

Appendix B: Land Use Planning and Policy Influence on Housing Development

Land use planning and development policies greatly influence California’s ability to provide an adequate supply of housing and encourage land use patterns that support infill development. California local governments have primary control over land use and housing-related decisions and can enact policies which either encourage or discourage housing construction. Despite planning efforts to facilitate new housing, actual housing production in California falls far short of meeting the need, in part, due to the lack of certainty of where housing is economically and politically feasible to build. In addition, lack of enforcement of State housing laws limits the effectiveness of existing tools intended to promote housing development. This appendix examines how land use policies and practices affect the ability to meet State planning and housing production goals —particularly where and how much housing is built.

State’s Housing Lens on Land Use Planning

California State law declares the importance of safe, decent, suitable housing for Californians of all economic levels a matter of statewide importance. Over the years, California has developed a set of laws in which the State and local governments have interdependent roles to encourage and require adequate residential development sites in the right places,ⁱ for example, in locations with access to jobs, transportation, education, food and health-related services. State law also recognizes that efforts to expand housing opportunities and accommodate the housing needs of Californians require cooperation between government and the private sector.ⁱⁱ

Since the Brown Administration’s 1978 “An Urban Strategy for California,” the State has set forth goals including “providing an adequate supply of affordable housing in both cities and suburbs,” and “encouraging land use patterns in a manner to stimulate necessary development while protecting environmental quality.” State plans and policies—such as the California Statewide Housing Plan, the AB 32 Scoping Plan, the California Transportation Plan 2040, and Safeguarding California—include housing and land use provisions that form the foundation for decision-making at the statewide level. These plans and policies are designed to achieve dual goals of adequate supply and environmental sustainability. The location of housing is critical to improving connectivity, meeting greenhouse gas (GHG) reduction targets, and creating healthy communities.

Implementation of State land use policy relies upon the private sector, as well as cooperation and coordination of local and regional governments, as most land use decisions are made at the local level. State and local governments lay the groundwork for increasing the supply of affordable homes in location-efficient places through specific tools, incentives, requirements, and regulations. The private market develops the housing and creates affordable and sustainable development, guided by this groundwork. However, housing development often

contends with significant barriers, disincentives, and constraints that limit actual production, resulting in failure to meet housing production goals.

Evolution of Land Use and Housing Policy

California has also enacted land use and housing-related laws that guide where development is not appropriate or is subject to significant mitigation. Efforts to conserve farmland (Williamson Act), protect coastal resources (Coastal Zone Requirements), and protect the environment (California Environmental Quality Act or CEQA), limit development by restricting and, in effect, directing growth. Some practices of CEQA implementation, for example, Level of Service (LOS) standards for traffic analysis, have worked against the goal of creating more infill development.ⁱⁱⁱ Extensive restrictions on development in some areas—coupled with local preference that land be used for purposes that generate sales-tax revenue (e.g., commercial development) and resistance to higher density development—have resulted in growth concentrating in areas with less restriction and opposition to building, including outlying greenfield areas. The cumulative effect of a variety of regulatory policies and economic incentives have, therefore, resulted in urban sprawl, leap-frog development patterns, and concentrations of low-density, single-family housing, far from major job centers.

Development patterns directly influence the emissions of greenhouse gases, including those from transportation between jobs and housing. Research shows that as housing units per acre (density) decreases, vehicle miles traveled (VMT) increases.^{iv} One study demonstrated that location-efficient affordable housing minimized vehicle use with 20-40 percent reduction in VMT.^v Indirect effects of traditional, low-density development patterns also include low rates of physical activity due to the lack of walkable communities.

The unintended consequences of sprawling development patterns led to increased focus on reducing VMT and GHG through the encouragement of more infill housing. Housing Element Law and prior Statewide Housing Plans, completed in 1982 and 2000, have long recognized the importance of developing high-density housing in infill areas. The integration of land use requirements and sustainability objectives gained further momentum in the early 2000s through the following State laws and policies:

- In 2000, the Cortese-Knox-Hertzberg Local Government Reorganization Act directed Local Agency Formation Commissions (LAFCOs) to discourage urban sprawl, encourage orderly governmental boundaries, and preserve open space and prime agricultural land.
- In 2002, California adopted State Planning Priorities^{vi} to promote and encourage infill and more efficient land use development patterns in order to protect environmental and agricultural resources and achieve greater equity from development patterns.
- In 2004, the State Planning Priorities were incorporated in the Regional Housing Need Assessment (RHNA) principles.
- In 2008, the State adopted the Sustainable Communities and Climate Protection Act (Sustainable Communities Act, SB 375, Chapter 728, Statutes of 2008) to increase

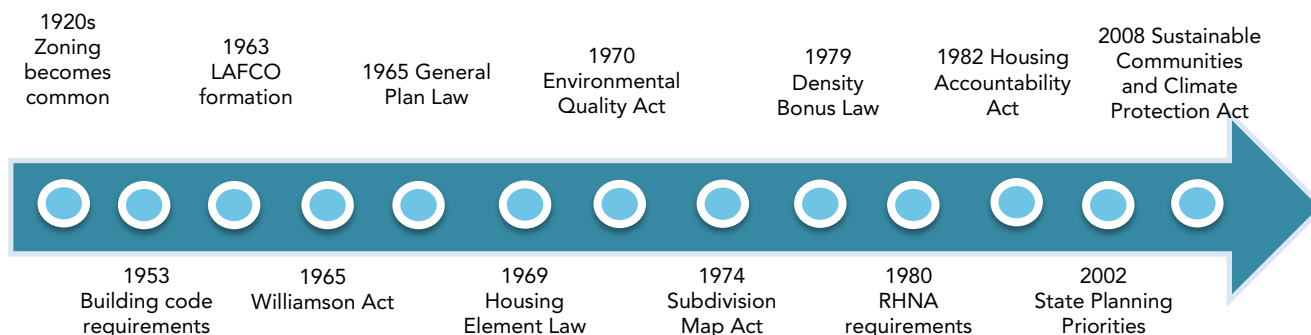
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coordination of transportation and housing with the objective of reducing greenhouse gas emissions.

