize affordable housing, as opposed to a comprehensive affordable housing policy shift that considers process reform as well as robust public investment (including state-level investment), may be inadequate in cities that cannot command the highest rents.

While process reforms in some places might shorten entitlement timelines and in turn increase entitlement rates, those changes would not address critical constraints on supply in other markets–such as supply of appropriately zoned land or construction costs.

While this data may suggest that a state-mandated ministerial process may be helpful in strong-market cities where local NIMBY opposition is a primary constraint to unleashing more supply, a closer examination of local contexts also reveals how crafting an effective and equitable state-wide as of right solution also requires direct consideration of affordability.

Process reform could certainly shorten timelines for development by limiting project opponents' ability to appeal at the local level or challenge projects in court,[53] but removing the discretionary hook without explicitly addressing affordability, or requiring inclusionary provisions, would also curtail the ability for community or the city to negotiate for more affordability from developers proposing large scale market-rate development near transit.

2. State-law by right proposals should contemplate exempting certain types of common deviations from local codes and certain types of subdivision actions from the scope of discretionary review; these proposals must also ensure state-level initiatives do not cause these cities to enact more rigid regulations.

Debates around newly proposed legislative solutions at the state-level that propose as of right, or by-right as it is commonly referred to, can benefit from a close analysis of Los Angeles, which provides a unique case study within California of how by-right proposals will likely work in practice. Despite a relatively generous by-right provision in Los Angeles, our team found few developments of 5 or more units but less than 49 units permitted as of right compared to developments approved through a discretionary approval.

Analyzing all projects in Los Angeles of 5-49 units (below the Site Plan Review threshold) shows that 62% of these projects were still discretionary because they required deviations from the code—such as variances, rezonings or density bonuses and related concessions and incentives like parking, open space, and setbacks. This suggests that in order for by-right proposals to effectively contribute to increasing supply (assuming all other equity considerations associated with prior by-right proposals are resolved), underlying zoning codes must be flexible and accommodating for market-demands on housing (e.g., less parking, smaller units, and relaxed setback and lot coverage standards).

Any state law that intends to impose by-right must address nuances and include common code deviations within the scope of by-right provisions.

But updating these codes in many jurisdictions is a financial and political impracticality. As such, any state law that intends to impose by-right must address nuances and include common code deviations within the scope of by-right provisions. This proposal necessitates analysis of the most commonly requested variances, and by extension density bonus incentives, in high-demand cities of varying sizes across the state to propose effective common code deviations at the state level. We have this data and will provide this analysis in future writing.

Similarly, subdivision presents another wrinkle to an as of right solution. Because new condominiums require a discretionary subdivision approval, proposed legislation could not make these for-sale units truly ministerial. If they had been ministerial in Los Angeles, this policy would have made 114 developments truly ministerial and eliminated 92 MNDs and one EIR. Lawmakers should contemplate making the approval of certain types of tentative tract maps for new construction condominium units ministerial with effective safeguards to guarantee environmental and equitable outcomes. Making certain tentative tract maps ministerial would not do away with the substantive requirements of the Subdivision Map Act and local codifications; rather, it would eliminate the need for CEQA review and the potential for a related legal challenge.

Environmental safeguards could mimic the thresholds for the CEQA Class 32 infill exemption, meaning that the project must be located in an urban infill location and cannot exceed certain size thresholds. Equitable safeguards could also be deployed to ensure a new affordable supply of units and minimize displacement—condominium conversions of existing rental units, for example, should not be covered by these policies because these conversions do not create new supply.[54] Crafting safeguards to promote equity and avoid displacement also requires understanding how condominium projects in Los Angeles that only required a subdivision approval interact with outcomes associated with displacement.

Finally, cities have a wide range of tools at their disposal to require more projects to obtain deviations—primarily variances and exceptions—from design standards in the zoning code, without downzoning in violation of the Housing Element and other state laws. For example, a tweak to the code as simple as how to measure height on a slope could necessitate variances for floor heights and other building form issues. Parking configurations—not parking ratios—is another frequent source of variances that could provide jurisdictions with a discretionary hook. Mechanical and elevator penthouse protrusions are another common request. In sum, state by-right law proposals (which will likely encounter substantial political obstacles) must work carefully to avoid cities enacting more rigid regulations or risk inefficacy.

NEXT STEPS

Additional analysis of entitlement trends in these Southern California cities is forthcoming, as is comparative analysis with our first five Bay Area jurisdictions. Our team is also expanding into seven cities—Sacramento, Folsom, Fresno, Mountain View, Inglewood, Redondo Beach, and San Diego—and extending data collection into 2017.

