



## **Do Bills Build Homes?**

*An Assessment of California's 2017 Housing Package on  
Addressing the Housing Crisis in Los Angeles County*

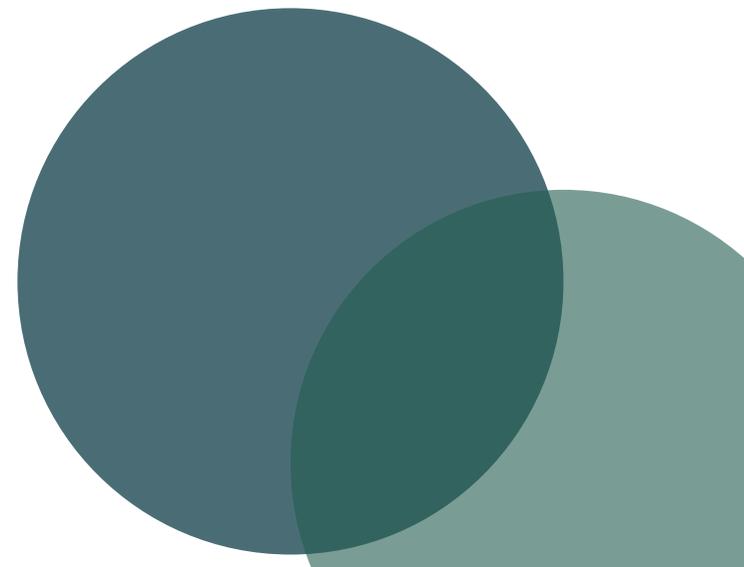
*2018 UCLA Urban Planning Community Scholars*

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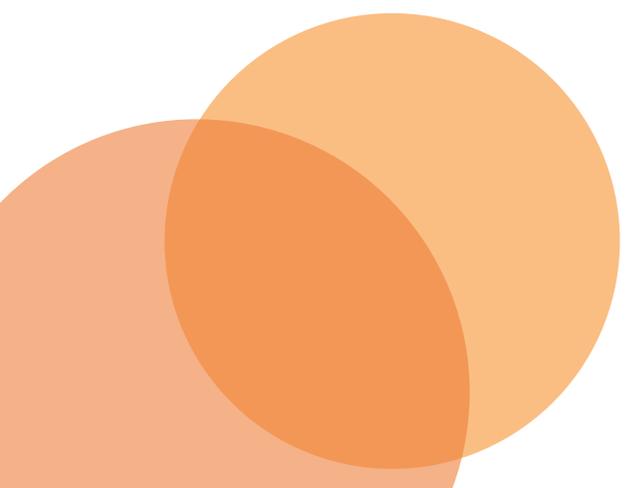
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# Executive Summary

Los Angeles County is experiencing a housing crisis that is pervasive throughout the state of California. Rents, housing prices, and the proportion of people experiencing homelessness or severe housing insecurity are rising. In an effort to address what seems to be a steadily worsening crisis, last year the California Legislature passed a landmark package of 15 bills pertaining to housing.

This report is an effort to understand the impact these bills will have in curbing the housing crisis in Los Angeles County, by aiding the creation and preservation of affordable housing. Each bill is grouped into one of five areas of analysis according to the part of the housing problem they address:

- *Planning and Siting*
- *Funding Affordable Housing*
- *Streamlining and Special Zones*
- *Capturing Land Value*
- *Preserving Affordable Units*

To better understand the impact the

proposed changes within the new legislation would have on local planning efforts, the authors conducted interviews with over 50 housing advocates, city and county planners, affordable and market-rate developers, consultants, and others active in the world of California housing policy. Four of the 15 bills impact a jurisdiction's Housing Element - a necessary tool through which jurisdiction's plan for future housing. To better evaluate how these changes would affect different jurisdictions in Los Angeles County, the authors conducted three Housing Element case studies: Santa Monica, Inglewood, Azusa.

## Key Takeaways

The case study analysis showed that for these three cities, only 20% of the parcels in their Housing Element are residential, and only 32% are vacant sites.. The other major finding is that the average site in each of the three cities is infeasible for development, given prices and rents in the respective cities. In short, Housing Element site inventories have very little to do with actual production of housing.

Overall, from our analysis of these 15 bills, there are nine key issues/themes that emerge:

1. Local jurisdictions are concerned

2. about increasing loss of local control in land-use decision making;
2. Increasing complexity of planning processes could negatively impact some jurisdictions;
3. Jurisdictions will need education and training opportunities so that they can properly implement the changes enacted by each bill;
4. Planning for housing is not the same thing as building housing, and often they can be very disconnected;
5. There is still not enough money to fund affordable housing developments;
6. There are still significant challenges to building permanent supportive housing in Los Angeles County;
7. Displacement concerns are being taken more seriously at the level of the state legislature;
8. The bills offered little protection to existing tenants; and finally
9. The passage of this bill package was an enormous and unprecedented feat, however, apart from the creation of a new funding stream, the 2017 Housing Package does not create fundamental change that will help Los Angeles County provide housing for all.

## Recommendations

This report details the dozens of changes made to state and local housing law, and ends with a set of recommendations that if enacted, can address some of the issues that emerged from analysis of the 2017 Housing Package.

### *Planning and Siting*

- *Simplify Housing Element siting processes to better connect housing planning with housing development.*

### *Funding Affordable Housing*

- *A transparent administration and allocation process of new funding streams that allows for stakeholder to hold agencies accountable is needed.*

### *Streamlining and Special Zones*

- *Future state legislation related to streamlining local zoning processes should include and be dependent on a displacement risk index.*

### *Capturing Land Value*

- *Creation of state-level monitoring of the impacts of inclusionary housing policies, and increased innovation in creating local inclusionary housing policies.*

### *Preserving Affordable Units*

- *Future legislation needs to do more to protect vulnerable tenants and ensure that communication materials reach residents whose primary language is not English.*

# Section 1: Introduction

## 1.1 State of Housing in California

### California Planning Politics and the Worsening Housing Crisis in Los Angeles County

Los Angeles County is in the midst of an affordable housing crisis. The homeless population in the City of Los Angeles has risen by 49% since 2013 and the median rent for a studio apartment by 92% from 2011-2017.<sup>1</sup> In the County, the price of a one-bedroom apartment has risen by 67% over the same time period.<sup>2</sup> These trends are echoed statewide. California is home to one-fifth of the nation's homeless

1 Los Angeles Times Editorial Board, "Los Angeles' homelessness crisis is a national disgrace," *Los Angeles Times*, February 25, 2018, <http://www.latimes.com/opinion/editorials/la-ed-homeless-crisis-overview-20180225-htmstory.html>

2 Los Angeles Times Editorial Board, "The homeless in Los Angeles are not who you think they are," *Los Angeles Times*, February 26, 2018, <http://www.latimes.com/opinion/editorials/la-ed-economically-homeless-20180226-htmstory.html>

population and includes nine of the nation's 10 most unaffordable metropolitan areas.<sup>3</sup> In San Francisco, rents in the Mission District for a typical two-bedroom apartment rose from \$1,900 per month to nearly \$5,000 in the period between 2011 and 2014, pushing thousands onto the streets.<sup>4</sup> Homeownership is a distant dream for most, as 71% of Californians cannot afford the median-priced home, which now costs \$537,315.<sup>5</sup> Housing unaffordability has become one of the most urgent issues that planners are grappling with, at all levels--local, regional, and state.

Today's crisis is the result of a convergence of many factors, rooted in the way the California planning process has developed. The California planning process is a game in which political players, among them homeowners, developers, and environmentalists, doggedly fight for their own objectives, "unwilling to compromise

3 Public Policy Institute of California, "Housing: California's Future," January 2018, <http://www.ppic.org/wp-content/uploads/r-118hjr.pdf>

4 Tracey Lien, "Inside San Francisco's housing crisis," *Vox*, October 22, 2014, <https://www.vox.com/a/homeless-san-francisco-tech-boom>

5 Andrew Lhour, "High housing costs are driving out lower-income Californians, reports say," *Los Angeles Times*, May 3, 2018, <https://www.latimes.com/business/la-fi-housing-costs-migration-20180503-story.html>

to achieve a broader vision in the public interest."<sup>6</sup> The highly political nature of this process has significantly hindered the planning for and building of affordable housing in the state, Los Angeles County, and particularly in the City of Los Angeles.

### Four Zoning Regimes in the City of Los Angeles

Los Angeles is the largest city in the County, and the evolution of its land-use policy has had a significant impact in shaping the growth of the region. Understanding this evolution is crucial to understanding why the City and the County now look the way they do and face major problems in providing safe, affordable housing for everyone. Andrew Whittemore, professor of city planning at University of North Carolina traces the history of land-use planning in the City of Los Angeles, and divides it into four distinct regimes, each "defined by the domination of one or more interest groups over others in policy-making."<sup>7</sup> According to Whittemore, the winner that emerged during the first era of land-use planning,

6 William Fulton and Paul Shigley, *Guide to California Planning - Fourth Edition* (Point Arena, CA: Solano Press Book, 2006), 8-13.

7 Andrew H. Whittemore, "Zoning Los Angeles: a brief history of four regimes," *Planning Perspectives*, 27, no. 3, (2012): 393. <http://dx.doi.org/10.1080/02665433.2012.681140>

which lasted from the emergence of zoning regulations in 1921 to the mid 1930s, was the speculating small-scale landowner. Planners' efforts to impose stringent zoning categories were undermined by the City Council, who were often swayed by lobbyists to grant variances that over-zoned commercial uses to increase the profits of small-scale developers, despite opposition from homeowners and big developers.<sup>8</sup> The tables turned in 1934, and homeowners and big developers emerged as the winners of the second era of the City of Los Angeles planning. The creation of the Federal Housing Administration (FHA) ushered in an era of low-density development. The FHA advocated for the creation and protection of single-family residential zoning as the "best way to assist hopeful homeowners eager to acquire FHA-backed mortgages."<sup>9</sup> Big community developers and planners created a city of sprawl where "hundreds of thousands were now accustomed to large homogeneous areas of single-family uses, and had bought under the assumption that their property values depended on the maintenance of a low-density character."<sup>10</sup>

In the third era of zoning, from 1960 to 1990, existing homeowners emerged victorious over big developers, planners, and potential new homeowners. After

8 Whittemore, "Zoning Los Angeles," 394-395.

9 Whittemore, "Zoning Los Angeles," 398.

10 Whittemore, "Zoning Los Angeles," 399.

1960, developers began to turn to denser infill multi-unit development as the supply of land for low density development decreased.<sup>11</sup> Suburban homeowners condemned height and density, and pushed the city to expand height district regulation to protect their views, prevent upzoning of residential estate zones, and advocated for significant zoning rollbacks in their individual Community Plan Areas.<sup>12</sup> In 1978, Proposition 13 passed, limiting a locality's ability to raise taxes on residential property in another win for homeowners. Homeowners continued to use their power to push for anti-growth and anti-density policies in 1986 when wealthy homeowners from the Valley and the Westside successfully passed Proposition U, a ballot measure initiative that "permanently and dramatically decreased the development potential of LA's commercial corridors."<sup>13</sup> Proposition U halved the allowable floor-area ratio from 3:1 to 1.5:1 in commercial and manufacturing zones in the city's prevalent Height District '1'.<sup>14</sup> In this era the NIMBY (Not in My Back Yard) ideology emerged, carried by wealthy, anti-growth homeowners who use their political power to slow down and stop development.

11 Whittemore, "Zoning Los Angeles," 399.

12 Whittemore, "Zoning Los Angeles," 400.

13 Paavo Monkkonen and Kate Traynor, "How Proposition U Restrains Los Angeles Housing Development," *Lewis Center*, December 14, 2017, <https://www.lewis.ucla.edu/how-proposition-u-restrains-los-angeles-housing-development/>.

14 Ibid.

The fourth and current zoning regime in the City is one where land use policy-making is still being directed by "suburban anti-growth interests."<sup>15</sup> Homeowner power grew even stronger after the creation of citywide neighborhood councils in 1999 and their influence over land-use decisions grew as the housing crisis worsened.<sup>16</sup> In the late 1990s, the federal government found that Los Angeles County was short 300,000 units, making it the second most overcrowded city in the nation.<sup>17</sup> In 2001, the Southern California Association of Governments (SCAG) estimated that the City of Los Angeles was only producing 8,000 housing units a year when 60,000 housing units per year were needed to bring down the cost of housing.<sup>18</sup> In 2017, the California Department of Housing and Community Development (HCD) reported that the statewide housing construction need is 180,000 housing units a year, but the average annual production over the last 10 years has been less than 80,000, causing California to be ranked 49th in housing units per capita.<sup>19</sup> More than half of the state's six million renters are rent-burdened, spending more than 30% of their income

15 Whittemore, "Zoning Los Angeles," 404.

16 Ibid.

17 Whittemore, "Zoning Los Angeles," 406.

18 Ibid.

19 California Department of Housing and Community Development, "California's Housing Future: Challenges and Opportunities," February 2018, 1 [http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf)

on rent, and two-million spend more than half of their income on rent.<sup>20</sup> For the poor, housing is perpetually insecure and the lack of housing supply along with rising costs are increasing risks of displacement for the region's most vulnerable populations.

## Efforts Taken to Spur Affordable Housing Production

Certainly, at the local level, the ability of homeowners to exert such an anti-growth, anti-development influence on the land-use planning process is a major challenge contributing to the affordable housing crisis. Additionally, until last year, local and state governments have introduced few strategies to address these issues. There was the 1971 City of Los Angeles ordinance which required that developments with five or more units made possible through zone change or conditional use permit set aside 15% of the total units for Low income households.<sup>21</sup> In 1982, the state mandated a density bonus of 25% for developers that reserved 10% of units for Low income households or 25% of units for Low or Moderate income households.<sup>22</sup> Established in 1945, Community Redevelopment Agencies (CRAs) did not start building much affordable housing until the 1970s and 80s. Although there was quite a bit of controversy surrounding

<sup>20</sup> Ibid.

<sup>21</sup> Whittemore, "Zoning Los Angeles," 402.

<sup>22</sup> Whittemore, "Zoning Los Angeles," 403.

the State's 400 plus CRAs that eventually led to their dismantling by Governor Jerry Brown in 2011, they created 63,600 new affordable housing units from FY 2001 to FY 2008.<sup>23</sup> From 2001 onwards, the Los Angeles CRA built approximately 300 units of affordable housing annually, accounting for nearly 20% of total affordable housing delivered in the City.<sup>24</sup> In 2014, the U.S. Department of Housing and Urban Development estimated that the elimination of California's redevelopment agencies as a funding source for affordable housing would result in a "statewide average annual loss of 4,500 to 6,500 new affordable units."<sup>25</sup>

At the federal level, funding for affordable housing production has continued to prove unstable. Public housing, once the central mechanism through which to deliver housing to low-income Americans, is in steep decline. New units are not being built, and the nation's Housing Authorities lost almost 21% of total units between 1997 and 2012.<sup>26</sup> The City of Los Angeles was

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<sup>23</sup> Casey Blount, Wendy Ip, Ikuo Nakano, Elaine Ng, "Redevelopment Agencies in California: History, Benefits, Excesses, and Closure," *U.S. Department of Housing and Urban Development*, January 2014, 1-2, [https://www.huduser.gov/portal/publications/redevelopment\\_whitepaper.pdf](https://www.huduser.gov/portal/publications/redevelopment_whitepaper.pdf).

<sup>24</sup> Blount et al., "Redevelopment Agencies in California," 7.

<sup>25</sup> Blount et al., "Redevelopment Agencies in California," 6.

<sup>26</sup> Alex F. Schwartz, *Housing Policy in the United States - Third Edition* (New York, NY: Routledge, 2015), 194.

no exception, losing 2,300 units over this period.<sup>27</sup>

The nation's largest program to produce affordable housing is the Low-Income Housing Tax Credit (LIHTC), established by the Tax Reform Act of 1986. This program, situated within the Department of the Treasury, allows housing developers to apply for tax credits, which they then sell to investors to fund the creation of low income housing.<sup>28</sup> This model of housing finance for multifamily affordable units, while it has numerous advantages, is also volatile. The price of the tax credits can vary widely, especially when there is turbulence within the financial market, which hurts affordable housing production. Although the LIHTC program has been a fairly steady source of funds for affordable housing production, it is not permanent. For example, the 2017 Tax Cuts and Jobs Act would have eliminated private activity bonds and 4% tax credits, financing instruments which are crucial to the LIHTC program. While it was amended and these funding sources were preserved, the bill as presented would have eliminated one million future affordable

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<sup>27</sup> Ibid.

<sup>28</sup> For further information on the Low-Income Housing Tax Credit and its role in affordable housing production, please see Novogradac and Company's LIHTC explainer at: <https://www.novoco.com/resource-centers/affordable-housing-tax-credits/lihtc-basics/about-lihtc>.

housing units.<sup>29</sup> As a result of the relative scarcity and volatility of federal funding, most affordable housing developers rely heavily on state and local resources to build units.

## California's 2017 Housing Package

Traditionally, in the United States, state governments do not get involved in local housing markets and local land use issues.<sup>30</sup> However, last year, in an effort to address the issues contributing to the statewide housing crisis, the California Legislature broke tradition, and passed a package of 15 housing bills. These bills may have significant impacts on local land use policies.

These 15 bills can be grouped into five categories based on the issues they address: siting and planning for housing; housing production and financing; streamlining and accountability (of entitlement process) and special zones; capturing land value; and preserving existing affordable housing. The 2017 Housing Package was framed as the state's response to a perceived generalized

<sup>29</sup> Michael Novogradac, "Tax Reform Bill Would Eliminate Future Supply of Nearly 1 Million Affordable Rental Housing Units," *Novogradac and Company*. November 3, 2017, <https://www.novoco.com/notes-from-novogradac/tax-reform-bill-would-eliminate-future-supply-nearly-1-million-affordable-rental-housing-units>.