Infill and efficient land-use policies have had a positive effect on reducing sprawl. A comparison of sprawl scores in the 2002 and 2014 Smart Growth America studies^{vii} showed a significant increase in the percentage of metropolitan statistical areas (MSA) in California that had a better than average score from 55 percent of MSAs scoring better than average in 2002 to 73 percent in 2014.^{viii}

Housing needs vary across population groups and places, making one-size-fits-all policies difficult to implement and inefficient for meeting the diverse needs of all Californians. This appendix focuses on the specific housing needs of certain special population groups and briefly examines how they can be addressed across California's diverse areas.

Figure B.1: Timeline of Selected Land Use and Housing Laws



Production Goals Continue to Fall Short of Planning Objectives

California's housing production and affordability has not kept up with demand. The State plans for housing by projecting future regional housing needs, after which local governments are required to plan to accommodate this need through their local planning and zoning processes. The RHNA process uses projected population growth to determine housing and affordability needs relative to household incomes, and provides estimates of how many new units will need to be affordable to lower- and moderate-income households. The RHNA has been a forerunner of "fair share" planning, wherein all local governments have an obligation to accommodate a mix of housing (e.g., apartments, single-family) for all income levels.

As seen in Figure 3.2, during the Regional Housing Needs Allocations Fourth Cycle Projection Period (2003-2014) the majority of housing built was single-family (62 percent versus and 38 percent multifamily). During that period, not one region built enough housing to meet its RHNA. For example, of the two most populous regions in the State, the Southern California Association of Governments region produced 46 percent and the Association of Bay Area Governments produced 53 percent of the regional RHNA. Generally, 47 percent of the housing required to meet projected need was constructed during this time-period.

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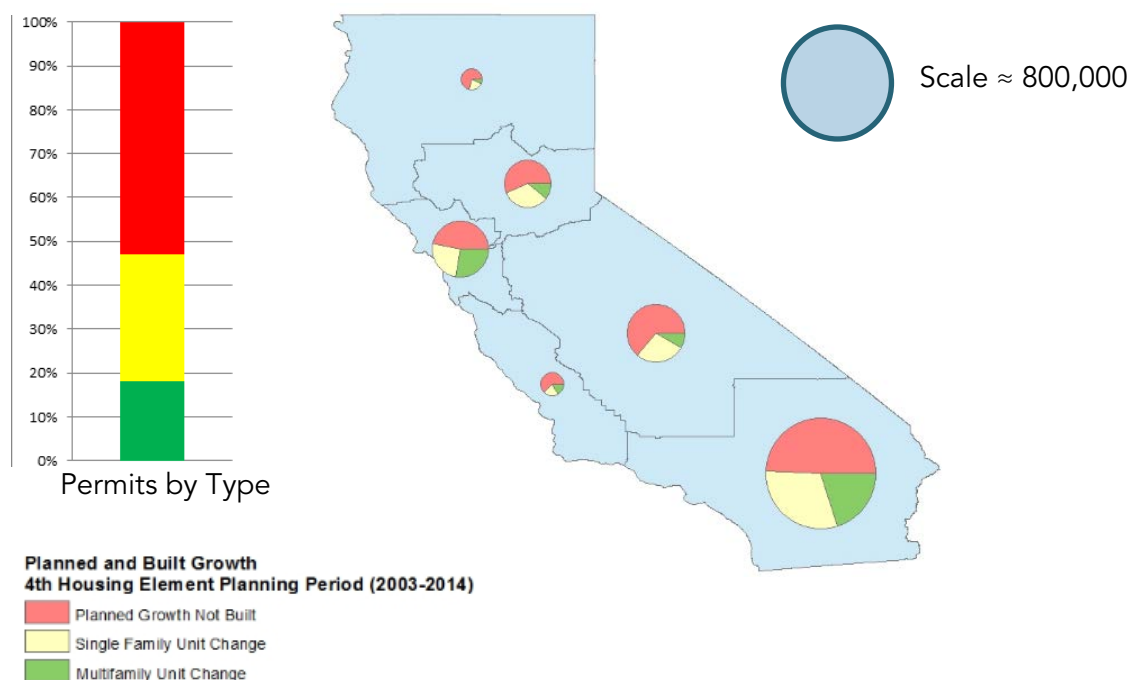
The low percentage of housing construction compared to the need is especially true for housing affordable to lower-income households. Figure B.3 shows, for the fourth cycle projection period, the projected housing need for lower-income households compared to the net change in deed-restricted affordable homes. It also shows the projected housing need for moderate- and above-moderate income households compared to the net change in market-rate multifamily and single-family homes. New home production falls short for all income segments, but is lowest for deed-restricted homes that serve lower-income households. For a list of RHNA by jurisdiction in comparison to constructed housing units for the fourth cycle, please See Exhibit B2.

Failure to meet housing production goals is a reflection of the following:

- Market conditions.
- Competition among builders for housing demand at the higher-income and price levels.
- Lack of subsidies for housing affordable to low- and moderate-income households.
- Legal and political processes that can stop or dramatically slow housing projects.