ENDNOTES

[1]Governor Brown Signs Comprehensive Legislative Package to Increase State's Housing Supply and Affordability. (2017, September 29). Retrieved February 10, 2018, from https://www.gov.ca.gov/2017/09/29/news19979/.

[2]Liam Dillon, Gov. Brown Just Signed 15 Housing Bills. Here's How They're Supposed to Help the Affordability Crisis, L.A. Times (Sep. 29, 2017), http://www.latimes.com/politics/la-pol-ca-housing-legislation-signed-20170929-htmlstory.html; Angela Hart, Jerry Brown Signs New California Affordable Housing Laws, SACRAMENTO BEE, (Sep. 29, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article176152771.html; Liam Dillon, The Housing Package Passed by California Lawmakers is the Biggest Thing They've Done in Years. But it Won't Lower your Rent. L.A. Times (Sep. 15, 2017), http://www.latimes.com/politics/la-pol-ca-housing-legislation-deal-impact-20170915-story.html.

[3]Chang-Tai Hsieh & Enrico Moretti, How Local Housing Regulations Smother the U.S. Economy, N.Y. Times (Sep. 6, 2017), https://www.nytimes.com/2017/09/06/opinion/housing-regulations-us-economy.html; Liam Dillon, Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, it Depends on the Project, L.A. Times (Sep. 25, 2017), http://www.latimes.com/politics/la-pol-ca-enviromental-law-breaks-20170925-story,amp.html; Angela Hart, Here's Why California's Historic Housing Legislation Won't Bring Down Costs Anytime Soon, Sacramento Bee (Sep. 27, 2017), http://www.sacbee.com/news/politics-government/capitol-alert/article175541676.html; John Gamboa, Jennifer Hernandez & Michael Shellenberger, Newsom must prioritize affordable middle-class housing, S.F. Chronicle (Jan. 7, 2019), https://www.sfchronicle.com/opinion/openforum/article/Newsom-must-prioritize-affordable-middle-class-13515693.php.

[4]See e.g., Jennifer Hernandez, David Friedman & Stephanie Deherrera, In the Name of the Environment, Holland & Knight (2015); Carolina Reid & Hayley Raetz, Perspectives: Practitioners Weigh in on Driver of Rising Housing Construction Costs in San Francisco (2018); Edward L. Glaeser & Joseph Gyourko, The Impact of Zoning on Housing Affordability 17 (National Bureau of Economic Research Working Paper No. 8835, 2002); John Quigley, Steven Raphael & Larry A. Rosenthal, Measuring Land Use Regulations and Their Effects in the Housing Market, in Housing Markets and the Economy 282 (Lincoln Institute of Land and Policy ed., 2009).

[5]Robert Yin, Case Study Research: Design and Methods (5 ed. 2014).

[6]Malo Hutson, The Urban Struggle for Economic, Environmental and Social Justice: Deepening their Roots (2016); Paul Knox & Linda McCarthy, Urbanization: An Introduction to Urban Geography (2012).

[7]Chas Alamo, Brian Uhler & Marianne O'Malley, California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (2015).

[8]Kristoffer Jackson, Regulation, Land Constraints, and California's Boom and Bust, 68 Reg. Sci. & Urb. Econ. 130 (2018)

[9]In some instances, individuals we interviewed worked in, or for, two or more of the cities within our group of four.

[10]Los Angeles Muni. Code § 16.05.

[11]Santa Monica Muni. Code § 9.07.030(l).

[12]Long Beach Muni. Code § 21.25.502.

[13]Pasadena Muni. Code § 17.61.030.

[14]The first column lists tools that impose discretionary review that are applied even where a proposed project is consistent with the zoning ordinance. The second column lists requirements for discretionary review for categories of projects that are built within the framework of the zoning ordinance—in other words, the zoning ordinance itself contemplates that some projects must obtain one of these types of permits. The third column provides categories of discretionary review that attach to a project when the proposed project would not comply with the zoning ordinance; this includes when the developer is seeking an exemption from the zoning ordinance (variance), or asking the city to zone the project site differently (rezoning), or change or update the General Plan to allow for the proposed project.

[15]Pasadena Muni. Code § 17.61.030.

[16]Santa Monica Muni. Code § 9.55.120.

[17]Los Angeles Muni. Code § 16.05. Los Angeles does control design in certain areas of the city—see our discussion of the Community Design Overlay (CDO) in Finding # 3.

[18]Long Beach Muni. Code § 21.25.503. The code specifies that the Site Plan Review Committee can review all site plan review applications and has the discretion to refer certain applications to the Planning Commission. In practice, it appears that projects with 50 or more units are referred to the Planning Commission.