<sup>30</sup> Fred Bosselman and David Callies, "The Quiet Revolution in Land Use Control," *Council on Environmental Quality*, December 1971, <https://files.eric.ed.gov/fulltext/ED067272.pdf>.

housing crisis, which as housing bill author Scott Wiener argued in testimony, threatens California's economy, its environment and the "fabric of our community."<sup>31</sup> The ideas behind many of these bills had been brewing for some time. For instance, SB 2, which creates a permanent source of funding for affordable housing through a real estate transaction fee, was first introduced into the legislature more than 15 years ago.<sup>32</sup> Funding for affordable housing has a broad base of support among advocacy groups across the state. However, Jerry Brown, California's current governor, has in the past expressed concern about the high costs of constructing new affordable housing units. He reportedly would not consider new funding measures without concurrent action on streamlining land use permissions for housing and holding jurisdictions accountable if they refused to build. The introduction of streamlining bill SB 35 and accountability bill SB 167 thus offered cover for a variety of groups to push forward their housing bills, given the knowledge that support from the governor was more likely. The housing package thus represents a broad spectrum of interest groups and includes a variety of policy prescriptions for addressing California's housing crisis.

<sup>31</sup> California State Democrats, "Senator Wiener on SB 35 - streamlining housing approvals," Youtube Video, 2:52, September 15, 2017, <https://www.youtube.com/watch?v=pRdlUCjtz-l>.

<sup>32</sup> Housing activist, personal communication, May 3, 2018.

This report is a product of Community Scholars, a course offered by the Luskin School of Public Affairs at University of California Los Angeles (UCLA) to second-year Masters of Urban and Regional Planning students, as well as Los Angeles community members with an interest in the topic under discussion. In 2018, the course brought together 13 UCLA students and 12 community members—union organizers, affordable housing developers, and activists—to discuss the 15 bills that comprise California's 2017 Housing Package in the context of centuries of housing justice struggles across the country. The housing package has been heralded as an unprecedented and game-changing intervention by the state. The report that follows analyzes the expected impact of the package, and the likelihood of its provisions meaningfully addressing the housing crisis in Los Angeles. It focuses on the greater Los Angeles region, paying particular attention to the impact the new legislation will have on the City of Los Angeles, in concert with current City-wide and County-wide initiatives, and drawing comparisons, where appropriate, to other cities in the region.

## 1.2 - Methodology

In order to better understand how the bills work together, the bills have been categorized into five issue areas for

discussion in this report. There are bills that impact the planning and siting of new housing; create new funding streams for the development of affordable housing; streamline the planning and entitlement processes for new housing, and demand higher levels of accountability in these processes; aid local jurisdictions in capturing land value; and ease the preservation of affordable housing.

All of the research is grounded in a series of interviews conducted with urban planners, academics, advocates, legal experts, state officials, legislators, and other practitioners over the course of the spring of 2018. The purpose of these interviews was to shed light on the conditions that led to the housing crisis, and in turn, the housing package; to understand how the bills were being interpreted and put into practice in the months after their passage; and to learn how experts in the field predicted they would—and, critically, would not—impact housing development in Los Angeles in the months and years to come.

Insights gleaned from these 53 interviews were bolstered by analysis of the legislation, research into Los Angeles housing and land use history, and discussions with Community Scholars and faculty during and outside of our class sessions. Specific discussion of additional methods used can be found in Appendix D.

## 1.3 Quick Look - 2017 Housing Bills Summary Table

Planning and Siting	
Bill	Summary
AB 72 (Santiago)	<ul style="list-style-type: none"> <li>• Strengthens enforcement of Housing Element Law</li> <li>• HCD can find jurisdictions out of compliance with state housing law at any time instead of every eight years</li> </ul>
AB 1397 (Low)	<ul style="list-style-type: none"> <li>• Increases and strengthens the criteria that jurisdictions must consider when identifying sites to be included in their Housing Element</li> </ul>
SB 166 (Skinner)	<ul style="list-style-type: none"> <li>• Prohibits jurisdictions from having an inventory of sites in their Housing Element inventory that is insufficient to meet their unmet share of regional housing need for Lower and Moderate income housing</li> <li>• Prohibits jurisdictions from reducing the density of residential parcels, or allowing lower-density developments, in order to ensure no net loss of housing sites</li> </ul>
AB 879 (Grayson)	<ul style="list-style-type: none"> <li>• Requires jurisdictions to report more data to HCD on meeting housing production goals</li> </ul>
Funding Affordable Housing	
Bill	Summary
SB 2 (Atkins)	<ul style="list-style-type: none"> <li>• Imposes a \$75 document recording fee on real estate transactions throughout the state (not including sales), up to \$225 per parcel per transaction</li> <li>• Year 1 revenue will be dedicated to HCD, local government programs addressing homelessness and planning grants</li> <li>• Year 2 revenues and beyond will be split among HCD and local jurisdictions, roughly 30% to 70%</li> </ul>
SB 3 (Beall)	<ul style="list-style-type: none"> <li>• Places a \$4B general obligation bond on the November 2018 general election ballot that will fund a number of existing programs</li> <li>• \$3B of the funds would be used to finance existing housing programs; \$1B would be allocated to CalVet for farm and home purchase assistance for veterans</li> </ul>
AB 571 (E.Garcia)	<ul style="list-style-type: none"> <li>• Reduces the requirement for farmworker housing projects to be to farmworkers and their families from 100% to 50% of units</li> <li>• Allows farmworker housing projects to use Difficult Development Areas (DDA) and Qualified Census Tract (QCT) boosts</li> <li>• Now allows farmworker projects to receive a state tax credit allocation without federal tax credit reservation</li> </ul>

Streamlining and Special Zones	
Bill	Summary
AB 73 (Chiu)	<ul style="list-style-type: none"> <li>Allows jurisdictions to create a housing sustainability district with streamlined zoning</li> <li>20% of units built in the district are affordable to Very-Low, Low, and Moderate income households with 55 year covenants</li> <li>Requires prevailing wage and skilled + trained workforce</li> </ul>
SB 35 (Wiener)	<ul style="list-style-type: none"> <li>Allows developers in jurisdictions that have not met their RHNA targets to pursue a streamlined entitlement process</li> <li>Requires prevailing wage and for projects to meet affordability requirements of either 10% or 50% of units depending on locality</li> </ul>
SB 540 (Roth)	<ul style="list-style-type: none"> <li>Allows jurisdictions to create a workforce housing overlay zone with a pre-approved Environmental Impact Report (EIR) and public comment process</li> <li>At least 30% of the total units are Moderate income, 15% Low income, and 5% Very-Low Income, no more than 50% Above-Moderate income in each project</li> <li>Requires 10% affordable in all projects</li> <li>Requires prevailing wage and skilled + trained workforce</li> </ul>
AB 678 (Bocanegra) / SB 167 (Skinner)	<ul style="list-style-type: none"> <li>Strengthens the Housing Accountability Act (HAA) by requiring jurisdictions to provide stronger justification for the denial of housing</li> <li>Authorizes courts to impose a fine of \$10,000 or more per unit of housing whose illegal denial cannot be defended by a jurisdiction within set timelines</li> <li>Entitles petitioners, including a housing organization, to reasonable attorney's fees if they are the prevailing party in a legal action</li> </ul>
AB 1515 (Daly)	<ul style="list-style-type: none"> <li>Establishes that a housing development conforms with applicable standards if there is substantial evidence that would allow a reasonable person to find it so</li> </ul>
Capturing Land Value	
Bill	Summary
AB 1505 (Bloom)	<ul style="list-style-type: none"> <li>Reaffirms power of local governments to use inclusionary housing</li> <li>Creates a new review mechanism for HCD to monitor impact of inclusionary housing in select jurisdictions</li> </ul>
Preserving Affordable Units	
Bill	Summary
AB 1521 (Bloom)	<ul style="list-style-type: none"> <li>Notifies tenants and local governments of the impending loss of affordable units three years prior to expiration</li> <li>Notifies qualified preservation entities of the opportunity to submit a non-binding offer to purchase covered properties</li> <li>Requires landlords to accept a bona fide offer from qualified developers or declare they will not sell the property for five years from date of declaration</li> <li>Requires HCD to monitor units and landlords for compliance</li> </ul>

## 1.4 Quick Look - Los Angeles Local Measures

Legislation	Summary
Linkage Fee	<ul style="list-style-type: none"> <li>Levies a fee on new residential and commercial development on a per square foot basis prior to the issuance of a building permit.</li> <li>Fees range from \$3-\$5 per square foot for nonresidential uses and \$8-\$15 per square foot for residential uses</li> <li>Establishes the Housing Impact Fund for the purpose of preserving existing affordable housing and developing new projects.</li> </ul>
JJJ	<ul style="list-style-type: none"> <li>Conditions General Plan Amendments/zone changes/height district changes with production of affordable units at prescribed AMI; percentage of units varies on the density increase, zone change and tenure type</li> <li>Requires Community Plan review by City Planning Commission to ensure capacity for affordable housing and good jobs</li> <li>Created the Transit Oriented Communities program of tiers near major transit stops, offers additional density bonus and other incentives for building affordable units</li> <li>Requires prevailing wage and local hiring</li> </ul>
H	<ul style="list-style-type: none"> <li>Levies a Los Angeles County quarter cent sales tax for the next 10 years</li> <li>Earmarked funds exclusively for homelessness related services</li> <li>Has an estimated revenue of \$355 million annually for services and programs.</li> </ul>
HHH	<ul style="list-style-type: none"> <li>Establishes a \$0.348 per square foot property tax in City of Los Angeles to fund a \$1.2 billion measure over the next 10 years</li> <li>Funds a loan program to work with tax credit financing</li> <li>Aims to reduce homelessness through the creation of safe and affordable housing with access to services and treatment programs</li> <li>Projected to build 10,000 units in the next 10 years</li> </ul>

## 1.5 Glossary of Terms

AMI - Area Median Income  
CDC - Community Development Commission  
CDBG - Community Development Block Grant  
CEQA - California Environmental Quality Act  
CLT - Community Land Trust  
CRA - Community Redevelopment Agency  
CUP - Conditional Use Permit  
EIR - Environmental Impact Report  
HAA - Housing Accountability Act  
HACLA - Housing Authority of the City of Los Angeles  
HCD - California Department of Housing and Community Development  
HCIDLA - Los Angeles Housing and Community Investment Department  
LIHTC - Low Income Housing Tax Credit  
MHP - Multifamily Housing Program  
NOFA - Notice of Funding Availability  
PSH - Permanent Supportive Housing  
RFP - Request for Proposals  
RHNA - Regional Housing Needs Allocation  
SCAG - Southern California Association of Governments  
TCAC - California Tax Credit Allocation Committee  
TOC - Transit-Oriented Community

# Section 2: Impact of the 2017 Housing Package

## 2.1 Planning and Siting for Housing

### Background

#### *The Housing Element*

The Housing Element is the central mechanism by which cities and counties plan for future housing. As such, the housing package addresses this tool in several ways. The Housing Element is one of the seven state-mandated components of the General Plan. It is meant to serve as a framework for ensuring that jurisdictions have appropriately planned to accommodate housing production at different income levels. Initially, the building industry conceived of and advocated for the law to create planning that would lower government restrictions on building—arguing that the high cost of development restricted developers from building housing at lower price points.<sup>33</sup> After forty years of planning, regulation,

and amendments, Housing Element law has expanded from two short paragraphs to pages of highly specific reporting requirements.

Once a city has prepared and adopted its Housing Element, the California Department of Housing and Community Development (HCD) reviews it to ensure the element meets all State requirements. After the element is approved, jurisdictions must submit an annual report to HCD documenting how they have performed against the goals they set for themselves. A new Housing Element cycle starts every 8 years, and jurisdictions must update and draft a new Housing Element. The current Housing Element planning period began in 2013 and lasts until 2021. Housing Element law requires specific analyses be included in the planning document: population trends, household characteristics, and housing stock conditions. However, the component of the document most affected by recent legislation is the inventory of land availability for potential development of housing at all income levels, etc. This inventory ensures that a city has adequate zoned capacity to meet its Regional Housing Needs Allocation (RHNA) allotment.

#### *Regional Housing Needs and the Site Inventory*

A jurisdiction is told by the Council of Governments to which it belongs—Southern California Council of Governments, or SCAG, in the case of cities in Los Angeles County—how many housing units it must zone for in a given Housing Element cycle. This is a jurisdiction's RHNA allocation, and it takes into consideration a jurisdiction's existing housing needs, vacancy rates, and its projected growth over the course of the RHNA cycle. The RHNA allocation is broken down by affordability into four different bands of household income: Very-Low income (households earning below 50% of the Area Median Income, AMI), Low income (below 80% AMI), Moderate income (below 120% AMI), and Above-Moderate income.<sup>34</sup> In Los Angeles County, for the current cycle, SCAG designated that roughly 16% of new housing production should be affordable to moderate-income families; approximately half of the remainder should be affordable to above-moderate income households, with the rest affordable to the two lowest income bands.

Jurisdictions must not only demonstrate

<sup>34</sup> "5th Cycle Regional Housing Needs Assessment Final Allocation Plan 1/1/2014 - 10/1/2021," Southern California Association of Governments, August 29, 2012. <https://www.scag.ca.gov/Documents/5th-CyclePFinalRHNAplan.pdf>.

<sup>33</sup> William Baer, "California's Fair-Share Housing 1967-2004: The Planning Approach," *Journal of Planning History*. 7, no. 1 (2008): 48-71.

The component of the document most affected by recent legislation is the inventory of land availability for potential development of housing at all income levels. This inventory ensures that a city has adequate zoned capacity to meet its RHNA allotment.

### *In Depth Look: Challenges with the RHNA process in Los Angeles*

Over the years, many have questioned the efficacy of Housing Element law in ensuring adequate housing supply.<sup>35</sup> Studies show that compliance with the state's Housing Element policy is positively associated with housing production overall, but Housing Element compliance may not influence housing production at all income levels.<sup>36</sup> One conclusion of these studies is that Housing Element law rewards the planning process, but not planning outcomes (i.e. more housing supply for lower income residents). After all, RHNA allocation is not a commitment to build much needed housing or even a plan to build such housing. It merely ensures that a jurisdiction has the zoning capacity to accommodate existing and projected housing needs. If a city or county can meet all the requirements as outlined by the state legislature, then HCD is compelled to certify its Housing Element.

In choosing sites for the Housing Element inventory, planning departments and housing agencies only judge whether the land is suitable for housing development. Some sites already have existing structures, meaning that the jurisdiction assumes it is worth it for a developer to tear down and rebuild. Planners from some cities in Los Angeles County, including the City of Los Angeles, freely admitted not being able to check each site individually to determine suitability. In the City of Los Angeles, planners included sites that could, in theory, produce nearly four times the city's RHNA target in its site inventory. Evidence at the state level shows that inventories do not accurately reflect developer interest; the majority of larger housing developments are built on sites not included in inventories.<sup>37</sup> One developer interviewed for this report acknowledged using the Los Angeles inventory to scout for land; other developers said they never referred to them, and city planning officials agreed that they were rarely used by developers to choose sites for new housing. This is due to the fact that feasibility for sites is generally assessed purely on the basis of site capacity, without consideration of whether or not the landowner is willing to sell.

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35 Liam Dillon, "California Lawmakers have tried for 50 years to fix the state's housing crisis. Here's why they've failed," *Los Angeles Times*, June 29, 2017, <http://www.latimes.com/projects/la-pol-ca-housing-supply/>. See also: Daniel Ramsey-Musolf, "According to the Plan: Testing the Influence of Housing Plan Quality on Low-Income Housing Production," *Urban Science* 2, no. 1 (2017): 1-32, <https://doi.org/10.3390/urbansci2010001>.

36 Ramsey-Musolf. (2016) Evaluating California's Housing Element Law, Housing Equity, and Housing Production (1990-2007). *Housing Policy Debate*. 26 (3), 488-516.

37 Mac Taylor, "Do Communities Adequately Plan for Housing?" *Legislative Analyst's Office*, March 8, 2017, Retrieved from <http://www.lao.ca.gov/publications/report/3605>.

The sheer size of the City of Los Angeles complicates RHNA allocation and siting in a number of ways. First, there is a lack of resources to perform even the most basic feasibility study of sites. Second, when it receives its RHNA allocation from SCAG, the city further breaks down its targets for new housing units by Community Plan Area. The target for each of the city's 35 planning areas is calculated using different formulas that are not made available to the public, according to a community planner. Although there are plans development, and therefore kept their population growth limited, would have a smaller RHNA target than similarly-sized ones that had met their planning targets and built new housing.

to standardize these formulas going forward, the city does not intend to share their methodology most likely due to fear of becoming vulnerable to litigation. Third, community plan updates, which are the mechanism for large-scale rezoning of city neighborhoods, take place on a rolling basis outside the eight year Housing Element cycle. There is little to no interaction between these two processes, according to the planner. Community plan update changes to zoning that alter suitability for housing development do not automatically trigger an update to the site inventory. As new community plans are approved by the City Council, the city loses track of its zoning capacity and its ability to meet even its RHNA zoning targets, let alone its ability to produce housing units in line with those targets.

These flaws make clear that the process leaves room for improvement. Despite only requiring jurisdictions to plan for housing, rather than to actually produce it, Housing Elements and their site inventory components were an obvious target for intervention.. In reaffirming the connection between planning and building, the legislature amended the government code to state that "designating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals."<sup>38</sup>

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38 CA Government Code 65580(f)

that they have assessed their housing capacity and their ability to meet their RHNA targets, but that they have zoned the appropriate amount of land to meet their share of the regional housing need. This inventory takes the form of a list of sites, which also includes their "realistic capacity" for housing construction. If cities and counties are not able to find an adequate number of sites on which there is the potential for building the number of units needed per their RHNA allocation, then the city would need to show they are taking the steps to alter their land use policies to achieve the capacity needed to meet their RHNA targets.<sup>39</sup>

The RHNA process relies on detailed formulas and methodologies agreed upon years in advance, and assessments of housing needs conducted by the state Housing and Community Development (HCD) department. However, the process is open to political pressure and gamesmanship. For instance, the methodology used by the California Department of Finance to determine RHNA targets for regions and cities uses past growth to determine future growth.<sup>40</sup> Targets

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39 CA Government Code 65583 (c)

40 Ethan Sharygin, "Modeling methodology for the 2016 baseline California population projections," *California State Department of Finance*, January 20, 2018, [http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/Methods\\_01\\_Report\\_v14.pdf](http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/Methods_01_Report_v14.pdf).

set by HCD, and as a result SCAG, rely on these projections. This means that jurisdictions that have successfully blocked development, and therefore kept their population growth limited, would have a smaller RHNA target than similarly-sized ones that had met their planning targets and built new housing.