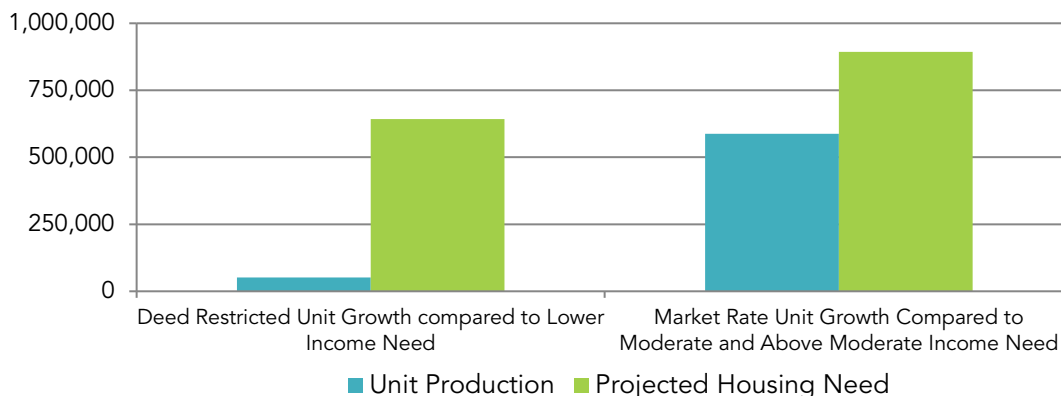
In addition, barriers and constraints, such as lengthy development review at the local level and local opposition, impact the type, quantity, and location of housing built. However, local planning and development processes also play a significant role in the production of housing supply, and can be important tools in helping to close the gap between the housing need and production.

Figure B.2: All Regions Have a Shortfall in Meeting Production Goals



Sources: HCD Regional Housing Needs Allocations; DOF ES Population and Housing Estimates for Cities, Counties, and the State; E8 Historical Population and Housing Estimates for Cities, Counties, and the State; TCAC Mapped Developments. Graphic by HCD.

Figure B.3: Home Production Is Lowest for Lower-income Households¹



Sources: HCD Regional Housing Needs Allocations 4th Cycle Housing Element (2003-2014); DOF E5 Population and Housing Estimates for Cities, Counties, and the State; E8 Historical Population and Housing Estimates for Cities, Counties, and the State; TCAC Mapped Developments.

Process for the Development of Housing

Land use refers generally to where and what is built in a community and is influenced by a complex system of regulatory control, market forces, and the policy decisions at multiple levels of government. The application of local land-use regulations has significant effects on the location and type of housing that is developed.

The following section describes the development phases and outlines barriers or obstacles that impact achieving housing supply, affordability, and sustainability goals.

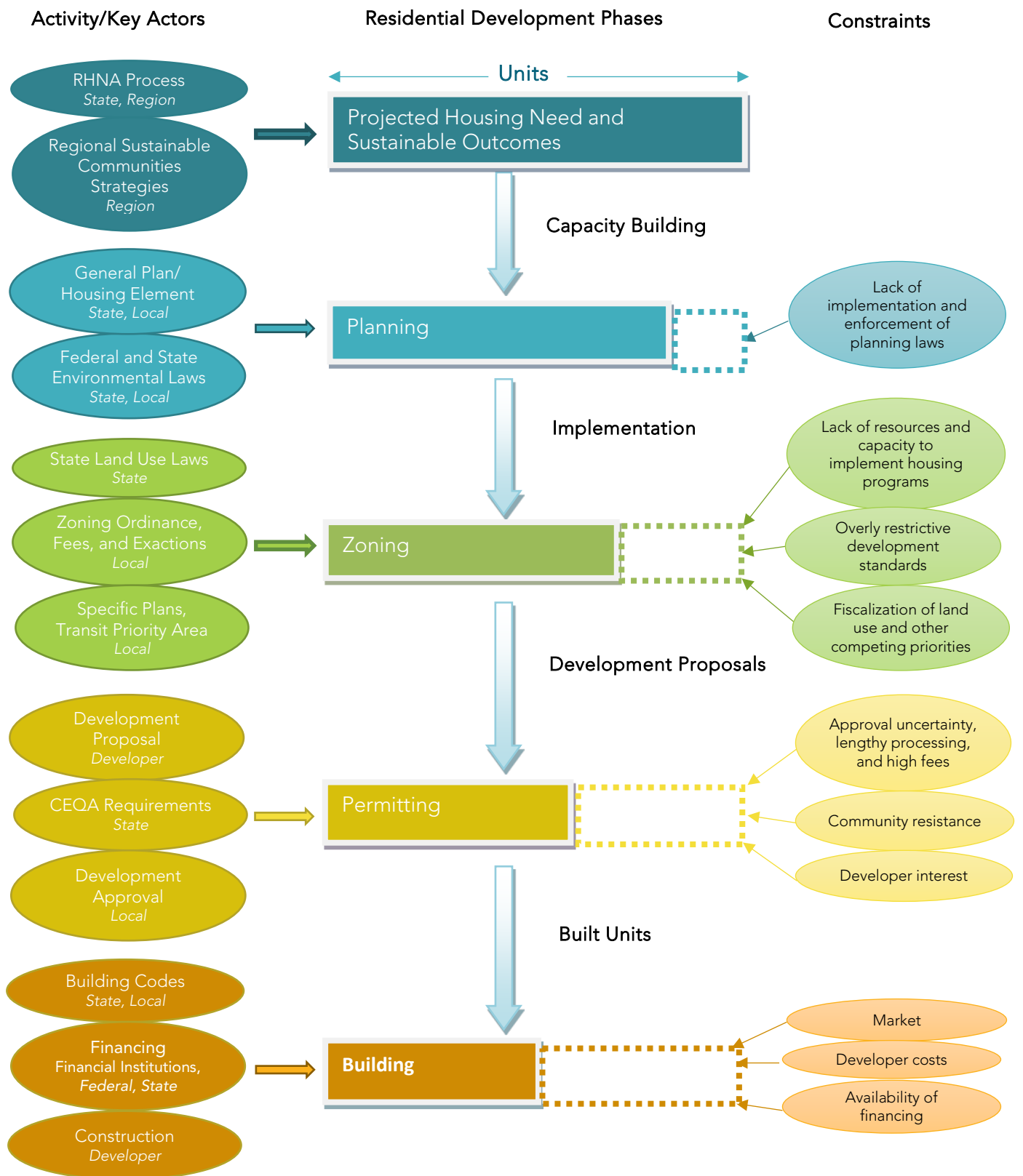
Primary authority for land use decisions is at the local level² through the implementation of planning, zoning, permitting, and building requirements. However, in matters of statewide importance, the State Legislature passes laws that set limits on that authority or require local governments to include specific considerations in their planning efforts. State law also includes incentives to encourage certain development patterns, such as promoting development near jobs, services, high-performing schools, and transit. These State laws provide consistent policies that have statewide impact and are beyond the scope of local government planning alone.