[19]Density bonuses are incentives to encourage developers to propose new development providing for specific types of senior housing or affordable housing; 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. Cal. Gov't Code § 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. Jurisdictions have also enacted local density programs to benefit particular types of projects. Los Angeles created the Greater Downtown Incentive Area, which provides density bonus incentives in parts of the city where there is no underlying residential density restriction. Los Angeles Muni. Code § 12.22.29.

[20]Variances are available where the owner of the land would suffer a unique hardship from strict application of the zoning ordinance because the topography, size, location, or surroundings of the owner's parcel are different than other parcels subject to the zoning ordinance. Cal. Gov't Code § 65906. This requires a city to make precise hardship findings, which can be difficult to justify based on site conditions. By contrast, if a developer meets the density bonus set-aside standards, a jurisdiction can only deny the waiver or deviation if it would not result in an identifiable cost reduction necessary to build the affordable units, if it threatens health and safety, or is contrary to state or federal law. Cal. Gov't Code § 65915(d). This is an easier legal standard to meet than the hardship findings required for a variance.

[21]See Santa Monica, Interim Ordinance No. 2439.

[22]Santa Monica Muni. Code § 91.10.070.

[23]Coastal development permits are a third, but relatively minor, discretionary hook in our data years. The California Coastal Act requires all development proposed within California's coastal zone to obtain a coastal development permit. See Pub. Res. Code § 30600. Many jurisdictions have an approved Local Coastal Program, which enables them to administer this program locally. Otherwise, the California Coastal Commission administers the coastal permitting scheme.

[24]Specific Plans codify acceptable development uses and standards for smaller geographic units of a city. Specific Plans can be confined to a particular neighborhood, or span larger areas of a city. Occasionally, projects permitted in a Specific Plan area might require additional land use approvals, as is the case in LA. See Cal. Gov't Code § 65451(a); see also Hafen v. County of Orange, 26 Cal. Rptr. 3d 584, 591 (Ct. App. 2005).

[25]CDOs are districts where the Los Angeles Planning Department has established specific design standards to maintain the character of the neighborhood. CDOs differ from Specific Plans because they are concerned primarily with aesthetics; Specific Plans cover a broader range of development and use standards. Los Angeles Muni. Code § 13.08.

[26]See S.B. 35, 2017 Leg., Reg. Sess. (Cal. 2018); See Cal. Dep't. Housing & Community Dev., Streamlined Ministerial Approval Process Guidelines § 301(a), Nov. 29, 2018, ("Ministerial approval . . . shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval").

[27]Cal. Pub. Res. Code § 21080.

[28]See Cal. Gov't Code §§ 65100, 65101. For more background about CEQA's application to infill residential development, see Moira O'Neill, Giulia Gualco-Nelson, Eric Biber, Developing Policy from the Ground Up: Examining Entitlement in the Bay Area to Inform California Housing Policy, 25 Hastings Env't. L. J. 1 (2019) https://repository.uchastings.edu/hastings_environmental_law_journal/

[29]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. See CEQA Guidelines §§ 15260-15285 (statutory exemptions), §§ 15301-15333 (categorical exemptions). A primary difference between statutory and categorical exemptions is that the statutory exemption is absolute, whereas a categorical exemption may not apply if there is a likelihood of a significant environmental impact due to unusual circumstances. CEQA Guidelines § 15300.2(c).

[30]See CEQA Guidelines § 15332. These factors are: (1) the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (2) the proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (3) the project site has no value, as habitat for endangered, rare or threatened species; (4) approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (5) the site can be adequately served by all required utilities and public services.

[31]See CEQA Guidelines § 15183.

[32]Id. § 15070(b)(2).

[33]Id. § 15063(b)(1), § 15060 (indicating a project may also bypass the Initial Study to proceed directly to the EIR).

[34]See Cal. Pub. Res. Code § 21064.5; CEQA Guidelines § 15070.

[35]Because many projects undergo more than one form of CEQA review, total percentages will equal more than 100% in most jurisdictions. In Long Beach, CEQA data was unavailable for some approvals, which is why the total are less than 100%.

[36]For example, during our study years nearly 45% of the electorate voted in favor of a local referendum that would require city-wide elections for nearly all proposed development of two stories or more, indicating powerful neighborhood opposition to most large-scale development, including residential development. See Measure LV, November 8, 2016 (defeated), https://ballotpedia.org/Santa_Monica,_California,_Voter_Approval_Requirement_for_Certain_Development_Projects,_Measure_LV_(November_2016).

[37]See, e.g., Los Angeles Muni Code § 16.05(F) and Long Beach Muni Code § 21.25.506.