### Relevant Legislation

Among the four bills amending Housing Element law, two of them (AB 1397 and SB 166) focus specifically on how jurisdictions construct and use the site inventory component of the Housing Element. The other two bills change both enforcement and annual reporting on progress toward RHNA targets (AB 879 and AB 72).

#### *AB 1397: Adequate Housing Element Sites*

AB 1397 adds several criteria for how a jurisdiction identifies appropriate sites for housing development at different income levels in its land inventory. Sites that are smaller than a half-acre, or larger than 10 acres, do not qualify to count as capacity for housing units affordable to lower income households.<sup>41</sup> However, if the jurisdiction is able to show that parcel size has not been an impediment to development in the past, these sites are allowed into the inventory. This is significant for jurisdictions like Santa Monica where 70% of the sites in the inventory are under a half-acre in size.

41 CA Government Code 65583.2 (c) (2) (A), see also CA Government Code 65583.2 (c) (2) (B)

In Los Angeles, where we examined three contiguous community plan areas, fewer than 7% of sites identified as suitable for lower income housing development met the size requirements of this new bill.<sup>42</sup> At medium residential density, a half-acre site should produce a maximum of 28 dwelling units, with no concessions or bonus densities taken into account. Of the 228 affordable housing developments that received either 4% or 9% Low Income Housing Tax Credits from October 1998 through 2014 in the City of Los Angeles, 192 contained 28 or more units.<sup>43</sup> While the square footage of each of these sites has not been studied, these calculations suggest that Los Angeles would have a difficult time arguing that parcel size has not historically been an impediment to development. An important caveat, however, is that new regulations enacted under Measure JJJ make building higher density affordable housing on these parcels possible. It will remain to be seen if these changes make the small parcels identified in Los Angeles' housing inventory viable for affordable housing development.

AB 1397 also restricts which non-residentially zoned sites can be included in the site inventory. For instance, non-residentially zoned sites can only be included if the Housing Element outlines

42 Community plan areas examined were West Los Angeles, West Adams, and South Los Angeles

43 "Project Mapping," California Tax Credit Allocation Committee, accessed May 1, 2018. <http://www.treasurer.ca.gov/ctcac/projects.asp>.

a plan to rezone them for residential use—though it is not clear how this interacts with mixed-use zoning.

Many of the changes made by AB 1397 refer to the inclusion of non-vacant sites in the site inventory. The bill dictates that to reuse a non-vacant site from a prior Housing Element's site inventory to meet the jurisdiction's lower-income housing RHNA target, the site must be zoned for by-right residential use and 20% of units must be made affordable to lower income households.<sup>44</sup> These same rules also apply to vacant sites that have been identified in the last two Housing Elements. It is unclear whether this will act as a defacto inclusionary program for reused non-vacant sites in the inventory, or how jurisdictions will be held accountable for the affordability requirements.

Further, non-vacant sites in the inventory must include a more detailed analysis of its realistic development capacity. When more than 50% of the sites used to meet the jurisdiction's lower income household capacity are non-vacant, the methodology must detail how the existing use would not constrain housing development on the site during the Housing Element planning period.<sup>45</sup> These new requirements over the use of non-vacant sites in the inventory may result in significantly revised site inventory methodologies, though it is impossible to

44 CA Government Code 65583.2 (c)

45 CA Government Code 65583.2 (g) (2)

draw a single conclusion about its impact on cities in Los Angeles County.

For example, within the site inventories analyzed, 94% of the sites in Santa Monica's inventory are non-vacant. But because Santa Monica mandates that all new multifamily developments set aside 30% of its units for lower income households, the city may be able reuse all of its undeveloped sites in its next Housing Element. In Azusa, 52% of sites in the inventory are non-vacant. Under 1397, Azusa would need to provide an analysis of the current leases and contracts that may prevent redevelopment of the non-vacant sites. Ultimately, it is up to HCD to decide the implications of this analysis on the contents of the inventory. A strict interpretation of 1397 may require Azusa to replace all of these sites in its next Housing Element (assuming none of the current sites in the inventory are developed as affordable to lower income households). However, it is unclear how HCD will interpret 1397, and whether Azusa, or other jurisdictions in similar positions, will struggle to construct site inventories without having to rezone land if required. Planners, developers, and legal experts we spoke with all foresee no major changes to site inventories for the next Housing Element cycle.

#### *SB 166: No Net Loss*

SB 166 adds language to the government code to facilitate the use of the site inventory over the course of the

appropriate planning period. If a site listed in a jurisdiction's Housing Element for lower income residential development is going to be developed at a density lower than it is zoned for, then the planning department is required to analyze whether the site inventory's residential capacity will become insufficient to meet the jurisdiction's RHNA targets. If so, then the jurisdiction will need to identify a new site with adequate capacity to be added to the site inventory.<sup>46</sup> At the end of the day, the law requires that a jurisdiction's site inventory must have the capacity to meet its RHNA targets for the planning period at all times.

#### *AB 879 and AB 72: Enforcing Housing Element Law*

Both AB 879 and AB 72 give HCD broader authority to monitor and enforce Housing Element law. AB 879 changes the Housing Element process in two ways. First, the bill requires that jurisdictions perform additional analysis on local ordinances that would impact residential housing development. This analysis must also include a review of development proposals that build to densities lower than those specified in the Housing Element, and data on the time periods between approving a project and receiving an application for building permits.

Secondly, AB 879 specifies what information needs to be included in the Housing Element annual report that is

<sup>46</sup> CA Government Code 65863 (b) (1) (B)

currently required by law, and extends these reporting requirements to charter cities. HCD now has more power in reviewing, adopting, amending, and repealing the standards and forms of the annual progress report. These changes give HCD more power to change its reporting requirements in order to improve the outcomes of the program. Additionally, the new information required in the annual report could lead to increased transparency in how a jurisdiction's Housing Element is implemented.

AB 72 gives HCD more power to enforce compliance with the Housing Element law. HCD can now determine if actions a jurisdiction takes are inconsistent with that jurisdiction's Housing Element. HCD can then revoke its approval of the jurisdiction's Housing Element, and may notify the Office of the Attorney General that the jurisdiction is in violation of Housing Element law in any way.<sup>47</sup>

It is still unclear how AB 72 will impact Housing Element law overall. The law does not identify many consequences should HCD determine a jurisdiction's Housing Element is out of compliance. Currently, when a jurisdiction is non-compliant, it may lose its housing funding. But not every jurisdiction depends on housing funds to achieve its policy objectives, and cities and counties that are less committed to meeting their housing development targets may be

<sup>47</sup> CA Government Code 65585 (i) (1) (A)

particularly unmotivated by this potential outcome. It is also unclear what action the Office of the Attorney General will take in light of HCD's notification. Should the attorney general set Housing Element enforcement as a high priority, then many jurisdictions will need to ensure they are following the law carefully.<sup>48</sup> In both of these laws, HCD's discretion is key to its impact on the Housing Element's efficacy. HCD now has an increased role in deciding how the Housing Element progress reports are conducted and the consequences for jurisdictions that do not follow their own housing planning. How HCD will go about defining terms, setting criteria, and auditing local decisions remains to be seen.

## Analysis

### Case Studies

In order to understand how changes to Housing Element law will impact cities in Los Angeles County, we took a closer look at elements from three very different cities: Santa Monica, Inglewood, and Azusa. A range of experts agreed that radical changes to Housing Element site inventories in and around Los Angeles are unlikely despite these bills. Therefore, the following analysis seeks to understand how well current site inventories further the state's goal of increased housing production. The analysis reveals that the sites chosen for a

Figure 2.1.1 Los Angeles County



48 Housing Element Consultant, personal communication, May 15, 2018

city's Housing Element are largely far too expensive on a per-unit basis to support affordable or even market-rate housing production. Additionally, the current uses of many of the sites do not elicit confidence that they will be sold to housing developers within the current cycle, and therefore cast doubt that the Housing Element sites will contribute to meet the city's RHNA targets.

Santa Monica, Inglewood, and Azusa were especially chosen as case studies for several reasons. First, these cities have very different housing histories, across a spectrum of real estate investment and disinvestment and at varying time scales. These cities also vary in their public resources, which reflects in their capacity to carry out long-range planning around housing policy. Third, as this report will show, each takes a different approach to finding sites for their Housing Element based on existing housing stock and the city's vision for growth. Finally, while the development capacity of each city's site inventory exceeds its RHNA allocation, the extent to which they do varies greatly. Azusa, at 127% of its allocation, only just clears the bar. Santa Monica's inventory holds approximately 250% of its RHNA allocation, while Inglewood's capacity is more than seven times its RHNA target.

In order to obtain the following information, a random sample of Housing Element sites was chosen from each of the cities, proportional to the size of the

city's inventory. These sites were then categorized by use and by realistic capacity. Next, by combining various sources of data on land costs, comparable projects, construction costs, and effective rents in the various cities, the costs of purchasing and developing the each site's listed capacity were estimated. From these estimates, feasibility of development of market-rate housing was assessed on each city's site inventory, given housing market conditions and investor expectations. Feasibility for affordable housing depends on an inordinate number of external factors, including funding availability, and therefore this level of analysis is outside the scope of this report. Please refer to Appendix D for a more thorough explanation of the assumptions used for this analysis.

### **Santa Monica**

The Santa Monica Housing Element states as its goal, beyond meeting state requirements, "to develop complete neighborhoods in mixed-use areas adjacent to transit opportunities and services."<sup>49</sup> Additionally, the plan contains language about "enhancing and preserving the community's character." Following from these goals, the city's site inventory focuses heavily on the city's downtown area and the area surrounding Bergamot Station on the Exposition Line.

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49 "Housing Element 2013-2021," City of Santa Monica Planning and Community Development Department, accessed May 15, 2018. <https://www.smgov.net/Departments/PCD/Plans/2013-2021-Housing-Element/>.

The focus is on sites with high density and development capacity, mostly under current use as commercial or office properties. The median "realistic capacity" for our random sample of sites was 19 units, although a few large outliers bring the mean to 97 units. This approach presents several apparent benefits. Directing housing investment near transit is a favored approach both in academic research and in public discourse around urban planning.<sup>50</sup> Residents would be able to take advantage of walkability, proximity to amenities, and short commutes to work.<sup>51</sup> However, this approach also avoids addressing the prevalence of low-density single-family districts in the city, and concentrates potential development in areas with particularly high land costs in an already expensive city.

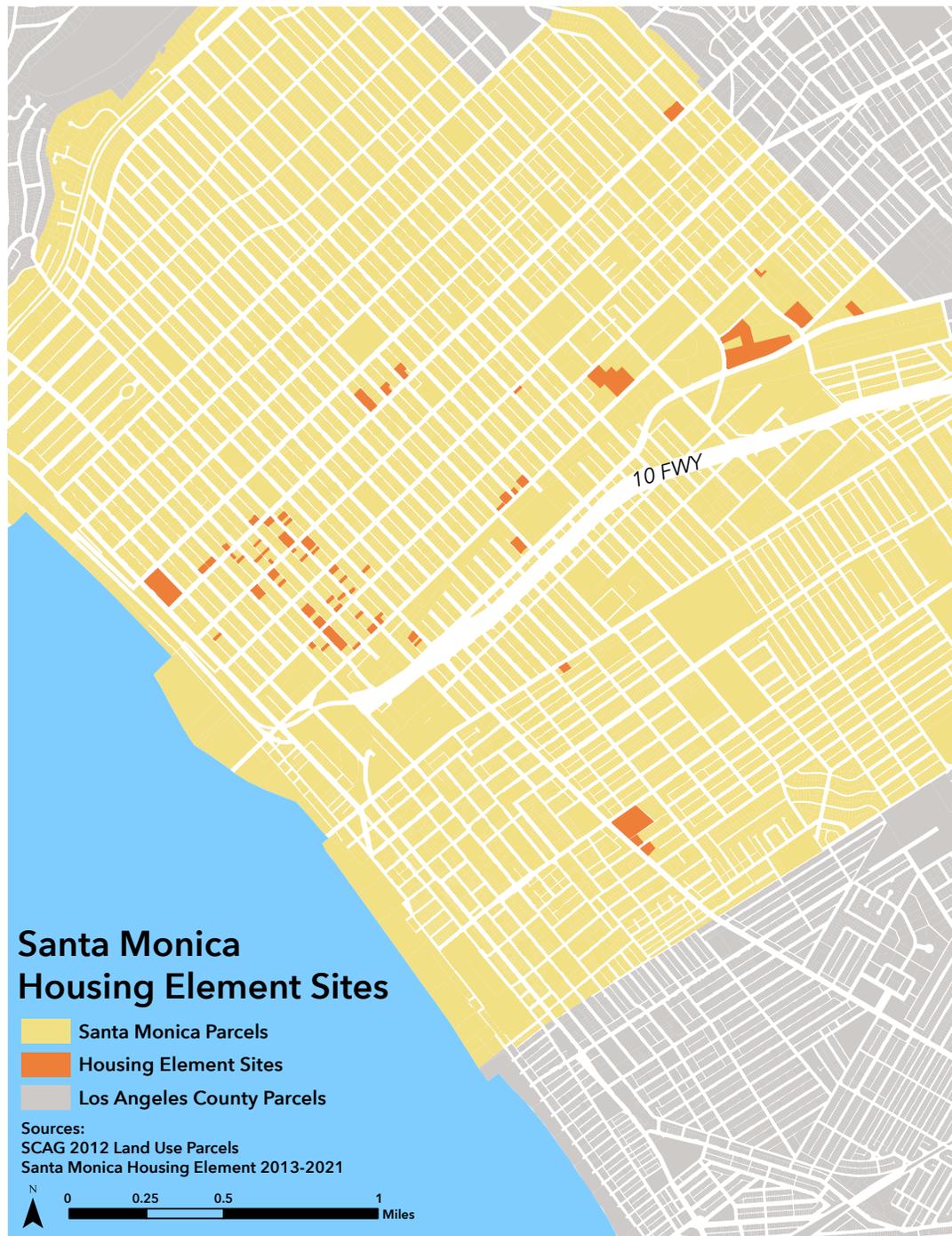
Average land cost per unit for the Santa Monica sample Housing Element sites was \$380,000, a figure almost prohibitively high for development, even considering the high rents that multifamily housing can command in the city. In fact, the economic returns that could be generated by market-rate development on these sites indicate that, on average, the sites are infeasible for development. This calculation does not

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50 Hank Dittmar and Gloria Ohland, eds., *The New Transit Town: Best Practices In Transit-Oriented Development*, (Washington, D.C.: Island Press, 2004), 20.

51 John L. Renne, "The Next Century of Sustainable Communities Will Be Organized Around Transportation," Citylab, April 29, 2014, <https://www.citylab.com/transportation/2014/04/next-century-sustainable-communities-will-be-organized-around-transportation/8980/>.

Figure 2.1.2 Santa Monica Housing Element Sites



even take into account that only 10% of the sample of the city’s sites are on vacant land. Developers would have to buy out the existing uses and demolish existing structures on the other 90% of sites, adding to development costs.

Additionally, the city’s focus on a few, large-capacity sites means that, if those sites are not developed, Santa Monica will receive far less housing than projected. For instance, one site near Bergamot Station was projected to yield 729 units, 17% of the city’s total capacity. The parcel has since been developed as creative office space, with no mixed-use component. While Santa Monica’s inventory holds enough capacity to double its RHNA target, and is in little danger of running afoul of any of the four bills discussed in this section, the loss of this site for housing development indicates the risk of counting on fewer sites to meet growing housing needs.

**Inglewood**

The City of Inglewood takes a markedly different approach to the Housing Element inventory, relying on a far more distributed set of smaller sites. The list contains very few vacant sites, and instead consists largely of parcels with low-intensity residential development. In the sample, 73% of the sites and 58% of the total capacity was located on land that is currently occupied by single-family homes. Much of the rest of the capacity is found in sites with small multi-family complexes of 10 units or less.

This approach to meeting the city’s housing challenges presents its own set of problems, not the least of which is the assumption that single family homeowners will sell their homes within the eight-year Housing Element cycle. The median “last year sold” for the properties in the sample was 1995, indicating long tenure periods for these properties. While surging prices might encourage homeowners to sell, expensive housing might also push them to hold on to a secure asset, knowing that finding somewhere to move will be costly.

Despite the lower intensity of current use on the properties in Inglewood’s inventory, and lower per-unit land costs of \$174,000, costs are still prohibitive for multifamily housing development. Because rent is lower in Inglewood, returns to investors for building the realistic capacity of units on Inglewood’s sample sites were roughly equivalent to those in Santa Monica, meaning that developers would shy away from construction on Inglewood’s average site.

### Azusa

The city of Azusa represents a third potential path to meeting housing needs, differing from the other two cities by leaning heavily on the city’s ample vacant land to produce housing and meet RHNA targets. Of the sites in the inventory sample, 45% are vacant, while another 23% are single family homes.