Figure B.4 describes the four stages of the residential planning and development process in California; the role of the State, regional, and local governments, and some of the constraints at each stage, which compound to create a large gap between projected housing need and built units.

¹ Note: In this figure deed-restricted units created with public financing sources are used as a proxy for the number of low-income units produced during this time period. Local inclusionary units and non-deed restricted homes affordable to lower-income at initial sales or rental are not included in this total due to lack of statewide data. Comparisons with San Diego Association of Governments and Association of Bay Area Governments regional data show total actual affordable units produced during this time show up to twice the affordable units produced depending on local inclusionary policies.

² This includes incorporated cities and towns as well as unincorporated areas within counties.

Figure B.4: Residential Development Process Flowchart



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Table B.1 illustrates some of the State laws intended to facilitate and encourage housing development. Laws that guide development include those that influence the location of development and increase local capacity for new housing. Laws that remove barriers prescribe how certain uses are allowed throughout the State and remove some limitations on development. Those that incentivize housing offer concessions for the provision of affordable housing development. For a description of these laws, refer to Exhibit B1. In addition, Exhibit B3 includes excerpts from the White House Housing Development Toolkit released September 2016, which makes recommendations on actions that states and local jurisdictions can take to promote healthy, responsive, affordable, high-opportunity housing markets.

Table B.1: State Laws to Encourage and Facilitate Housing Development

Guides Development	Removes Barriers To Development	Incentivizes Housing
General Plan/Housing Element Law	Second Unit Law including establishment of junior accessory dwelling units	Density Bonus Law
Regional Housing Needs Assessment	Housing Accountability Act	Multifamily permit streamlining
No-Net-Loss Law	Mitigation Fee Act	CEQA streamlining
Subdivision Map Act	Permit Streamlining Act	Local assistance resources for housing and infrastructure including Enhanced Infrastructure Finance Districts, Community Revitalization and Investment Authorities, and Low and Moderate Income Housing Assets Funds of the Housing Successor Agencies.
The Cortese-Knox-Hertzberg Local Government Reorganization Act	Least-Cost Zoning	
Sustainable Communities and Climate Protection Act (SB 375)	Emergency shelter, transitional housing, and supportive-housing zoning requirements (SB 2)	Affordable Housing Beneficiary Districts
Williamson Act	Manufactured and Factory Built Housing Law	
California Environmental Quality Act (CEQA)	Employee Housing Act	
	Group Home Law	
	Federal and State Fair Housing Law	

While there are efforts to facilitate and encourage the type of housing development that meets planning goals, these tools are not enough to overcome other disincentives, barriers, or constraints that influence actual outcomes. There are many reasons why existing tools are not as effective as originally envisioned. Some tools are not widely implemented because people do not know they exist.

Other tools may be too complex and difficult to implement. Finally, most of the land use provisions lack enforcement mechanisms except through the judicial system. Table B.2 outlines broad categories of constraints associated with the planning level most affected.

**Table B.2
Barriers and Constraints to Housing Development**

Type Of Constraint	Constraint
PLANNING PHASE	
Implementation and Enforcement of Planning Laws	Tension between State and local control
	Enforcement of State law
	Community resistance to growth and change
	Inadequate capacity and resources at a local level to complete plans
	Weak General Plan and housing program implementation
ZONING PHASE	
Competing Priorities	Local revenue generating mechanisms that favor nonresidential
	Tensions between the need for transportation corridor or transit oriented development (TOD) and health effects from exposure to poor air quality/pollutants
	Development standards that impact supply and cost of housing
PERMITTING PHASE	
Processes and Standards	High impact fees
	Lack of implementation of housing programs
	Multiple levels of discretionary review
Community Opposition	Community resistance to new affordable housing
	Environmental permit process reviews can be used to stop or limit housing development
	Growth vs. preservation of character (development standards, density)
	Referendums and requirements for voter approval
BUILDING PHASE	
Market Conditions	Limited access to predevelopment financing
	Weak market conditions
	High land and construction costs
	Public subsidies inadequate/declining

Residential Development, Phase One: Planning

Planning at all levels of government allows for the development of policies that guide how land use occurs. Planning allows decision makers and the community to implement strategies to address many community objectives, such as economic development, environmental protection, healthy communities, equity, and affordability. This includes accounting for the long-term development needs of the community as well as accommodating the immediate wishes of the current residents.

The primary mechanism used by local governments for long-range planning is the General Plan. The General Plan usually encompasses a planning horizon of at least 20 years, providing a vision for future growth. All subsequent planning documents created by a local government—such as zoning codes or specific plans—must be consistent with the goals and policies adopted within its General Plan.