[38]See, e.g., City of Santa Monica Planning Division Architectural Review Board Applications, https://www.smgov.net/uploadedFiles/Departments/PCD/Applications-Forms/Architectural-Review-Board-Application-Signs.pdf and https://www.smgov.net/uploadedFiles/Departments/PCD/Applications-Forms/ARB%20APPLICATION%20FINAL%20SR.2017.BDCM.LNDSCP%20fillable.pdf).

[39]Because of the high instance of EIRs in Santa Monica, to determine CEQA exemption time frames, we only take into account projects that solely received an exemption. Often a project would conduct an EIR for the DA, and then the City would approve the Architectural Review years later under a tiering based exemption. We removed these projects to avoid inflating the exemption timeframe with EIR timeframes.

[40]Population data is from ACS 2016 5-Year Estimates.

[41]Land areas are taken from the 2010 Census.

[42]Sometimes a developer will receive an entitlement and then seek to modify it months or years later. We do not include the modification in our time frame calculations because it may not be reflective of the operation of either state or local land use law, or land use law applied through planning processes, but instead external factors related to the developer that are outside the scope of what we are measuring.

[43]Deed-restricted affordable housing refers to affordable housing units produced through a local inclusionary housing ordinance, state or local density bonus, or by a developer utilizing low-income housing financing programs. The housing is "deed-restricted" because the units are reserved for specific income levels, and the restriction is recorded in a deed of restrictions.

[44]Pasadena Muni. Code § 17.42.040(D).

[45]This letter of support from the Council Office requirement has been eliminated, but was active in our data collection years. See City of Los Angeles Housing & Community Investment Department, Affordable Housing Managed Pipeline Program Regulations, Policies, and Procedures (Nov. 9, 2018).

[46]See S.B. 35, 2017 Leg., Reg. Sess. (Cal. 2018); See Cal. Dep't. Housing & Community Dev., Streamlined Ministerial Approval Process Guidelines § 301(a), Nov. 29, 2018, ("Ministerial approval . . . shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval").

[47]Administrative appeals are generally a prerequisite to challenge a project in court. Cal. Pub. Res. Code § 21177. Appeals rates are lower than litigation rates in Pasadena and Long Beach, which could reflect incomplete data keeping or a failure on the part of the litigant to exhaust their administrative remedies. Future writing will delve deeper into appeals rates to address both scenarios.

[48]To analyze litigation rates, we obtained all CEQA writ petitions filed with the California Attorney General during our study years. We are currently searching court records to identify non-CEQA writ petitions filed in these years.

[49]While litigation was filed against a large development in Santa Monica, the City Council later rescinded the entitlements when faced with the possibility of a referendum. Because the entitlements were rescinded, this development was not included in our dataset. See City of Santa Monica Bergamot Transit Village "Hines Project" Veto Referendum (November 2014), Ballotopedia, https://ballotpedia.org/City_of_Santa_Monica_Bergamot_Transit_Village_%22Hines_Project%22_Veto_Referendum_(November_2014).

[50]See Santa Monica City Council Evicts Village Trailer in Favor or Major Development, Santa Monica Mirror, Nov. 16, 2012, https://smmirror.com/2012/11/santa-monica-city-council-evicts-village-trailer-park-in-favor-of-major-development/.

[51]See Eve Bachrach, SaMo Reapproves Huge Mixed-Use, Village Trailer Park-Crushing East Village Project, Curbed Los Angeles, March 20, 2013, https://la.curbed.com/2013/3/20/10262112/east-village; Steve Sharp, Work Underway at Santa Monica's Trailer Park Redevelopment: Multifamily residential complex rises near Expo Line Station, Urbanize Los Angeles, Nov. 10, 2016.

[52]See Eve Bachrach, SaMo Unapproves Trailer Park-Killing East Village Mixed-Use, Curbed Los Angeles, Dec. 14, 2012, https://la.curbed.com/2012/12/14/10294946/santa-monica-unapproves-east-village-mixed-user.

[53]As of right within residential development is an example of a ministerial act by a city. While ministerial acts may be subject to legal challenges, who can challenge the action and how is substantially limited. Specifically, judicial review of ministerial actions is limited to traditional writ of mandamus actions to compel the carrying out of a ministerial act (see Cal. Civ. Code § 1085(a) and case law limits who can bring these actions. For more explanation, see the California League of Cities, Land Use 101 Field Guide, https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2015/Land-Use-101-Webinar-Paper.aspx.

[54]Condominium conversions of existing multifamily units that do not result in new construction are covered by a CEQA exemption; however, these actions are not ministerial. See CEQA Guidelines § 15301(k).

Images:

Page 18
Pelletier, Patrick. "Los Angeles Arts District Construction 2014." Wikimedia Commons, Wikimedia, 21 March 2014, https://commons.wikimedia.org/wiki/File:Los_Angeles_Arts_District_Construction_2014.jpg.

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