Figure 2.1.3 Inglewood Housing Element Sites

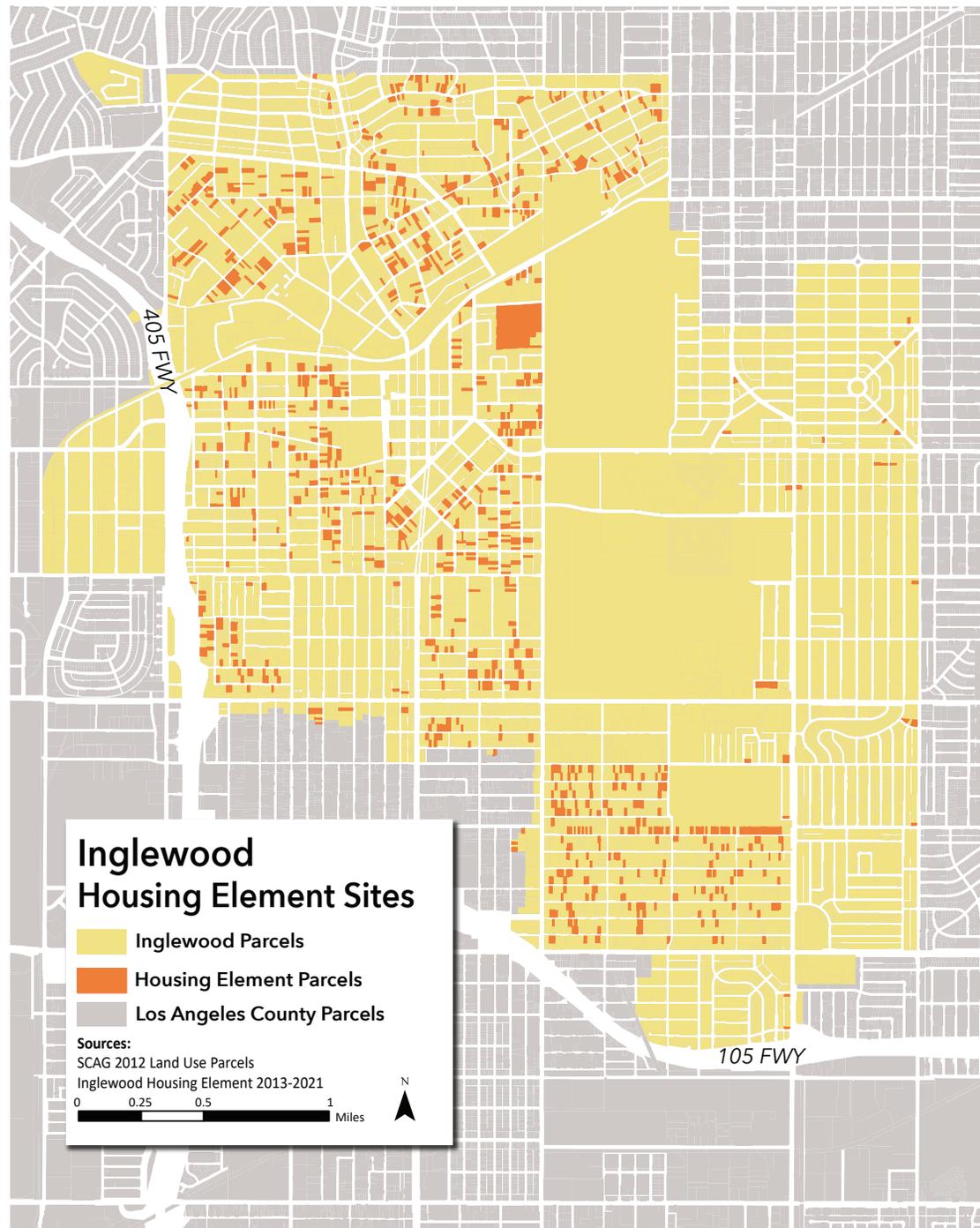
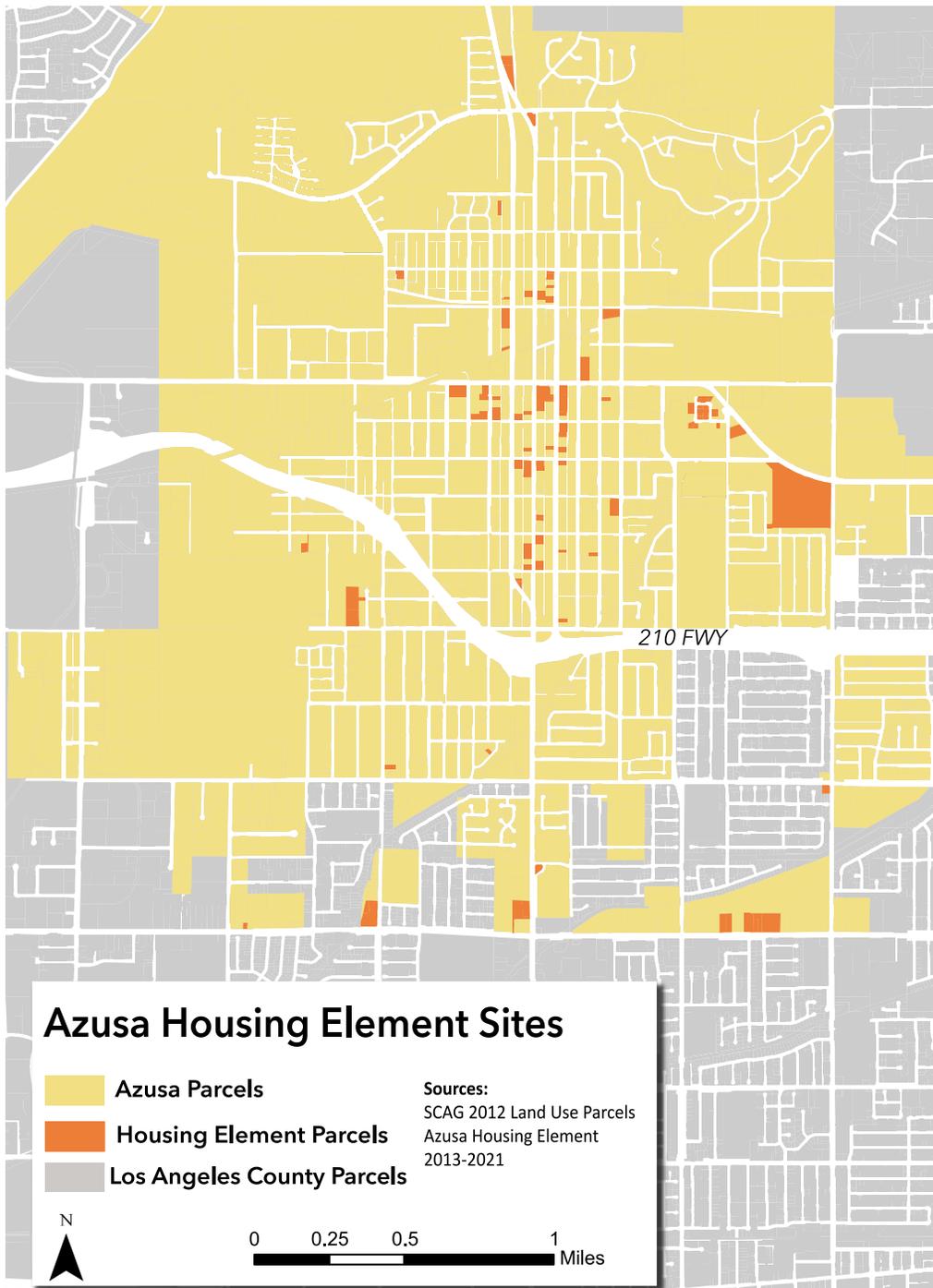


Figure 2.1.4 Azusa Housing Element Sites



Further away from the region’s economic centers, Azusa remains a fairly low density city. As of the time the Housing Element was adopted, 59% of housing units were Single Family Homes, and housing prices were comparably low for the region. The Housing Element also highlights issues with overcrowding in the city’s rental units, with some 23% listed as “overcrowded.”<sup>52</sup> The fact that the city is less built-out than Santa Monica or Inglewood allows the city to rely on less politically contentious sites for housing, like vacant parcels and parking lots.

Azusa’s mix of housing sites does not raise as many questions as the previous cities, however, the inventory is also not as deep. While Santa Monica and Inglewood have enough sites in their inventories to meet their RHNA targets many times over, Azusa has space for just 130% of its allotment. With the new stipulations under AB 1397 and SB 166, the city’s current inventory will possibly not be enough, and it will potentially have to find additional sites or upzone to accommodate new housing. While differing in several ways from the other two case studies, Azusa matches them in one major respect. Given the realistic capacity of the sites and their land prices, which averaged roughly \$159,000 per unit, the average sample Housing Element site is infeasible for development as multi-family housing.

52 City of Azusa, Housing Element 2013-2021

### Case Study Trends

A few trends emerge across the three case study cities. The first concerns the current use of the sites. Of the sites included in the cities' housing inventories, about 70% are already in residential use, indicating that higher intensity redevelopment would be needed. However, realistic capacity by use shows a different picture. Of the total realistic capacity in all three cities, only 20% is residential, while vacant sites account for 32% of the total. This trend is driven mostly by sites in Santa Monica, a few of which are projected to contain more than 300 units of housing.

The other major finding is that the average sample site in each of the three cities is infeasible for development, given prices and rents in the respective cities. In short, Housing Element inventories have very little to do with actual production of housing. This finding elicits a question about what

**If the real goal of the site inventory is to ensure there is enough zoned capacity to accommodate population growth, then the inventory of land could be constructed on a neighborhood level rather than a parcel level.**

the state wants the Housing Element site inventory to accomplish. Even with the new regulations, if the goal is to find a set of sites ripe for development as housing, then the exercise shows that it is not achieving that goal.

Regardless of site inventory feasibility, most cities in Los Angeles County have continued to act in compliance with the law. In Los Angeles County, 60 of the 89 jurisdictions have a zoned capacity in excess of their RHNA allocation. At the same time, judging from the most recent Housing Element annual progress reports, it is clear that jurisdictions are not hitting their targets as planned. By 2016, only 9% of jurisdictions in Los Angeles County had stayed on track with their Very-Low income RHNA target (assuming an equal portion of the target is met throughout the eight year planning period). The reports also do not show progress for above market-rate housing. Only 20% of jurisdictions have stayed on track to meet that RHNA target.

*Table 2.1.1 - Progress towards RHNA 5th Cycle Targets in Los Angeles County*

Income Category	Proportion of Cities in Los Angeles County on Track to Meet RHNA Targets
Very-Low Income	9%
Low Income	7%
Moderate Income	10%
Above-Moderate Income	20%

Additionally, most cities have site inventories adequate to meet their RHNA targets. Not including cities that are out of

compliance with Housing Element Law, the median city left room in its inventory for 1.83 times their RHNA, and many cities had even more. For example, the city of Burbank has a RHNA allocation of roughly 2,700 units, but lists a realistic capacity of nearly 24,000, more than eight times their target. Even Los Angeles, with a housing needs allocation of 82,000 units, lists sites for almost four times their allotment. It seems that many have a sizeable buffer under their current zoning regimes before they would have to resort to upzoning to accommodate a growing RHNA allocation.

### Key Takeaways

The four bills discussed in this section will strengthen jurisdictions' Housing Elements and could lead to better planning for housing production across Los Angeles. Based on the analysis conducted here, and extensive interviews with experts, the concern is whether this planning will lead to increased housing development, particularly for lower-income households. The issues can be grouped into three categories: the utility of site inventories for creating housing, the likelihood that cities and counties will upzone in order to produce compliant Housing Elements for the next planning cycle, and the difficulty in mandating housing production as opposed to housing planning.

Developing a site inventory compliant with Housing Element law was already an

onerous process for jurisdictions, especially large ones like Los Angeles. Planners did not investigate the feasibility of developing housing on the sites included in their inventories, and knew that many of the sites listed were highly unlikely to be developed.<sup>53</sup> They could not reasonably be expected to carefully construct an inventory of sites prime for the development of more than 80,000 housing units. In the case of Los Angeles, planners mitigate this concern by producing a Housing Element with the capacity to meet the city's RHNA allocation several times over. Analysis of Housing Elements and RHNA targets, along with expert interviews, show us that site inventories have limited utility in creating housing. The bills passed in 2017 make the process far more complex, and these same experts doubt it will lead to more or easier housing production.

If the real goal of the site inventory is to ensure there is enough zoned capacity to accommodate population growth, then the inventory of land could be constructed on a neighborhood level rather than a parcel level. Using parcels as the unit of analysis is difficult because it assumes that each parcel owner would be willing to sell in order to create the housing necessary to meet the growing housing needs. Planning for a neighborhood level capacity could be more helpful in targeting areas for population growth so that a jurisdiction's Housing

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<sup>53</sup> City Planner, City of Los Angeles, Personal communication, April 4, 2018

Element can better inform their land use element. An inventory constructed this way would be more of a blunt instrument than one identifying individual parcels, but would also more honestly reflect the relationship between planning for housing and developing housing. Overall, this would simplify the Housing Element process for jurisdictions, especially large ones, and allow planners to create more intentional land use policy at a wider scale.

The primary impact of AB 1397, which changes the requirements for what sites can be included in a jurisdiction's inventory, would be felt most by cities and counties that had to rezone to accommodate their RHNA allocations. Otherwise its consequence is only changing what parcels are listed in a document of seeming limited utility. Of the 73 cities in Los Angeles County with compliant Housing Elements, only 11 inventories contain less than 150% of the capacity required by the RHNA allocation. That is a fairly robust buffer. Interviews with planners and other experts suggest that very few jurisdictions expect to upzone to produce compliant Housing Elements in 2021. Because of new limits on reusing sites in housing inventories, the cycle following 2021 may require more widespread upzoning. But that planning period is a decade off, so the expectation is that little impact will be felt for many years.<sup>54</sup> The caveat to this conclusion is

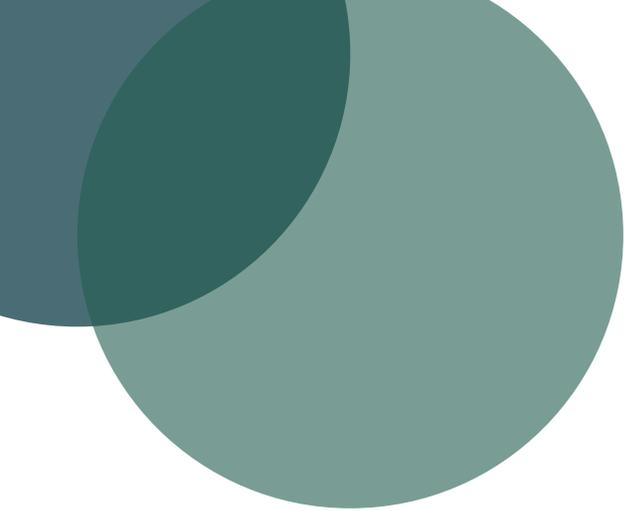
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<sup>54</sup> Housing Advocate, personal communication, April 18, 2018.

that, because housing sites are not always fully researched before inclusion in the site inventory, and jurisdictions are unlikely to have the resources to do a more thorough analysis, it is impossible to assert that little or no upzoning before 2021 will be required.

One thing to keep in mind, however, is that Housing Elements and housing production are complicated, and rely on many factors. Changes to site inventory requirements will not take effect for several years, and few people understand what the changes are and how they will be taken up by city planning departments. It is possible that site inventories compiled in light of the 2017 bills will be more directly useful to the development of housing than past versions have been. This would also likely require a far greater investment of time and resources in the development of these documents. Interviews with planners in departments across Los Angeles County do not indicate this investment will be forthcoming. Crucially, these bills are aimed at more robust planning for housing, not more robust development of housing. This of course is no accident—the state cannot mandate that private developers build housing; the best it can do is to alter rules that it sees as inhibitor to development. The four bills discussed in this section are unlikely to make housing development more difficult. But they are also unlikely to spur significantly more homebuilding.

The production of affordable housing and



## 2.2 Funding Affordable Housing Production

### Background

housing affordability relies on various funding sources that contribute to the construction and operation of housing as well as the provision of rental assistance. Where this funding comes from in California has changed dramatically over time, and access to it involves complying with an ever-changing multitude of regulations. Since the 2008 recession, California has seen a 69% decline in the availability of funding for the production and preservation of affordable housing.<sup>55</sup>

The loss of redevelopment agencies in 2012 has had a massive impact on housing affordability in the state and Los Angeles County. According to a report published

55 Ray Pearl, "California's affordable housing crisis must be addressed," *Sacramento Bee*, January 27, 2017, <http://www.sacbee.com/opinion/op-ed/soapbox/article128749824.html>.

by the California Housing Partnership Corporation (CHPC), "the elimination of redevelopment agencies in 2012 and the exhaustion of state bond funding foreshadowed a 14% rise in homelessness in the state of California."<sup>56</sup> In Los Angeles County, this loss led to a 26% rise in homelessness from 2016 to 2017.<sup>57</sup> Industry experts, such as the Executive Director of the Kennedy Commission, and a Los Angeles reporter, also reflect that these changes have had a significant impact on housing affordability at the state and local levels.

Uncertainty around the 2017 federal tax reform compounded this already difficult situation. Federal tax credits are crucial in getting most affordable housing built, and therefore makes the state reliant on federal institutions to a certain extent.<sup>58</sup> According to CHPC, the anticipation of the federal tax reform resulted in a 45% decline of Low Income Housing Tax Credits in California.<sup>59</sup> In Los Angeles County specifically, CHPC reported a 54% decline of Low Income

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56 "California Housing Emergency: State Leaders Must Immediately Reinvest in Affordable Homes," California Housing Partnership Corporation, March 2018, <https://1p-08d91kd0c03rlxhmhtydpr-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/CHPC-State-Housing-Need-Report-2018-Web.pdf>

57 "Los Angeles County's Housing Emergency and Proposed Solutions," California Housing Partnership Corporation, May 2018.

58 Los Angeles-based market-rate developer A, personal communication, May 22, 2018.

59 "California Housing Emergency."



The finding bills in the 2017 package are a significant step, because they reverse the trend of disinvestment and provide much-needed resources for California.