Housing Elements are a required part of each local government's General Plan and are updated to ensure that each local government is adequately planning to meet their existing and projected housing needs, including their share of the RHNA. The housing element is the primary mechanism to increase the amount of land available for housing development at the local level. Housing elements must be updated frequently (every five to eight years) and must include public engagement efforts to inform the plan. A major component of the Housing Element is the identification of sites with appropriate densities and development standards to accommodate construction of new housing that will meet the specific needs of the community. As communities update their General Plans, including their Housing Elements, local governments, with community input, analyze environmental impacts and set local rules for how their community will grow, enabling streamlined processing for subsequent development.

Community engagement early and upfront during General Plan update process allows communities to set a framework for how growth should occur, influencing multiple (instead of individual) developments and addressing community goals that cannot be achieved at the scale of individual developments. This is important to reduce the need for redundant approval of applications for each and every individual development, which constitutes a substantial barrier to increasing the supply of housing in many communities and lead to more opportunities for ministerial approval. Ministerial processing enables streamlined land use entitlements where by an application for a residential development is deemed approved when it meets objective standards.

Planning Phase—Barriers to Development:

Tension between State and Local Control Can Affect the Success of Housing Programs

State law recognizes that providing affordable housing to low- and moderate-income households requires the cooperation of all levels of government. The State legislature also recognizes that in carrying out this responsibility, each local government also has the responsibility to cooperate with other local governments and the State in addressing regional

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housing needs (as determined in their RHNA)^{ix}. However, the State's involvement in local, land use decision making can result in tensions between meeting State housing objectives and local control. Local decision makers may be opposed to planning for additional growth, increasing development density, or zoning for some kinds of housing (such as homeless shelters). As a result, State planning priorities are not equally achieved across communities.

Reasons for this opposition can include, but are not limited to:

- Concerns about preserving community character.
- Balancing competing community objectives.
- Needs for infrastructure upgrades.
- Responding to the desires of constituents.

Enforcement of State Law is Limited

The primary mechanism to enforce State housing law is through the judicial system. For example, an interested party can legally challenge the actions of local government by filing a lawsuit when a local government's Housing Element is out of compliance with State law or when a local government denies approval of an affordable housing development.^x However, money, time, and interest are necessary to pursue judicial remedies. In addition, developers are hesitant to seek a judicial remedy in localities where they intend to have future development. The lack of enforcement and lack of consequences for noncompliance with State requirements limits the effectiveness of these laws.

Inadequate Capacity and Resources at a Local Level to Complete and Implement Plans

Development and implementation of housing and community plans can be a challenge for many localities due to the lack of staff capacity and resources. Many cities and counties rely on developer fees to fund planning and housing staff within local government. The slow-down in building during the Great Recession (2007-2009), resulted in many planning departments reducing staff and cutting back on implementation of housing programs. In addition, smaller localities may have very limited city staff with one or two people acting in multiple capacities. City staff may not have the expertise or the ability to develop required planning documents.

As a result, efforts at the State level to provide additional tools, resources, and technical expertise to local governments to plan and implement housing programs helps to encourage successful attainment of statewide housing goals. The State works to incentivize local governments to comply with State housing laws. For example, in order to be eligible to receive certain types of funding from the State, jurisdictions must have a current housing element that meets Housing Element Law requirements. However, these incentives to comply with State housing laws have lessened as the funding sources are depleted.

Since the last Statewide Housing Plan (2000), the California Department of Housing and Community Development (HCD) increased the availability of technical assistance to local governments that are preparing their Housing Elements by launching a webpage: *Building Blocks for Effective Housing Element*. This website, along with other technical assistance, helps local governments streamline the process for updating their Housing Elements and getting approval from HCD.

Housing Element compliance (Housing Elements submitted to HCD that meet the statutory requirements) steadily increased from 47 percent in the 2nd planning cycle to 90 percent in the 4th cycle. Current trends in the 5th cycle are on track to meet or exceed this percentage.

**Table B.3
Housing Element Compliance Rates Have Risen**

PLANNING CYCLE	2 ND PLANNING CYCLE (1991– 1999)	3 RD PLANNING CYCLE (1999– 2009)	4 TH PLANNING CYCLE (2005–2015)
In Compliance	47% (254)	82% (439)	90% (485)
Out of Compliance	53% (281)	18% (98)	10% (54)

Source: HCD Housing Element Tracking Database

Residential Development, Phase Two: Zoning

Local planning policies and goals are implemented through the zoning of land. Zoning specifies what can be developed and where it can be developed. It also details the standards for development, such as units allowed per acre, height standards, and parking standards. In addition to zoning parameters set by local governments, some State laws put additional parameters on local zoning in order to produce housing that is affordable to lower-income households or increase the general supply of housing (e.g., least cost zoning,^{xi} second unit law,^{xii} and the Employee Housing Act^{xiii}).

Zoning can be in the form of traditional zoning ordinances, a form-based code, or through community or specific plans. Local governments can also adopt policies that encourage particular types of housing (e.g., inclusionary housing policies and/or other incentives that encourage development of housing affordable to low-income households).

Zoning Phase—Barriers to Development

Local Governments Must Balance Competing Priorities

Land use policies can support a host of public policy objectives, such as promoting greater proportions of infill and transit-oriented residential development, improving a community’s balance of jobs, housing, retail, and services, and creating higher density, more-compact,

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walkable and bikeable development patterns. Local governments must balance these policy objectives with the need to address other policy and public health objectives. For example, building in transportation corridors may also necessitate mitigation of adverse health impacts, such as increased risk of asthma and cancer due to living close to roadways.^{xiv} To address infrastructure constraints or control the amount and pace of growth, some local governments also have established growth-control measures. These growth measures can limit housing development; however, local governments are still required by State law to plan for enough housing development to meet their RHNA.^{xv}

Local Revenue-Generating Mechanisms Favor Non-Residential Development

Local governments must also balance the use of land that is available for residential development with other uses. In 1978, California voters passed Proposition 13, which limits how much homeowners' property taxes can increase each year. This limitation resulted in less property tax being paid to local governments and, therefore, less revenue available to fund government activities. Following the passage of Proposition 13, local governments began to pay more attention to the fiscal outcomes of land-use decisions as a way to replace the lost revenue from property taxes. As a result, land uses that generate sales tax revenues are often prioritized over residential and other land uses^{xvi} as a way to provide more funding to local governments. This prioritization in land use can result in a lack of support for housing development.

Local Tools to Encourage Affordable Development Are Evolving

Some local governments have adopted inclusionary (or "mixed-income") ordinances requiring that a percentage of units in a new housing development are affordable to (and reserved for) low- and moderate-income families. Following a 2009 appellate court ruling, *Palmer/Sixth Street Properties v. City of Los Angeles* 175 Cal.App.4th 1396, many local governments suspended enforcement of their inclusionary zoning ordinances for rental housing development.

The California Supreme Court in *California Building Industry Association v. City of San Jose* (2015) 61 Cal.4th 435 upheld the constitutionality of inclusionary ordinances and local government's authority to enact them in the case of for-sale housing.

The State has recently enacted tools such as Affordable Housing Beneficiary Districts, Enhanced Infrastructure Finance Districts and Community Revitalization and Investment Authorities to provide more flexibility to local governments to designate areas to support affordable housing and infrastructure development under certain parameters. However, as they are newly available, these tools have yet to see wide usage. (See Appendix C and Exhibit B1 for more information on these tools.)

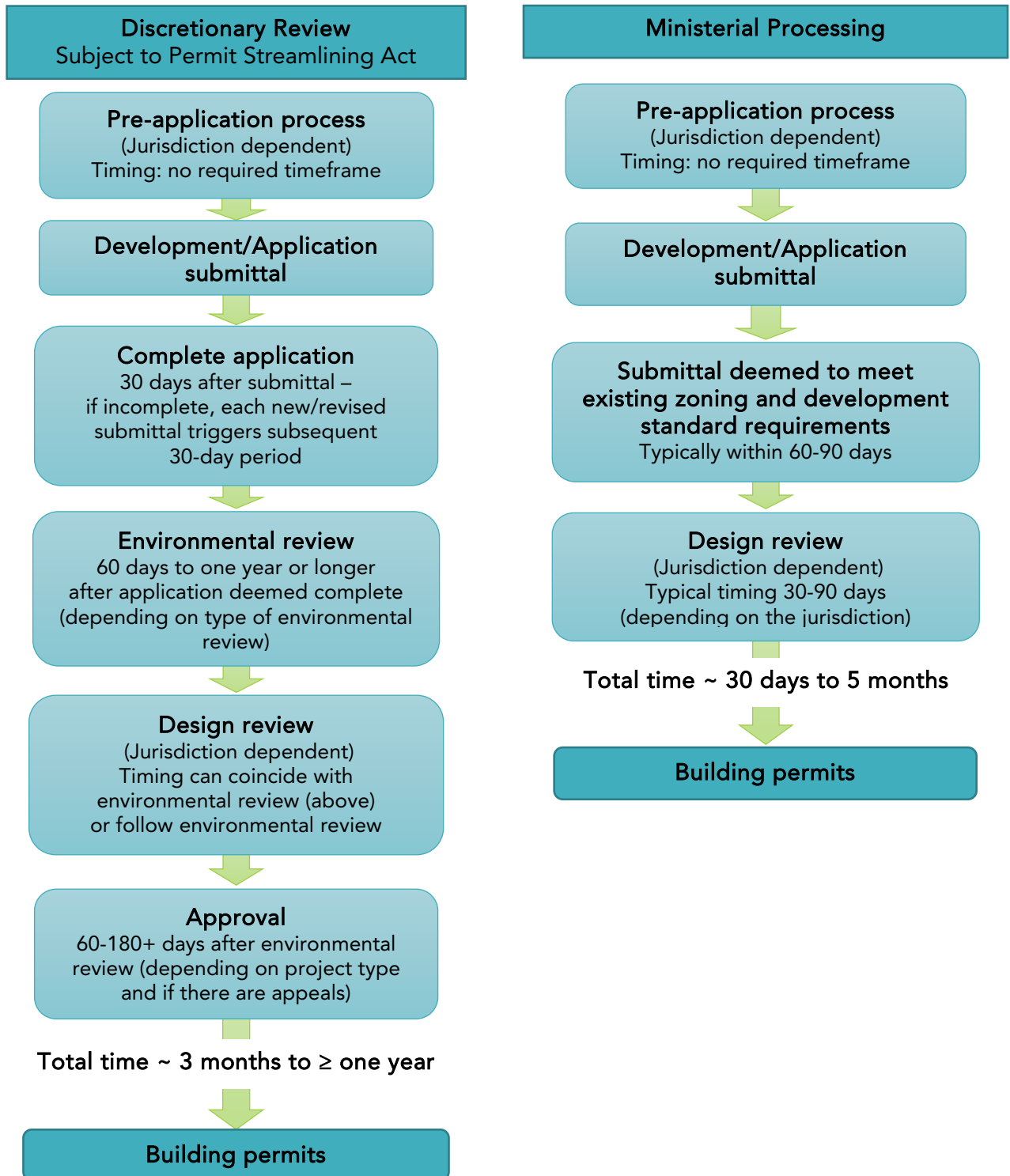
Residential Development, Phase Three: Permitting

Through the planning and zoning phases, local governments facilitate the development of housing by identifying priority locations, providing infrastructure and incentives that encourage development, and actively seek investments and developers to build in the community. However, the private sector is also critical to the housing development process. Developers (both for- and nonprofit) must acquire the land, secure financing, assemble a design team, and apply for permits to build.