Housing Tax Credits in 2017.<sup>60</sup>

The reduction in funding for affordable housing has contributed to the massive gap in housing affordability that we see today. Due to this funding gap, there has been an increasing focus on local governments to subsidize housing.<sup>61</sup> Some cities, like Santa Monica, have been more successful establishing a locally generated source of money not connected to state or federal monies. For example, with the end of redevelopment agencies, Santa Monica set out to restore around \$15 million a year for affordable housing through the Affordable Housing Trust Fund.<sup>62</sup> However, many other jurisdictions either do not have the capacity nor the political will to achieve similar levels of success.

60 "Los Angeles County's Housing Emergency and Proposed Solutions."

61 "Los Angeles County Homeless Initiative," Community Development Commission/Housing Authority of the County of Los Angeles, accessed May 17, 2018, <https://www.lacdc.org/home/cdc-homeless-activities/homelessness-i>.

62 Santa Monica Housing Program Manager, personal communication, May 18, 2018.

California's underproduction of housing over the past decade is an indicator of how long it may take for any proposed solutions to make an impact.<sup>63</sup> Yet the funding bills in the 2017 Housing Package and the local City of Los Angeles initiatives are a significant step, because they reverse the trend of disinvestment and provide much-needed resources for California and Los Angeles.<sup>64</sup>

## Relevant Legislation

### SB 2

The Building Jobs and Homes Act looks to be one of the most important bills of the 2017 statewide legislation package. The key impact of the Building Homes and Jobs Act is the creation of a permanent, ongoing source of funding for affordable housing. While far from the funding made available by redevelopment agencies and tax increment financing since their dissolution in 2012, there has not yet been a similarly reliable source of money for affordable housing.

Starting from January 1, 2018, the bill implements a \$75 document recording fee on all real estate transactions, with a major exemption for any recording made

<sup>63</sup> VP of Governmental Affairs, California Housing Consortium, personal communication, April 13, 2018.

<sup>64</sup> VP of Governmental Affairs, California Housing Consortium, personal communication, April 13, 2018; and Policy Director of Land Use and Finance, Housing California, personal communication, April 20, 2018; and Executive Director of Kennedy Commission, personal communication, April 27, 2018.

in connection with a sale of real property (which was argued to be in the spirit of encouraging homeownership affordability). The recording fee is limited to \$225 per transaction per single parcel, or three documents.<sup>65</sup> While historical data on the annual volume of eligible transactions has not been found, the projected annual income at the time of the bill's passage was \$200 million to \$300 million. As of June 2018, the State Controller had collected the first funds.<sup>66</sup> Although the amount has yet to be officially confirmed, the revenues appear to be on track with the Governor's Budget for 2018-2019.<sup>67</sup> The Brown Administration has estimated that this fee will raise roughly \$258 million in 2018-19.<sup>68</sup> In this first year of the program, HCD will direct money towards homelessness solutions and local planning grants. In 2019, its second year, ongoing revenue

<sup>65</sup> The types of covered transactions is extensive and listed in the California Government Code (GOV) Section 27388.1. A cleanup bill, AB 1110, was passed in February 2018 to clarify that the State and "any county, municipality, or political subdivision of the state," would be exempt from the fee.

<sup>66</sup> "Agenda: Wednesday May 16, 2018," Senate Committee on Budget and Fiscal Review, May 16, 2018, <http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/SUB4/May-162018Sub4.pdf>.

<sup>67</sup> Policy Research Specialist, California Department of Housing and Community Development, personal communication, May 24, 2018.

<sup>68</sup> In the governor's budget a \$129 million portion of SB 2 revenues appears as part of 2017-2018. The Policy Research Specialist at HCD clarified that \$258 million is the overall revenue expected from SB 2 this calendar year. The portion reported for 2017-2018 follows the fiscal year, which runs from July 2017 to June 2018, to allow expenditures for the first half of 2018.

will be split between HCD programs (30%) and a local return of funds (70%). Local jurisdictions will receive shares based on existing Community Development Block Grant (CDBG) allocation formulas.

### SB 3

The Veterans and Affordable Housing Bond Act, a bill which gained supermajority approval of the state legislature, holds the potential to provide resources for affordable housing. The bill is a ballot measure to appear in the November 6, 2018 statewide election where voters will have the ultimate approval of its issuance. Unlike the ongoing document filing fee of SB 2, however, this one-time source of funds will be less flexible and subject to the State General Obligation Bond Law. California will have to repay the bonds through general fund spending, and proceeds are limited to construction or acquisition of capital assets. While providing a substantial amount of resources to the tune of \$4 billion, the bond also reflects the numerous constituencies with interests in housing and the broad compromises required to pass funding legislation. The lion's share of funding, \$1.5 billion, goes to HCD's Multifamily Housing Program (MHP) and is followed by the CalVet Home Loan Program, with \$1 billion going towards farm, mobile home, and home purchasing assistance for veterans. With the exception of the Self-Help Housing Fund dollars, which will transfer to the California Housing Finance Agency, funds that remain unused by their *Table*

### 2.2.1 Program Allocations from SB 3 Bonds<sup>69</sup>

Program	Funds	Administrator	Description
Multifamily Housing Program (MHP)	\$1,500,000,000	HCD	MHP makes low-interest, long term deferred payment permanent loans for new construction, rehabilitation, and preservation of permanent and transitional rental housing for lower-income households.
CalVet Home Loan Program	\$1,000,000,000	CA Dpt. of Veterans Affairs	CalVet offers home loans to eligible veterans at a low interest rate, with low or no down payment, and with loan fees. CalVet loan can also be used for construction and rehabilitation.
Infill Incentive Grant Program	\$300,000,000	HCD	IG provides grant funding for infrastructure improvements for new infill housing in residential and/or mixed-use projects.
Joe Serna, Jr. Farmworker Housing Grant (JSJFWHG)	\$300,000,000	HCD	ISIFWHG makes grants and loans for development or rehabilitation of rental and owner occupied housing for agricultural workers, with priority for lower-income households
Local Housing Trust Fund Matching Grant Program (LHTF)	\$300,000,000	HCD	Affordable Housing Innovation's LIHTF lends money for construction of rental housing projects with units restricted for at least 55 years to households earning less than 60% of AMI. State funds match local housing trust funds as down payment assistance to first-time homebuyers.
CalHome Program	\$300,000,000	HCD	CalHOME makes grants to local public agencies and nonprofit corporation to assist first-time homebuyers to become or remain homeowners through deferred-payment loans. Funds can also be used to assist in the development of multiple-unit ownership projects
Transit-Oriented Development Implementation Program (TOD)	\$150,000,000	HCD	The TOD program makes low-interest loans and grants for rental housing that include affordable units located within one-quarter mile of a transit station.
Self Help Housing Fund	\$150,000,000	HCD	CSHHP makes grants to local government agencies and nonprofit housing corporations to provide technical assistance to low- and moderate-income families building their own homes.

respective programs will be reallocated to the MHP after 10 years, in 2028.

#### AB 571

This bill modifies the definition of farmworker housing; specifically, the required percentage of dedicated units for farmworkers and their families for a project to be eligible to apply for a California Tax Credit Allocation Committee (TCAC) set-aside. Current allocation for this set-aside per year is \$500,000. However, this reserved portion of funds has been historically underutilized, and over \$5 million awaits allocation. To put that number in context, the California Franchise Tax Board estimates that only \$4.2 million has been allocated over the last 10 years.<sup>70</sup> In order encourage their use, AB 571 changes the thresholds that make a project qualified as farmworker housing and thereby eligible for the funds.

Projects that use this set-aside can now dedicate 50% of project units to farmworkers and their families instead of the earlier requirement of dedicating 100% of units. This will spur the greater use of the farmworker project designation by allowing a mixed population of residents with a wider range of incomes to bolster project feasibility in predominantly rural areas. While this change might be seen

<sup>69</sup> Program descriptions from <http://www.hcd.ca.gov/> and <http://www.dre.ca.gov/files/pdf/re22.pdf>.

<sup>70</sup> "Bill Analysis - Bill Number AB 571," California Franchise Tax Board, accessed May 15, 2018. <https://www.ftb.ca.gov/law/legis/17-18bills/ab571-FINAL.pdf>.

as reducing the amount of resources dedicated to farmworkers and their families, this shows the tradeoffs that must be made when relying on market mechanisms—unused public resources will not provide any housing benefit at all. The threshold percentage of reserved units will not preclude farmworkers or their families renting such other units, but it will provide greater access to farmworker projects for other non-targeted, low-income populations. Other technical changes included will similarly increase the use of farmworker low-income housing tax credits. Also, extensions to the number of operating days for temporary migrant housing centers will provide more housing for these often low-wage workers.

**Measure H**

Measure H, approved by 69.34% of Los Angeles County residents in March 2017, is a quarter cent sales tax for the next 10 years. It was created specifically to deal with the rising problem of homelessness through the commitment of approximately \$355 million annually for services and programs. Measure H is a part of the Los Angeles County Homeless Initiative and is directly associated with a few of the 51 strategies outlined in it. The Board approved an annual expenditure plan for the Measure H revenue which was deposited in the Measure H Special Fund on May 15th, 2017. For accountability purposes, all expenditures will be reviewed by a Citizens’ Homeless Initiative Oversight

Advisory Board and are subject to annual independent audits. Measure H funds primarily address housing, health, social services and criminal justice, stemming from the realization that housing alone was ineffective in dealing with homelessness.

**Proposition HHH**

Administered by Los Angeles Housing and Community Investment Department (HCIDLA), the Proposition HHH Permanent Supportive Housing Loan Program (Prop HHH) is designed to develop permanent supportive housing units for homeless individuals as well as those at risk of homelessness in the City of Los Angeles. In November 2016, Los Angeles residents voted for a \$0.348 per square foot property tax to fund the \$1.2 billion measure. The program’s goals are to primarily reduce homelessness through the creation of safe and affordable housing, while providing access to various services and treatment programs. By requiring health services associated with supportive housing, the measure works in conjunction with Measure H. This program was designed to be financially structured using tax-exempt bonds and the 4% tax credit program. Projects can also utilize the 9% tax credit program after applying to the HCIDLA Managed Pipeline. Proposition HHH regulations also allow "alternative financing structures" which will be reviewed on a project-by-project basis. However, HCIDLA will still continue to require adherence to the City's established policies for

affordable housing construction, including wage compliance, tenant relocation, environmental review, fair housing, and federal accessibility requirements.

**Linkage Fee**

On December 13th, 2017, the Los Angeles City Council passed the Linkage Fee ordinance, which went into effect on February 17th, 2018. The Linkage Fee arose directly from the realization that Los Angeles needed more funding for the production and acquisition of affordable housing.<sup>71</sup> The ordinance has two primary components. First, it levies a fee on new residential and commercial development on a per square foot basis prior to the issuance of a building permit. The ordinance geographically differentiates between market areas so as to collect greater fees from high market areas and less from low market areas. Based on type of development and location, the fee can range from \$3-\$5 per square foot for nonresidential uses and \$8-\$15 per square foot for residential uses. Second, it establishes the Housing Impact Fund for the purpose of preserving existing affordable housing and developing new projects. Certain projects are exempt from the fee, primarily buildings constructed for the government such as schools, museums, homeless shelters, and also accessory dwelling units (ADUs) and nonresidential projects less than 15,000 square feet. Projects that have 40% of units restricted

<sup>71</sup> Staff, ACT-LA, presentation, Los Angeles, CA, April 18, 2018

to Moderate income households, 20% to Low income, or 11% to Very-Low income are also exempt. Affordability levels for exempt projects must be maintained for 55 years in order to qualify. The Linkage Fee was also designed to work with Transit Oriented Communities and JJJ projects. The full guidelines of the Housing Impact Fund are currently being discussed, and the exact uses of the collected money are yet to be determined.

## Analysis

### Projected Revenue and Local Housing Needs: The Amount and Allocation of Funds

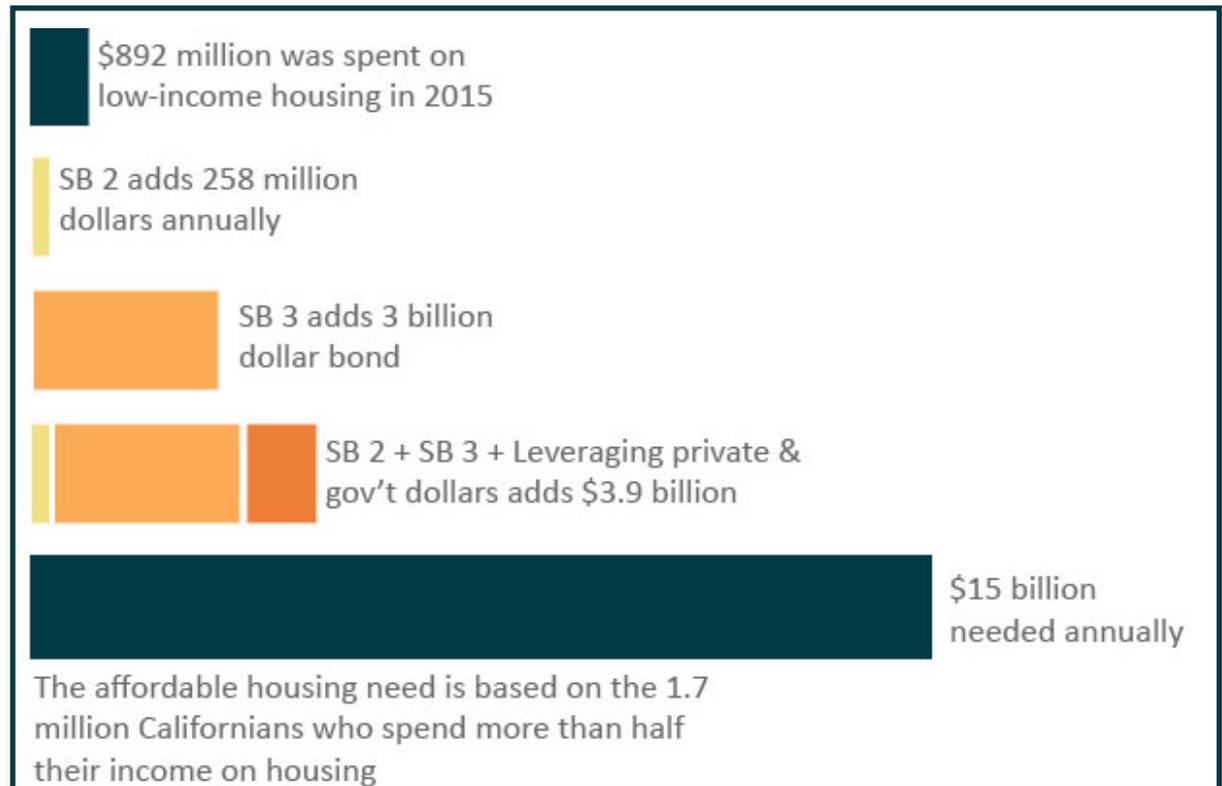
The funding bills and the Los Angeles measures are projected to create a significant amount of housing. Although current projections of based on the amount funds are not precise, they provide a foundation for understanding the impact of these policies on the housing crisis.<sup>72</sup>

Governor Brown's administration has estimated that the fee from SB 2 will raise roughly \$129 million in 2017-18 and \$258 million in 2018-19.<sup>73</sup> SB 3 will raise \$3 billion of funding through a one-time

72 Director of Research & Advocacy, San Francisco Electrical Construction Industry, personal communication, April 30, 2018

73 Senate Committee on Budget and Fiscal Review. Subcommittee No. 4. LA, CA. 4. <http://sbud.senate.ca.gov/sites/sbud.senate.ca.gov/files/SUB4/May162018Sub4.pdf>. A policy research specialist at HCD clarified that \$258 million is the overall revenue expected from SB 2 this calendar year. A portion is reported for 2017-2018 fiscal year, which runs from July 2017 to June 2018 in the governor's budget to allow expenditures the first half of 2018.

Figure 2.1.5 California's Projected Revenue vs. Projected Housing Need



Source: Los Angeles Times Graphics, California Housing Partnership Corporation, Legislative Analyst Office

issuance of bonds. By leveraging additional private, federal and local dollars, all together SB 2 and SB 3 are projected to generate \$3.9 billion annually.<sup>74</sup> By comparison, a massive gap still exists because adequately financing homes for Low income renters in the State would cost \$15 billion annually according to the State Legislative Analyst's

74 Dillon, Liam. "State Senate Bills Aim to Make Homes More Affordable, but They Won't Spur Nearly Enough Construction." Los Angeles Times. August 11, 2017. Accessed June 04, 2018. <http://www.latimes.com/politics/la-pol-ca-state-housing-deal-effects-20170811-htmistory.html>.

Office.<sup>75</sup>

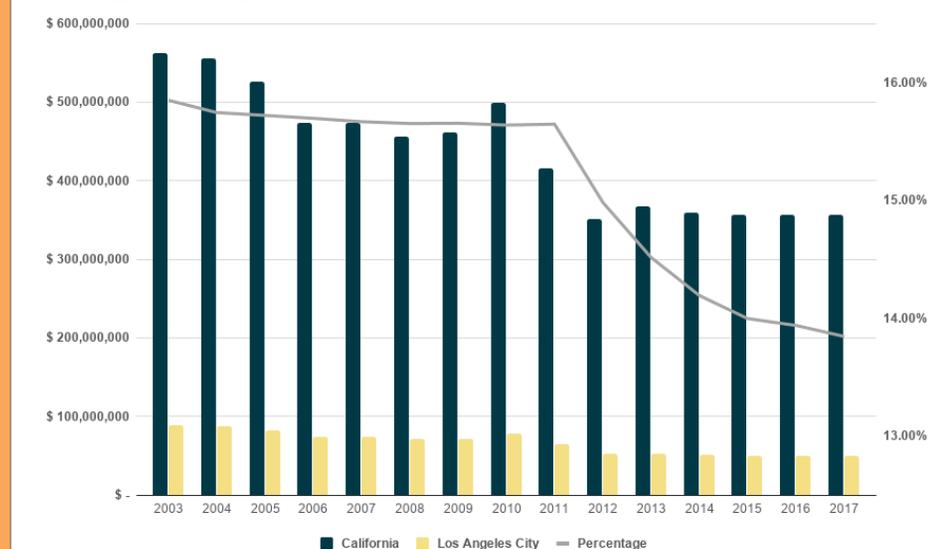
Furthermore, there might be issues in the implementation of funds which could lead to larger gaps in funding. For SB 2 specifically, HCD should monitor collection and enforce clear and consistent application of the fee by County Recorders. This would ensure the narrowly-defined exemptions on the document recording fee are not misconstrued and reduce covered

75 Taylor, Mac. "Perspectives on Helping Low-Income Californians Afford Housing" (Legislative Analyst's Office, Sacramento, CA, February 2016), 4. <http://www.lao.ca.gov/Reports/2016/3345/Low-Income-Housing-020816.pdf>

## In Depth Look: CDBG Allocation Formulas

These allocation formulas have not been changed since 1978, and over time their fitness in targeting community development need has declined.<sup>76</sup> One chart compares the City of Los Angeles' CDBG allocation, an entitlement city, with that of the entire state of California, and another further shows the median and average local CDBG allocations. Both show HUD CDBG data from 2003 to 2017 and reflect nominal (non-inflation adjusted) award amounts.<sup>77</sup>

**Figure 2.2.2 The City of Los Angeles and California State CDBG Allocations, 2003-2017**  
(Nominal figures not adjusted for inflation)



Source: U.S. Department of Housing and Urban Development, <https://www.hudexchange.info/grantees/allocations-awards/>, accessed April 20, 2018.

Besides showing the large decrease in federal CDBG funding over time, Figure 2.4 shows that the City of Los Angeles has received approximately 14% of the state's allocation in recent years. From a total state award of approximately \$356.9 million in 2017, the city received \$49.4 million.<sup>78</sup> Although the ongoing proportion of 70% from HCD to local jurisdictions local funds will not begin until the second year of the Building Homes and Jobs Act, and the fee's total revenue relies on other real estate activity in the economy, we can provisionally estimate Los Angeles' take from SB 2. Using the latest Governor's budget estimate of \$258 million,<sup>79</sup> Los Angeles could receive something on the order of \$25.3 million from SB 2.<sup>79</sup> Of course this projection is much less than the city's CDBG funding, but it would be a significantly large amount of funding dedicated to entirely affordable housing (less administrative costs), while CDBG funds can be applied to a larger set of community development needs.

<sup>77</sup> United States Department of Housing and Urban Development, HUD Exchange, "About Grantees" <https://www.hudexchange.info/grantees/>.

received \$49.4 million. Although the ongoing proportion of 70% from HCD to local jurisdictions local funds will not begin until the second year of the Building Homes and Jobs Act, and the fee's total revenue relies on other real estate activity in the economy, we can provisionally estimate Los Angeles' take from SB 2. Using the latest Governor's budget estimate of \$258 million,<sup>78</sup> Los Angeles could receive something on the order of \$25.3 million from SB 2.<sup>79</sup> Of course this projection is much less than the city's CDBG funding, but it would be a significantly large amount of funding dedicated to entirely affordable housing (less administrative costs), while CDBG funds can be applied to a larger set of community development needs.

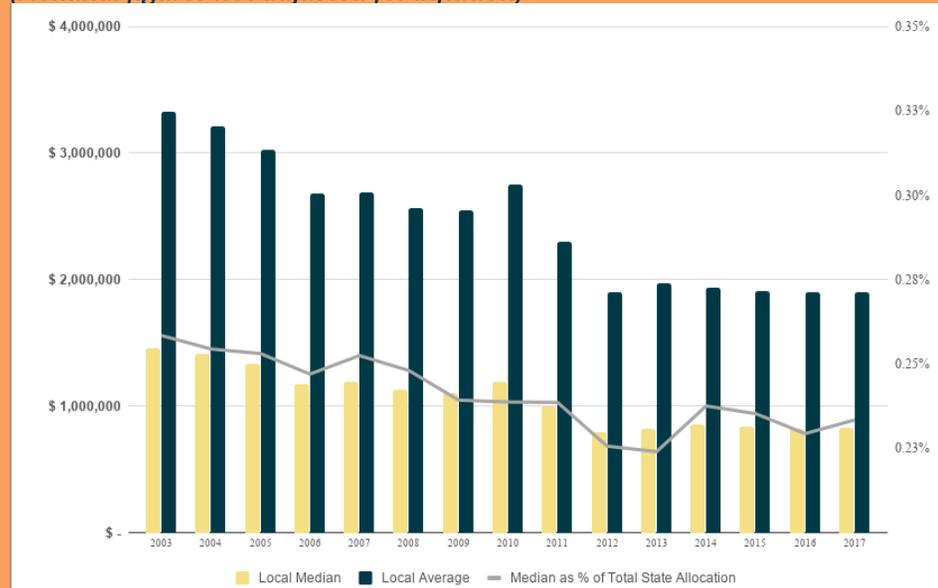
For other jurisdictions in the state, the allocation process would be much less generous. As one interviewee remarked, the share of the SB 2 document recording fee for many jurisdictions could result in inefficiently small allocations.<sup>80</sup> Figure 2.4 shows the median CDBG allocation across the state and average allocations for reference as well. Besides the declining amount of overall federal funding, the number of grantees in the state has grown over time. This has resulted in a median CDBG allocation in 2017 of only \$833,000 for local jurisdictions. Using the median proportion of 0.23% of total state CDBG allocation to create the same estimate as above, half of CDBG areas would receive less than \$415,380 annually (in quarterly remittances) using existing CDBG allocation formulas—less than the cost of a single unit of affordable housing in some instances.

<sup>78</sup> Legislative Analyst's Office, *Administration of the 2017 Housing Package*, February 8, 2018, <http://www.lao.ca.gov/Publications/Report/3746>.

<sup>79</sup> Or approximately 14% of the whole 70% of local funds. For ease of comparison, these estimates have disregarded the 83%, 10%, and 7% split among entitlement, non-entitlement, and competitive allocation (respectively) of the total local funds. For more information refer to: <http://www.hcd.ca.gov/policy-research/docs/sb2-ongoing-housing-funding-allocations.pdf>.

<sup>80</sup> Vice President of Government Affairs, California Housing Consortium, personal communication, April 13, 2018.

**Figure 2.2.3 Median and Average Local CDBG Allocations, 2003-2017**  
(Nominal figures not adjusted for inflation)



Data Source: U.S. Department of Housing and Urban Development, <https://www.hudexchange.info/grantees/allocations-awards/>, accessed April 20, 2018.

Is there another allocation process besides those provided by CDBG that would better suit California’s distribution of housing need? In the recent past, a secondary market for trading CDBG funds emerged in Los Angeles County, in part for small grantees to deal with this problem. HUD ultimately issued a memorandum discouraging the practice, claiming it was against its intentions and put funds at risk of being redirected from qualified programs and actions.<sup>81</sup> Another method of minimum or rotating allocations could provide another possibility for sharing SB 2 revenue. The bill’s revenue structure ultimately means that areas with high real estate activity will likely produce and contribute more document recording fees than are returned locally. The system for allocating this new source of housing funding must be considered further.

<sup>81</sup> Reported by Alison Leigh Cowan, “Development Grant Sales Are Brisk in Los Angeles,” *New York Times*, February 16, 2013, and response by Yolanda Chavez, US Department of Housing and Urban Development, “Exchanging Community Development Block Grant Funds between Units of General Local Government in Urban Counties,” Memorandum, May 13, 2013.

transactions and revenues.<sup>82</sup> A persistent tension in allocating state and local funds appropriately is the need to balance an efficient use of funds with political feasibility. For one example, the “local return” mechanism in SB 2 is inefficient but was crucial to garnering support for its passage. Local jurisdictions will receive their share of SB 2 revenue based on CDBG allocation formulas, and the following estimates reveal the shortcomings of this method. While the federal formulas provide a standard and familiar process for distribution of funds, its efficiency and equity should be reevaluated with the State’s needs in mind.

SB 3 will appear in the statewide November Ballot and is yet to be passed, which leads to more uncertainty regarding the projected revenue of funds. Although the future is not always predicted by past behavior, it is encouraging for SB 3 that no Veterans Bonds Acts have been voted down in California’s state history. Since the first of such measures in 1922, Proposition 1, all 28 CalVet bonds have been approved by voters, including most recently, the Veterans Housing and Homelessness Prevention Bond of 2014.<sup>83</sup>

On a local scale there is a similar issue of a gap in funding. Measure H is projected to raise \$355 million annually for 10 years.<sup>84</sup> By recent estimates, the projected need of annual funding is actually \$628 million in Los Angeles County.<sup>85</sup> The Measure H funding translates to moving approximately 45,000 homeless individuals into permanent housing during the first five years, while also

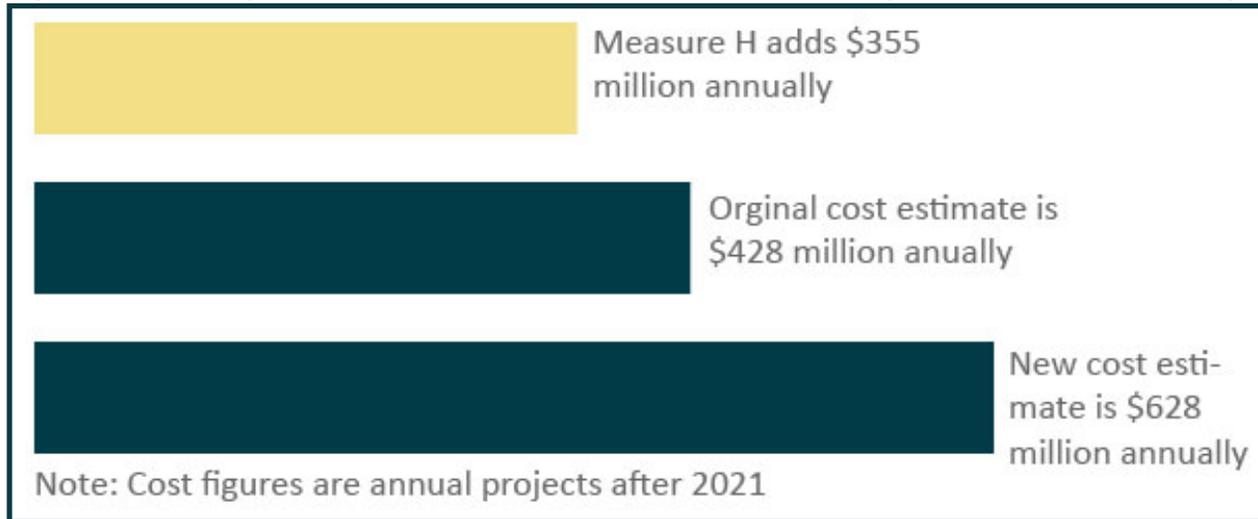
<sup>82</sup> Vice President of Government Affairs, California Housing Consortium, personal communications, April 13, 2018.

<sup>83</sup> Information is from voter’s ballot information for Veterans Housing and Homelessness Prevention Bond of 2014, AB 639 Perez, which was itself approved by voters to bring the total count up to 28.

<sup>84</sup> Los Angeles Times Staff. “Measure H Adopted Budget.” *Los Angeles Times*. July 31, 2018. <http://spreadsheets.latimes.com/measure-h-adopted-budget/>

<sup>85</sup> Smith, Doug. “L.A. County’s homeless problem is worsening despite billions from tax measures.” *Los Angeles Times*. February 19, 2018. <http://www.latimes.com/local/lanow/la-me-ln-homeless-housing-gaps-20180217-story.html>

Figure 2.2.4 Los Angeles County Projected Revenue vs. Projected Housing Need for Homeless Housing



Numbers Sourced from Los Angeles Times Graphics, L.A Homeless Service Authority

preventing 30,000 at risk individuals from becoming homeless.<sup>86</sup> However, according to the 2017 Greater Los Angeles Homeless Count, over 55,000 persons are currently experiencing homelessness in the region.<sup>87</sup> Despite these commitments, there still exists a shortfall in the funding needed in Los Angeles County.

The City of Los Angeles in particular, has created additional funds to deal with its housing needs. Prop HHH aims to build 10,000 new units for homelessness over the

next 10 years.<sup>88</sup> However, with a third of the money already committed, new projections estimate HHH funding will only lead to the production of 6,000 units due to federal tax reform and rising construction costs.<sup>89</sup> No Place Like Home (NPLH) funds will collectively bring \$1 to \$2 billion in funding for homeless housing.<sup>90</sup> This could increase the projected number of units to

7,500 over the next 10 years.<sup>91</sup> However, these funds are legally stalled. Through legislative action, funding for No Place Like Home was meant to be borrowed from the Mental Health Services Act (MHSA). But it is yet to be determined if this is an allowed use of MHSA funds. The hearing for NPLH is scheduled for July 23, 2018, but voters will have a chance to bypass the lawsuit by ballot measure in November 2018 if it remains unresolved.

The Linkage Fee in Los Angeles is also estimated to generate about 1,500 units of new affordable housing per year once it is fully implemented.<sup>92</sup> It is projected to bring more than \$100 million in annual revenue to the city.<sup>93</sup> However, the effectiveness of this funding could be further reduced due to diversion of funds. The regulations regarding the Linkage Fee have yet to be finalized, and there is a push for some money to be directed towards homeownership instead of affordable rental housing. The wisdom of using Linkage Fee Housing Impact funds as a public source of money for homeownership is debatable.<sup>94</sup>

86 Southern California Grantmakers. "Policy Brief: Approved Measure H Funding." July 13, 2017. <https://www.socialgrantmakers.org/resources/policy-brief-approved-measure-h-funding>

87 Los Angeles Homeless Service Authority. 2017 Greater Los Angeles Homeless Count - Data Summary Los Angeles County. May 2018. <https://www.lahsa.org/documents?id=1353-2017-greater-los-angeles-homeless-count-data-summary-los-angeles-county.pdf>

88 Galperin, Ron. "Measure HHH homeless-housing bond a sensible investment for L.A.: Ron Galperin." Los Angeles Daily News. November 4, 2016. [http://www.lacontroller.org/measure\\_hhh\\_homeless\\_housing](http://www.lacontroller.org/measure_hhh_homeless_housing)

89 Smith, Doug. "Rising costs threaten L.A.'s homeless housing goal." Los Angeles Times. May 11, 2018. <http://www.latimes.com/local/lanow/la-me-ln-rising-hhh-costs-20180511-story.html>

90 Lead of Homeless Initiative, Chief Executive Office of Los Angeles County, personal communication, May 7th, 2018

91 Smith, Doug. "Rising costs threaten L.A.'s homeless housing goal." Los Angeles Times. May 11, 2018. <http://www.latimes.com/local/lanow/la-me-ln-rising-hhh-costs-20180511-story.html>

92 Waite, David and Stein, Julia. "Los Angeles City Council Passes "Linkage Fee" Ordinance." Cox, Castle & Nicholson. December 29, 2017. <https://landuse.coxcastle.com/2017/12/29/los-angeles-city-council-passes-linkage-fee-ordinance/>

93 Ibid.

94 Lecturer in Urban Planning, UCLA, personal communication, May 4, 2018

Homeownership subsidies would take up scarce public resources and involve a tradeoff with supporting underserved populations of renters.<sup>95</sup> According to stakeholders involved in the conversation, it could lead to a loss of approximately \$13 million in annual revenue.<sup>96</sup> Therefore, allocations of funds from the Linkage Fee need to be carefully determined, especially considering that the fund was primarily created to produce more mixed-income housing.

**Access to State and Local Funding Resources: Timing of Funds**

The long term nature of the funding bills illustrate and speak directly to the fact that the crisis was formed due to years of disinvestment and a slowdown in production.<sup>97</sup> However, in doing so, the funding bills and the overall package does little to address the immediate needs of the crises of housing affordability.<sup>98</sup> For a public expecting results, ongoing communication is needed to convey when visible progress will emerge, to encourage continued voter support for future bonds, and to

95 Collins, Michael J. "Developing Effective Subsidy Mechanisms for Low-Income Homeownership." Harvard University Joint Center for Housing Studies. October, 2013. <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbti-08.pdf>

96Public Policy Manager, SCANPH, personal communication, May 30, 2018

97 VP of Governmental Affairs at California Housing Consortium, personal communication, April 13, 2018

98 VP of Governmental Affairs at California Housing Consortium, personal communication, April 13, 2018; Policy Director, Land Use and Finance Housing California, personal communication, April 20, 2018

demonstrate that their investments are

Summer 2018 (FY-Q1)	Fall 2018 (FY-Q2)	Winter 2018 (FY-Q3)	Spring 2019 (FY-Q4)	Summer 2019 (FY-Q1)	Fall 2019 (FY-Q2)	Winter 2019 (FY-Q3)
Governor's Budget Approval				Governor's Budget Approval		
	SB 2 Homelessness Grants SB 3 Vote		SB 2 Planning Grants NOFA SB 3 NOFA	SB 2 Local Funds NOFA SB 2 Production Incentive Program NOFA		SB 2 Farmworker Funds NOFA
No Place Like Home Hearing, July	No Place Like Home NOFA	No Place Like Home Voter Approval — or — No Place Like Home Validation Process Complete	No Place Like Home Distribution of Funds			

making an impact.

One observation from our interviews is that although developers were aware and enthusiastic about the new sources of affordable housing funds, the specifics of programs such as SB 2's implementation schedule and guidelines were unknown.<sup>99</sup> From the perspective of affordable housing developers, money will take at least two years to flow into projects since funds will first be directed to urgent homelessness

**Table 2.2.2 Funding Timeline<sup>100</sup>assistance**

99 Chief Executive Officer, Skid Row Housing Trust, personal communication, April 11, 2018; Chief Executive Officer, A Community of Friends, personal communication, April 11, 2018; Senior Project Manager, Abode Communities, personal communication, April 27, 2018.