Once a developer has submitted an application for a new development, the local government must approve it prior to building—this is known as the entitlement process. As demonstrated by Figure B.5, the process can be as simple as local-government staff’s review of the development to ensure it meets all the existing development standards and any mitigation requirements (ministerial processing). The process can also entail a longer, discretionary process that requires review by the City Council or Board of Supervisors, and any number of multiple local bodies, for example, the planning commission, design review boards, neighborhood advisory councils, etc. In addition, local governments can impose development fees to defray all or a portion of the cost incurred by the local government related to the development.^{xvii}

As with zoning, the State’s primary role in the permitting process is to establish parameters and protections for developments. The State also encourages local governments to approve affordable housing, through laws like the State Density Bonus Law,^{xviii} which allows a developer to include more housing (up to 35 percent more) in a development, and up to three incentives or concessions for including housing affordable to lower-income households. These incentives can include a reduction in site development standards, a modification of architectural design requirements, approval of mixed-use zoning, or other incentives or concessions that result in cost reductions.

Figure B.5: Multifamily Development Permitting Discretionary vs. Ministerial³



³ This figure expresses the permitting process for approval of a development application and does not show the environmental review at the planning and zoning stages, which ministerial projects implement.

Permitting Phase—Barriers to Development:

The planning phase is intended to consider the community as a whole, review and balance competing priorities through public engagement and discussion, and arrive at a set of policies for how a community will grow and develop. However, in reality, the agreements that were reached early on in the planning phase (for how a community will grow and develop) can (and often are) overridden or reversed for proposed developments through debates that occur during the permitting phase, which can delay, or all together prevent, development from occurring.

Multiple Levels of Discretionary Review Impact Certainty and Cost of Development

Processing housing development proposals can be long and unpredictable. Timing can take anywhere from three months for simpler, ministerial, approvals to multiple years for controversial developments that include multiple levels of discretionary approvals. As mentioned above, discretionary permitting approvals can include multiple bodies, including planning commissions, design review boards, and/or neighborhood councils. It can also include approvals from special districts. A 2016 report by the American Planning Association^{xix} indicated that because of their subjective nature, discretionary review sets up an adversarial process that can result in unpredictable negotiations on aspects of the development. These negotiations can include a reduction in units, increase in parking requirements, or the addition of costly amenities. In addition, citizens who disagree with approvals may accuse staff and decision makers of bias. Delays caused by long, discretionary, review processes can also translate into significant additional costs for developers, which, over time, can make a development so expensive, it's no longer financially feasible.

High Impact Fees and Restrictive Development Standards Impact Cost of Housing

Fees and exactions affect the cost and feasibility of housing development. High fees for planning and site development can impact property owners' ability to make improvements or repairs, especially for lower-income households. Depending on the market, developers pass on those costs to consumers at time of purchase or rental. For example, in one city it can cost up to \$40,000 or more in fees for the development of a second unit (accessory dwelling unit), which is cost prohibitive for many homeowners.^{xx} Restrictive development standards can also affect the development of housing. Parking standards, lot coverage, minimum unit sizes, and height requirements limit the available land on which housing can be built and affects the amount of housing that can be developed.

Community Opposition Can Delay or Stop a Development

Despite important public engagement that takes place early on in the planning phase for how communities will build and grow (for example, during updates to General Plans, zoning ordinances, and design review guidelines), individual developments are still subject to additional public scrutiny through the above-mentioned discretionary processes, as well as others, such as ballot measures, referendums, and public forums. These processes can lead to additional costs due to delay, major modifications beyond General Plan and zoning

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requirements, or possibly stop a development from being built in spite of the fact that it meets the requirements in existing plans.^{xxi} At the last stages of the permitting approval process, residential developments are often subjected to lower densities and reduced unit counts than what was originally proposed and can be subjected to additional costly conditions.

The reasons for community opposition to development can include fears about potential negative impacts to property values, crime, and traffic, and concerns about the effect on school enrollment or change to community character. While research demonstrates that affordable housing has a neutral or positive impact on issues such as property value and crime, and has other many beneficial community building impacts, these facts are rarely enough to alleviate concerns that can stop a development.^{xxii, xxiii}

Community-based constraints or opposition takes many forms

- **Referendums:** Citizens can use local referendums to overturn local decisions on housing. For example, in 2013, residents in Palo Alto, California, placed a measure on the local ballot that overturned a unanimous city council decision to rezone a 2.5-acre parcel to allow for a 60-unit, low-income, senior multifamily development.
- **Ballot Measures:** Measures that require voter approval for land use decisions also limit a community's ability to grow or plan for growth. For example, the City of Encinitas requires voter approval for any major changes to planning policy, including the Land Use Element of the General Plan, Land Use Policy Maps of the General Plan, Zoning Code, Zoning Map, any specific plan, and development agreements. It also requires voter approval for any exception to the citywide height limit of 30 feet or two stories. As a result, the City must have voter approval to adopt its required Housing Element and subsequent zoning amendments to meet the State's requirement that local governments plan to meet the housing needs of the community.
- **Opposition at Public Hearings:** The most prevalent form of opposition is expressed through public testimony during a city council or board of supervisor meeting where bias and objections, factual or otherwise, can result in significant modifications, delays, or denials to residential development.
- **Project-Level CEQA Lawsuits:** Another common form of opposition is using the provisions of the CEQA to challenge a development's environmental review documents. CEQA lawsuits are not limited to environmental groups but may be brought by any interested party or stakeholder. Costly and expensive, CEQA lawsuits can delay a development for years and/or make the development financially infeasible. A recent study found that residential development accounted for approximately 20 percent of all CEQA lawsuits. Of these lawsuits, multifamily residential developments were most targeted and more than two-thirds of them were in infill areas.^{xxiv} Another study focused in the Southern California Association of Governments region showed the greatest percentage (33 percent) of CEQA lawsuits targeted residential development and 98 percent of the CEQA lawsuits on residential development were in

infill area^{sxxv}. The vast majority (71 percent) of these lawsuits targeted multifamily residential development. Despite the environmental benefits of infill housing, some practices of CEQA implementation—for example, Level of Service (LOS) standards for traffic analysis—have worked against accommodating infill development.^{sxxvi}