100 Adapted from California Department of of Housing and Community Development, "California's 2017 Housing Package: Projected Milestones," <http://www.hcd.ca.gov/policy-research/lhp.shtml#milestones>.

and technical capacity building for local agencies. In addition, the construction of housing is a time intensive process that will take two or more years to begin after the funding is acquired.<sup>101</sup>

For example, the affordable housing developer Abode Communities has a homeless-serving project in Lancaster whose pre-development phase began in 2014 but will not come on-line until 2019.<sup>102</sup>

There is also a time lag in the local pipeline. For HHH funding, the first round of applications was planned for November 2017, which would enable developments

101 Policy Director, Land Use and Finance Housing California, personal communication, April 20, 2018.

102 Senior Project Manager, Abode Communities, personal communication, April 27, 2018.

to come on-line in 2020.<sup>103</sup> Instead, the first call for applications was in April 2018, pushing the pipeline further into the future. The Linkage Fee has its own delay because of a grace period, by which developers who submit a building permit within four months of the ordinance's effective date (February 17, 2018) will be exempt from the fee. Beyond these four months, the fee will still not be applied in full and instead will be pro-rated up until June 19, 2019.<sup>104</sup> This is a missed opportunity to collect more funds in a shorter time frame, and together, these delays in implementation push production of housing units further down the line.

### **Leveraging Funds: Alignment of Goals and Regulations**

The success of the various funding resources depends deeply on the ways they can leverage each other. To an extent, local measures that create new funding streams are designed to be complementary with state and federal dollars in order to leverage more units.<sup>105</sup> However, there continues to be a deeper need for funding agencies to align their goals and promote flexibility through their regulations in the most efficient way.

<sup>103</sup> Housing Manager, HCIDLA, personal communication, May 14, 2018.

<sup>104</sup> Waite, David and Stein, Julia. "Los Angeles City Council Passes "Linkage Fee" Ordinance." Cox, Castle & Nicholson. December 29, 2017. <https://landuse.coxcastle.com/2017/12/29/los-angeles-city-council-passes-linkage-fee-ordinance/>

<sup>105</sup> VP of Governmental Affairs at California Housing Consortium, personal communication, April 13, 2018.

An issue in the process of aligning funds and filling the necessary gaps is that there is a lack of connection between local level changes and state level bills. There exists a gap where the state may force local jurisdictions to contribute their fair share even in cases where jurisdictions may already be working on solutions that are tailored to their specific context.<sup>106</sup> In other situations, it may be difficult to implement state mandated solutions due to the lack of resources from the state.

But there are some examples of success of leveraging between state and local dollars. Under the the farmworker low-income housing tax credit, projects may utilize Difficult Development Area (DDA) and Qualified Census Tract (QCT) boosts to increase the eligible basis for tax credits. Farmworker housing projects are a unique type of project that can receive California state tax credits without accompanying federal tax credits. These rural areas of California may receive less attention in the current housing crisis compared to the state's largest urban centers, but the need for affordable housing is no less dire. Their contexts demand unique attention from HCD and different approaches by local jurisdictions.

Measure HHH is a much needed source of funds for homeless housing that was also particularly designed to work with tax credit

<sup>106</sup> Lead of Homeless Initiative, Chief Executive Office of Los Angeles County, personal communication, May 7, 2018.

financing, an already successful financial program.<sup>107</sup> This enables the program to leverage local funding resources and private equity dollars.<sup>108</sup> Every \$1 of HHH funds committed leveraged \$2.30 of non-city funds.<sup>109</sup> In Difficult to Develop areas, as determined by HUD, HHH commitment allows full developer fee as an incentive.<sup>110</sup> As such, HCIDLA was able to successfully fund eight projects in these areas. To further work with the TCAC program, HCIDLA is moving towards similar incentives in high opportunity areas as well.<sup>111</sup> By working with other programs and having flexible regulations, HCIDLA is able to support PSH developments throughout the city. However, the tradeoff here is that the tax credit program is technical and is associated with certain expenses.

In order to further align local interests and encourage leveraging of funds, the County of Los Angeles and HCIDLA have been exploring a single NOFA process to make this process easier. The direction is not entirely new. The Housing Authority of the City of Los Angeles (HACLA) and the

<sup>107</sup> Housing Manager, HCIDLA, personal communication, May 14, 2018.

<sup>108</sup> Ibid.

<sup>109</sup> Los Angeles Housing + Community Investment Department, "Prop HHH Developments Summary" April 4, 2018, <http://hcidla.lacity.org/prop-hhh-developments-summary>.

<sup>110</sup> Ibid.

<sup>111</sup> Housing Manager, HCIDLA, personal communication, May 14, 2018.

## *In Depth Look: Flexibility in HHH regulations*

**AMI flexibility-** Measure HHH has also shown a certain level of flexibility by allowing changes in their regulations. HHH was initially formulated to create permanent supportive housing units. However, their regulations changed from allowing only 50% AMI, to up to 80% AMI, with the caveat that only 20% of bond proceeds could be used for the relatively higher income populations.<sup>112</sup> The reality is that although there might be populations that can still benefit from the supportive services, they may not exactly fit within the target population definition. Therefore, by changing AMI regulations, HHH funds were able to be more flexible. Today 80% to 85% of HHH housing are PSH units and the rest can be classified as just affordable units, allowing for those housed in these units to also access important services.<sup>113</sup>

**Emphasizing Innovation-** HHH also aims to encourage different forms of innovation, such as providing funding to non-tax credit housing or developments that can significantly reduce costs.<sup>114</sup> Under this criteria, HCIDLA allows up to 20% of the units to house populations within the 50% to 80% AMI range in order to provide a loan of up to \$100,000 per unit. The agency is also open to discussion regarding this per-unit amount limit in order to foster innovative financial structures. In addition, HHH also continues to provide up to \$80,000 in supplemental funding per unit to jump start development due to unavailability of PSH funding such as No Place Like Home. However, the program's 55-year covenant and prevailing wage requirements do not make sense for non-tax credit developments, thereby placing a limit on HHH's ability to be flexible. Promoting innovation and flexibility is difficult because HHH is designed to serve a specific population.<sup>115</sup> As a result, the restrictions in the regulations do not substantially reward developers for being innovative or efficient.

**Ease in Timing -** HCIDLA's HHH funds are designed to be flexible in their timing as they fund projects that are completed two years out. As such, currently 24 HHH projects are in the pre-development stage.<sup>116</sup> This means that HCIDLA commits their funds first, enabling developers to leverage other funds later in the development process. Having funding cycles three times per year supports this flexibility as well. The aim is to make it convenient for a developer and allow them to apply for HHH funds during the due diligence of site acquisition as well as work with the timing of the 4% Tax Credit program.

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Senior Project Manager, Abode Communities, personal communication, April 27, 2018.

<sup>116</sup> Los Angeles Housing + Community Investment Department, "Prop HHH Developments Summary" April 4, 2018, <http://hcidla.lacity.org/prop-hhh-developments-summary>.

Los Angeles Housing and Community Investment Department (HCIDLA) did have a similar combined process up to 2012. According to HCIDLA, the success of a combined NOFA cycle with three different agencies is dependent on the timing of funds. All the agencies have to agree on the number of funding cycles in a year but that's difficult to accomplish as they have their separate set of priorities. Their priorities also determine at what point in the development stage funding is provided. As discussed earlier, HHH funds aim for flexibility by being available three times a year in addition to being the first to commit to a project. For HACLA, the priority is to fund a project that may come online in a year, as they manage their pipeline in a way to remove uncertainty before committing their funds.<sup>117</sup> In this case, funding would be a last minute competition before a TCAC deadline. Thus, a single NOFA process may involve a trade off between the flexibility of HHH funds but a better alignment of local resources and their regulations.

In addition to the capital funding provided by HHH, Measure H exclusively provides homelessness related services. However, the Measure H regulations also provide for flexibility in that they were able to carve out some portions for capital funding for brick and mortar expenses.<sup>118</sup> For example,

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<sup>117</sup> Housing Manager, HCIDLA, personal communication, May 14, 2018.

<sup>118</sup> Lead of Homeless Initiative, Chief Executive Office Los Angeles County, personal communication, May 7, 2018.

among the 21 strategies there are two strategies that enable capital funding under the “Increase affordable/homeless housing” group. One of them is a one time innovation fund of \$5 million that will be carried over into the future years until it gets fully utilized.<sup>119</sup> The primary objectives of the innovation fund is to encourage non-tax credit financing with a focus on funding proposals that can be scaled up.<sup>120</sup> This enables the grant to fund even a one unit project as long as it utilizes an innovative financing or physical structure while also allowing for an increase in number of units. According to the team responsible for this grant at the County of Los Angeles Chief Executive Office, this funding bucket can be viewed as a “proof of concept grant.” The second strategy is to “preserve and promote the development of affordable housing for homeless families and individuals,” by allocating money to the Community Development Commission of the County of Los Angeles (CDC).<sup>121</sup> For the fiscal year of 2017-18, this allocation was \$10 million. In the next two years, this amount of money will be increased to \$15 million and \$20 million respectively, after

119 Chief Executive Office Los Angeles County. “Fiscal Year 2018-19 Measure H Funding Recommendations.” May 15, 2018. <http://homeless.lacounty.gov/wp-content/uploads/2018/05/05-15-18-FY-2018-19-Measure-H-Funding-Recommendations-1.pdf>.

120 Lead of Homeless Initiative, Chief Executive Office LA County, personal communication, May 7, 2018.

121 Chief Executive Office Los Angeles County. “Fiscal Year 2018-19 Measure H Funding Recommendations.” May 15, 2018. <http://homeless.lacounty.gov/wp-content/uploads/2018/05/05-15-18-FY-2018-19-Measure-H-Funding-Recommendations-1.pdf>.

**HCIDLA predicts that the Linkage Fee will allow true mixed income housing, including much needed workforce housing. Therefore, it would help fill a need that most other funding sources do not.**

which the strategy will be reworked for the next three years. This money is provided through CDC’s NOFA cycle and as such goes into the construction of Permanent Supportive Housing.

Despite the flexibility provided in HHH and H funds, the regulations are still specifically for majority PSH units. However, the Linkage Fee was designed to be a flexible source of money and to view its regulations in context of deals that the city has not seen much of, such as true workforce housing.<sup>122</sup> According to HCIDLA, the initial goal was to aim for units with rents set up to 150% AMI, but they finalized on 120% AMI instead, which is still a significantly higher AMI than a lot of other funding sources. Workforce housing, especially for families in the ranges from 80% to 120% AMI, are difficult to build due to the lack of subsidies

122 Housing Manager, HCIDLA, personal communication, May 14, 2018.

for this income range.<sup>123</sup> HCIDLA predicts that the Linkage Fee will allow true mixed income housing, including much needed workforce housing. Therefore, it would help fill a need that most other funding sources, such as HHH, do not.

In addition, according to HCIDLA, the linkage fee does not have a 55-year affordability covenant like most other funds; the current term is yet to be negotiated. Prior discussions about the Linkage Fee deviated from most affordable housing funds by not linking prevailing wage to provide flexibility, but current discussions are more uncertain. The Linkage Fee could also be utilized for much needed preservation of affordable housing units by enabling the extension of the covenant for an extra ten or fifteen years. Because the Linkage Fee is not aligned with the tax credit program, it enables different levels of innovation. Essentially, although it is another fund for affordable housing, it does not follow similar patterns. However, as the regulations are yet to be determined, it is difficult to ascertain the depth of its flexibility and leverage potential.

## Key Takeaways

*Address Immediate Crises while Building Resilient Housing Production Mechanisms*  
 The new funding sources illustrate the

123 Kirk, Patricia. “Reversing the Decline in California’s Workforce Housing.” Urban Land. February 10, 2017. <https://urbanland.uli.org/development-business/reversing-decline-californias-workforce-housing/>

commitment that the various agencies have towards solving the affordable housing crises. The funds are effective in the sense that they will lead to the production of more housing units.<sup>124</sup> But it is evident that there is a gap between the projected revenue and the projected funding need both at the state and local levels. Moving forward, a key step is to figure out where, and by how much, is the gap in production and taking these numbers at face value in order to create a larger impact.<sup>125</sup> In particular, there is a need for more permanent funding from the state either through the general fund or increased tax credit allocations.<sup>126</sup>

Apart from the need for more permanent funding, a common refrain in conversations about the production and financing bills is that implementation and results will take time. Large pieces of the financing puzzle have started to fall into place, but given normal development timelines, a spike in housing production may take another two or three years. It is crucial that resources still be provided to help citizens in need today, whether through additional funding in the form of HCD's Emergency Solutions Grants for homelessness or Los Angeles' local initiatives that explore other immediate housing options. These funds going to emergency shelters, homelessness outreach, and rapid re-housing assistance

124 VP of Governmental Affairs, California Housing Consortium, personal communication, April 13, 2018.

125 Director of Research & Advocacy, San Francisco Electrical Construction Industry, personal communication, April 30, 2018.

126 VP of Governmental Affairs, California Housing Consortium, personal communication, April 13, 2018.

Enabling a one-stop shop process through a single NOFA or RFP process can go a long way in benefiting housing production. A process that takes five years could be shortened to two or three years.

will provide interim results the unhoused need and citizens want to see now.

#### *Align and Further Leverage Programs to Successfully Use Funds*

Using funds from five different programs requires compliance with five different sets of regulations, making it incredibly challenging for affordable housing developers.<sup>127</sup> Enabling a one-stop shop process through a single NOFA or RFP process can go a long way in benefiting housing production. Therefore, a process that takes five years could be shortened to two or three years, thus, shaving time off of the housing production process.<sup>128</sup>

127 Chief Executive Officer, Skid Row Housing Trust, personal communication, May 8, 2018.

128 Senior Project Manager, Abode Communities, personal communication, April 27, 2018; Chief Executive Officer, Skid Row Housing Trust, personal communication, May 8, 2018.

Skid Row Housing Trust, personal communication, May 8, 2018.

Alignment of Los Angeles County and City funding sources is more politically feasible, especially for permanent supportive housing funds. New funding sources for PSH such as HHH and No Place Like Home, in addition to existing programs such as Mental Health Services Act and CDC funding, can lend themselves to maximize leveraging of operating, capital and service funding resources. However, at the state level, the political will and bureaucratic coordination required for such a process is extremely unlikely.<sup>129</sup> In fact, HCD has tried a similar process for decades but its Uniform Multifamily Regulations (UMR) still concedes to the reality that each funding program has its own specific language on uses, eligibility, and regulations, making it difficult to harmonize them into a single application.<sup>130</sup>

To promote further alignment and leveraging of resources where jurisdictions such as the County of Los Angeles are already working on affordable housing issues, the state can incentivize affordability through incentives. For example, the state has provided a grant from the Strategic Growth Council to the County of Los Angeles to explore Community Land Trusts as viable options for the area.<sup>131</sup>

129 Senior Project Manager, Abode Communities, personal communication, April 27, 2018; Lecturer in Urban Planning, UCLA, personal communication; May 4, 2018.

130 Lecturer in Urban Planning, UCLA, personal communication; May 4, 2018.

131 Lead of Homeless Initiative, Chief Executive Office Los Angeles County, personal communication, May 7, 2018.

Opportunities such as these provide incentive for local jurisdictions to work on solutions that make sense in their communities. Other ways to promote an incentive structure is to tie infrastructure funds with housing funds. For example, Massachusetts' MassWorks Infrastructure Program is a "competitive grant program that provides a robust and flexible source of capital funds for municipalities and other eligible public entities to complete public infrastructure projects that support and accelerate housing and job growth."<sup>132</sup> It enables a different way of leveraging resources and funds and promoting equitable development through infrastructure and housing. It would also enable the state to commit some money in the process as well.

### *Capitalize on Flexible Ongoing Funds with Innovative Strategies*

Ongoing sources of funds for housing are difficult to establish, and they are especially useful when compared to general obligation bonds that are limited to spending on capital assets. As a unique part of statewide housing package, the SB 2 document recording fee can be directed towards more creative and flexible uses that general obligation bonds cannot fund. For example, funds may expressly be used for capitalized operating expenses and more resources might be used to subsidize specific

132 Commonwealth of Massachusetts Executive Office of Housing & Economic Development. 2018 MassWorks Program Guidelines. 2. <https://www.mass.gov/service-details/massworks-2018-round-opens>.

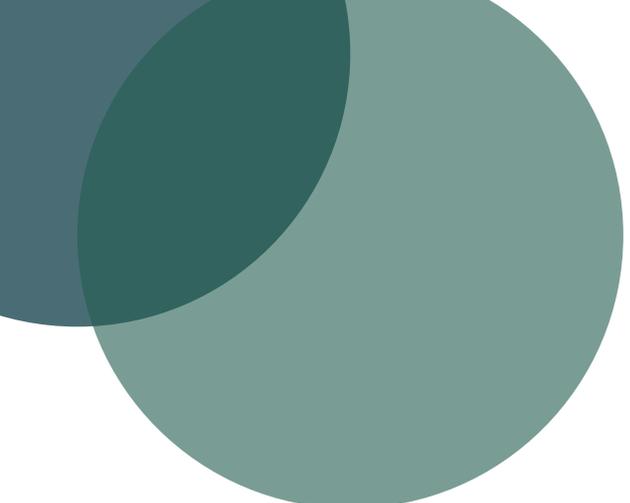
operating costs. While HCD administers many established housing programs, more experimental approaches can be done at the local level, and policymakers should be encouraged to take the lead with the resources provided to them.<sup>133</sup> For advocates and developers, it is crucial to be at the same table with policymakers to consider what innovative programs might look like and how the state can uniquely support common funding challenges, or gaps among the patchwork of foundation grants, community finance, and tax credit equity that affordable housing demands. Stakeholder engagement is crucial not only to ensure that programs are designed well, but that underserved communities are involved and being adequately addressed throughout the housing crisis also. Above all, the extent of the housing crisis has brought focus to providing more action and more resources to address the growing needs of the state. Decades of declining production and reduced investments have created a large deficit that continues to grow each year that the estimated production need of 180,000 units annually goes unmet.<sup>134</sup> Yet funding production is only one part of the solution. Although the new funding sources are

133 Policy Research Specialist, California Department of Housing and Community Development, personal communication, May 24, 2018.