Certain types of development, such as some affordable housing, infill development, or transit-oriented development, are exempt from the provisions of CEQA. This reduces the costs and uncertainty associated with preparing full studies under CEQA. However, these exemptions have limitations in their applicability. For example, in order for a development to qualify for an exemption, many requirements must be met, which significantly narrows the pool of developments eligible for the exemption. In some areas, only developments in incorporated cities are eligible, which leaves out developments located in urban, but unincorporated parts of the county. In addition, using an exemption may make a development vulnerable to legal challenges, thus adding to the cost of a development. Ministerially processed development has been subject to environmental review and mitigation at a prior planning stage, such as a specific plan or other general plan update or zoning ordinance adoption.

Residential Development, Phase Four: Building

Once a developer has secured all the local government approvals (entitlements), it must ensure its development financing is in place. It must also adhere to building code requirements that are developed by HCD's State Housing Law Program and adopted by the California Building Standards Commission. Local governments may adopt local amendments to these codes, provided they make express findings that the amendments are reasonable and necessary based upon climatic, geological or topographical conditions.

Building Phase-Barriers to Development

Market Constraints Affect the Pipeline of Development

High land and construction costs, the level of market certainty, and availability of financing can play major roles in determining whether a developer can, or will, build in a community. High land costs influence the amount of financing needed to construct the development, affecting the feasibility of the development and rent setting or sales pricing. In addition, there are only a few financing programs available to assist with land acquisition and many have limits on the amount of funding that can be acquired (see Exhibits C1-3 for more detail on funding for housing programs).

Financing and Overall Development Cost Affect the Feasibility of Development

Once the local government approves the development and issues building permits, the developer can begin construction. However, the developer must finish securing financing through various institutions, hire a general contractor, and adjust for any problems that could occur during the construction. These can include undiscovered soil contaminants, conflicts with construction documents, or lease-up issues that can affect loan terms and cause gaps in financing.

Conclusions

- Land use planning influences location, type, price, and supply of housing; this contributes to achieving availability, affordability, and sustainability goals.
- The State has a number of tools to promote land use planning and facilitate housing development. However, improvements in the use of existing tools and the development of new tools are needed to attain better outcomes in achieving housing and sustainability goals.
- California is not producing enough housing in the right places and at the right affordability levels to accommodate the population. The State can require planning but actual production of housing falls short of housing needs in part due to the lack of certainty of where and what is economically and politically feasible to build. There are still many market, policy, and implementation factors that hinder the development of denser, affordable housing, near jobs and services.
- The entitlement (approval) process for developing housing is uncertain, complicated and lengthy, which affects housing delivery and production costs and goals.
- Lack of enforcement of State housing laws limit the effectiveness of existing planning tools intended to guide and facilitate housing development.

End Notes

ⁱ California Government Code Section 65580.

ⁱⁱ California Government Code Section 65580(b).

ⁱⁱⁱ A Preliminary Evaluation of Alternative Methods of Transportation Analysis, Office of Planning and Research, December 30, 2013.

^{iv} Frumkin, Howard. "Urban Sprawl and Public Health" Public Health Reports, Volume 117, Issue No 3, 2002.

^v U.S. Environmental Protection Agency, Smart Growth Program, p. 90, Our Built and Natural Environments [2nd ed.] , 2013.

^{vi} California Government Code 65041.1.

^{vii} Reid Ewing, Rutgers University, Rolf Pendall, Cornell University, Don Chen, Smart Growth America "Measuring Sprawl and Its Impact", Smart Growth America, 2002

^{viii} Reid Ewing and Shima Hamidi, University of Utah "Measuring Sprawl 2014," Smart Growth America, 2014

^{ix} California Government Code 65580 (c)-(e)

^x Government Code Section 65589.5

^{xi} California Government Code Section 65913.1.

^{xii} California Government Code Section Section 65852.2 and 65583.1.

^{xiii} Health and Safety Code Sections 17021.5, 17021.6, 17021.5.

^{xiv} Robert Wood Johnson Foundation, "Where We Live Matters for Our Health: The Links Between Housing and Health," Issue Brief 2., September, 2008.

^{xv} Fulton, William, and Paul Shigley. Guide to California Planning, 4th edition, Solano Press Books, 2012.

^{xvi} McCubbins, Colin and Mathew D. McCubbins, "Proposition 13 and the California Fiscal Shell Game", The California Journal of Politics & Policy Volume 2, Issue 2, 2010.

^{xvii} California Government Code Section 66000.

^{xviii} California Government Code Section 65915

^{xix} Kendig, Lane "Minimizing Reliance On Discretionary Approvals" American Planning Association, Zoning Practice April 2016, Issue Number 4

^{xx} City of Novato "General Plan 2035 Policy White Paper: Junior Second Units" April, 2014.

^{xxi} California Department of Housing and Community Development, California Tax Credit Allocation Committee, California Housing Finance Agency, California Debt Limit Allocation Committee; Affordable Housing Cost Study, October, 2014.

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^{xxv} Hernandez, Jennifer, David Friedman and Stephanie DeHerrera. "In the Name of the Environment Update: CEQA Litigation Update for SCAG Region (2013-2015)". Holland and Knight, July, 2016

^{xxvi} A Preliminary Evaluation of Alternative Methods of Transportation Analysis, Office of Planning and Research, December 30, 2013.