134 California Department of Housing and Community Development, "California's Housing Future: Challenges and Opportunities," February 2018. [http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA\\_Final\\_Combined.pdf](http://www.hcd.ca.gov/policy-research/plans-reports/docs/SHA_Final_Combined.pdf).

capable of producing the projected number of units, ultimately, not all cities will build according to their projected need and capacity— especially without community pressure.<sup>135</sup> The complementary bills in the statewide housing legislation that deal with accountability and land use are just as crucial to the solution, and reveal how uniquely comprehensive this package of bills is.

135 Housing and Homelessness Committee Co-Chair, DSA LA, personal communication, May 8, 2018



## 2.3 Streamlining, Special Zones, and Accountability

### Background

Zoning in Los Angeles has historically prioritized the needs and desires of homeowners who have supported low-density, single-family developments and have harbored adversarial attitudes toward density and growth in their neighborhoods.<sup>136</sup> The roots of neighborhood opposition to new housing development come from a tangle of values, misunderstandings of economic principles, and the history of property rights in the United States. A white paper by UCLA Urban Planning Professor Paavo Monkkonen categorizes people who oppose new development into three distinct groups: those with concerns over the built environment, those with concerns over who lives in their neighborhood, and those with

<sup>136</sup> Andrew H. Whittemore, "Zoning Los Angeles: a brief history of four regimes," *Planning Perspectives*, 27, no. 3, (2012): 393. <http://dx.doi.org/10.1080/02665433.2012.681140>.

concerns over the development process.<sup>137</sup> These groups use the planning, political, and legal systems to block construction of new housing in their neighborhoods. A common example of this is groups using the planning and political processes to lead a city councilmember to block a project. Another common tactic to block housing development is a California Environmental Quality Act (CEQA) lawsuit filed against the developer of a proposed project. CEQA was passed in 1970 in response to the National Environmental Policy Act. CEQA requires a review to identify potential environmental impacts of qualifying developments—and to outline a plan to avoid or mitigate these impacts. CEQA guidelines are reviewed every two years by the Governor's Office of Planning and Research and finalized by the Secretary of Resources.<sup>138</sup> Though local public agencies are responsible for compliance, CEQA is enforced through citizen litigation.

A report by global law firm Holland Knight illustrates that CEQA litigation mostly occurs in cities and does not support environmental claims. Almost half (49%) of CEQA lawsuits target public infrastructure

<sup>137</sup> Paavo Monkkonen. "Understanding and Challenging Opposition to Housing Construction in California's Urban Areas," *Housing, Land Use, and Development Lectureship & White Paper* (2016). <https://ucla.app.box.com/s/yk6z6gaeqrqf6futueecmnwejevowu097>.

<sup>138</sup> State of California, Frequently Asked Questions About CEQA, 2014. <http://resources.ca.gov/ceqa/more/faq.html>.

projects and 21% target privately funded residential projects.<sup>139</sup> The report also finds that 80% of CEQA litigation targets infill projects, as opposed to greenfield development. The private residential projects targeted are mostly in high-density, transit-oriented areas.<sup>140</sup> This trend encourages the kind of development that runs counter to what environmentalists call for; it leads to urban sprawl that creates longer commutes, which in turn lead to higher greenhouse gas emissions. To sue requires financial resources and time, indicating that groups that do so are likely to be higher-income. CEQA is abused as a tool for environmental protection and is instead being wielded as neighborhood land use control by a privileged few.

Anecdotal evidence from interviews conducted with Los Angeles-based affordable and market-rate developers and a local land use lawyer support these claims. The majority of developers interviewed identified CEQA or neighborhood opposition through CEQA as a major hurdle in building housing. Additionally, affordable housing developers Abode Communities

<sup>139</sup> Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, "In The Name Of The Environment: How Litigation Abuse Under the California Environmental Quality Act Undermines California's Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse," *Holland & Knight*, 2015. <https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/>.

<sup>140</sup> Ibid.

Legislation that streamlines CEQA and facilitates the entitlement process can accelerate construction, make building more financially feasible for developers and lead to a more equitable planning process.

and Skid Row Housing Trust cited known opposition as a reason to avoid building in certain neighborhoods.<sup>141</sup>

While neighbors often attempt to use CEQA lawsuits to kill projects by endlessly delaying them, CEQA itself—without lawsuits—can also stop projects. A full Environmental Impact Report (EIR) can add 12-18 months to a project, sometimes up to 24 months. A lengthy pre-development process helps to keep production low and exacerbates the current housing crisis. Streamlining production by bypassing CEQA can speed up the pre-development process and eliminates an opportunity for neighborhood groups to sue, therefore balancing homeowner power.

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141 Senior Project Manager, Abode Communities, personal communication, April 27, 2018; Chief Executive Officer, Skid Row Housing Trust, personal communication, May 8, 2018.

## Relevant Legislation

Legislation that streamlines CEQA and facilitates the entitlement process can accelerate construction, making building more financially feasible for developers and lead to a more equitable planning process. State-mandated streamlining can also prevent jurisdictions from arbitrarily denying permits to build housing. Streamlining development can take the form of “carrots” or “sticks.” In the 2017 Housing Package, streamlining bills take both of these approaches. SB 540 and AB 73 act as “carrots” by offering incentives to jurisdictions to facilitate development, while SB 678, SB 167 and SB 35 are “sticks” that increase accountability for municipalities.

### *SB 540 and AB 73*

SB 540 and AB 73 introduce optional housing overlay zones which sit on top of existing zoning and offer various incentives. In contrast to a tool like a city-wide inclusionary housing ordinance, housing overlay zones offer jurisdictions the flexibility to create the zones that best serve their communities. As affordable housing is often concentrated in under-resourced, low-income areas, jurisdictions can use these zones to encourage affordable housing development in higher-income areas with access to job centers and transit. In this sense, these zones facilitate the use of underutilized land and combat the segregation of affordable housing. This type of streamlining allows cities and counties

a targeted, spatial approach to promoting outside of more lengthy processes such as rezoning.

Modelled after Massachusetts’ Smart Growth Zoning Overlay District Act, AB 73 provides a financial incentive for jurisdictions to create Housing Sustainability Districts. Housing Sustainability Districts serve as overlay districts that streamline housing development in areas with existing infrastructure and transit access. The districts are zoned at higher densities and an EIR is completed at the outset, allowing for a streamlined ministerial review. To be subject to streamlining, a development must be constructed with prevailing wage and meet certain affordability requirements. At least 20% of the housing constructed in the district must be affordable to Very-Low, Low, and Moderate income households and subject to a recorded affordability restriction for at least 55 years. At least 10% of the units in projects serving Above-Moderate income households must be set aside as affordable to Low income households. A jurisdiction will receive an as-yet-undetermined sum of money when HCD approves its Housing Sustainability District. The jurisdiction will receive a second payment when the first housing development is approved in accordance with the district. Every year, HCD must issue a certificate of compliance for the adopted housing sustainability district to the jurisdiction.

SB 540 authorizes the creation of Workforce Housing Opportunity Zones that allow for streamlining housing development under a pre-approved EIR. Jurisdictions can apply for a loan or grant from HCD to fund the creation of plan for the zone. The definition of workforce housing, much like affordable housing, varies by geography and funding entity. In the context of this bill, it refers to housing that serves households making 80-120% of the AMI.<sup>142</sup> The zones created by SB 540 must be located near job centers, transit, schools and other public amenities. Plans for the zones must outline environmental mitigation measures and design guidelines. The lead agency goes through a public review process of the plan and is required to provide an annual report on the status of the plan to HCD. After plan approval, the lead agency is not required to prepare an EIR or negative declaration if the following conditions apply: at least 30% of the total units are Moderate income, 15% Low income, and 5% Very-Low income and no more than 50% Above-Moderate income. Additionally, there is a 10% inclusionary requirement for all developments serving Above-Moderate income. The developer must carry out the mitigation measures adopted in the plan and provide legal commitment to maintaining affordability for 45-55 years depending on tenure type. Prevailing wage requirements also apply.

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142 Los Angeles-based market-rate developer B, personal communication, April 18, 2018.

### SB 35

SB 35 holds jurisdictions accountable for meeting housing production goals dictated by the RHNA. The streamlining process laid out in this bill applies only in jurisdictions which have not met their RHNA targets at Low, Very-Low, and Above-Moderate income levels. If a jurisdiction has not met these targets and a proposed development meets a list of criteria, the developer may receive approval for the project, overriding the jurisdiction's land use authority as well as neighborhood opposition. SB 35 is one of the bills that received the most attention leading up to the passage of the housing package. This scrutiny largely stemmed from SB 35's unprecedented step of taking away discretionary land use controls from local jurisdictions which are not meeting housing production targets. Applicable to jurisdictions that have not met their RHNA targets, SB 35 creates an opt-in streamlined approval process for projects on infill sites that meet certain labor and affordability requirements. If a jurisdiction has not met its Above-Moderate income housing need, any project over 10 units must dedicate 10% of its housing to be affordable for Low-income households (80% AMI) to qualify for streamlining. If a jurisdiction has not met its Below-Moderate income housing need, the project must contain 50% Low income housing. If a jurisdiction has met neither, it can choose between allocating 10% or 50%. All projects with more than 10 units must pay prevailing wage, and projects larger than

75 units which are not 100% affordable require a "skilled and trained workforce."<sup>143</sup> A development that meets all requirements and conforms to existing zoning codes will be considered a by-right development subject to ministerial review, and will thus bypass the CEQA process and not require approval by City Council and the planning commission. To trigger SB 35, a developer must request review under the streamlining process, at which point the jurisdiction then has 60 days (90 for projects over 150 units) to notify the applicant of any objective development standards that the process does not satisfy.

HCD determines which jurisdictions will be subject to SB 35 based on Annual Progress Report data. The list is updated quarterly to incorporate new or corrected data provided by jurisdictions. As of February 25, 2018, all but 12 jurisdictions in the state are subject to streamlining under SB 35<sup>144</sup>. Of these, four are in Los Angeles County: Santa Monica, Beverly Hills, West Hollywood, and San Fernando. While most of the small jurisdictions in Los Angeles County have failed to meet their Above-

143 Certain environmentally sensitive sites are exempt from streamlining under this bill. Projects may also use existing density bonuses.

144 California Department of Housing and Community Development, "SB 35 Statewide Determination Summary," February 25, 2018. [http://www.hcd.ca.gov/community-development/housing-element/docs/SB35\\_StatewideDeterminationSummary022518.pdf](http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary022518.pdf).

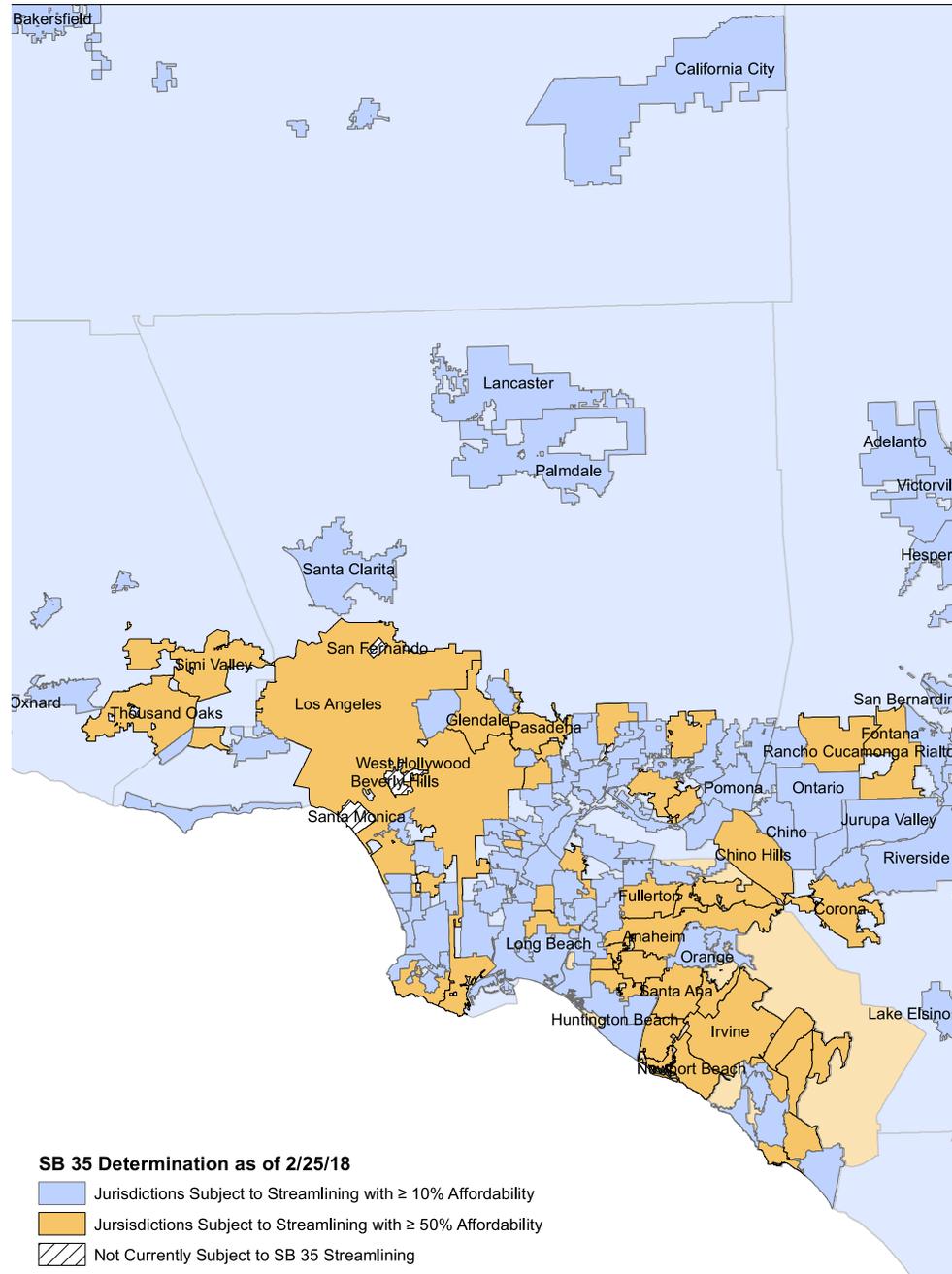
Moderate Income RHNA targets and are therefore subject to the 10% affordability requirement, the City of Los Angeles has met its Above-Moderate Income benchmark and thus requires a development to include over 50% affordable units in order to qualify for streamlining.

SB 35 went through many amendments between introduction and passage. Removing local control from the approval process sparked fears among housing advocates who were concerned about the bill's power to fuel displacement.<sup>145</sup> In its final form, the bill contains additional safeguarding provisions, including higher affordability requirements. It therefore has less potential to create displacement, but more uncertainty regarding what types of developers will benefit most from this legislation. The amendment process of this bill is indicative of larger conversations emerging in California's housing advocacy sphere. Equity-based organizations expressed concern that the amendments were insufficient, while a market-rate housing advocate was disappointed that the bill became too "watered down."<sup>146</sup> In the coming months, examining how this bill is being used and what impacts it appears to have on housing affordability

<sup>145</sup> Land Use Policy Analyst, Mission Economic Development Agency, personal communication, May 18, 2018.

<sup>146</sup> Land Use Policy Analyst, Mission Economic Development Agency, personal communication, May 18, 2018; Housing Advocate, personal communication, May 16, 2018.

Figure 2.3.1 SB 35 Southern California Regional Determination For Cities and Unincorporated Areas within Counties - as of February 25, 2018



Source: California Department of Housing and Community Development

within surrounding communities may help inform the emergent conversation around state-mandated streamlining.

### **SB 678/167 and AB 1515: Strengthening the Housing Accountability Act**

While not directly streamlining the CEQA nor entitlement process, SB 678/167 and AB 1515 are designed to support housing production by forcing local agencies to administer their own land use standards and requirements more fairly and consistently. It does this by making amendments to the Housing Accountability Act in order to strengthen and clarify some of the law's provisions.

The California Housing Accountability Act (HAA) was passed in 1982 and is commonly referred to as the "Anti-NIMBY" Act. It was designed to bar local agencies from rejecting housing projects using vague, unobjective reasons, such as being discordant with an area's "neighborhood character." More specifically, the HAA forbids cities from denying, making infeasible, or lowering density of housing developments that comply with general plans, zoning standards, and other criteria. This applies unless the local agency is able to make one of the following findings:

- that the jurisdiction has met its RHNA allocation for the income category under which the project falls;
- that the project would have a specific, adverse impact on public health or safety that cannot be mitigated without making the housing development infeasible;

- that the denial of the project or the imposition of certain conditions are necessary to comply with state or federal laws;
- that the project is sited on land designated for agricultural or resource presentation, or on land that does not have adequate infrastructural facilities (i.e., water or wastewater);
- that the jurisdiction has identified sufficient and adequate sites for the income category under which the project falls, and that the project at hand is inconsistent with the jurisdiction's zoning ordinance and general plan land use designation.

Based on the outcome of *Honchariw v. County of Stanislaus* (2011) certain provisions of the HAA are not restricted to low-income housing projects, as the initial version of the law suggested, but can apply to all housing developments. The recently passed SB 678 / SB 167 strengthens the Housing Accountability Act in several ways. These include by:

- increasing the standard of evidence necessary for local agencies to demonstrate why they denied an application;
- requiring local agencies to provide written documentation explaining why they consider a project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, standard, etc within 30 or 60 days of the completion of an application for a project (depending on whether the project has 150 or fewer units). If the agency is not able to provide this documentation, the project will be deemed consistent, compliant, and in conformity with applicable requirements;

- increasing fines applied if agencies are found to have violated the HAA—particularly if they are found to have acted in bad faith and/or if the jurisdiction has not met its RHNA allocation
- entitling petitioners, including a housing organization, to reasonable attorney's fees if they are the prevailing party in a legal action;<sup>147</sup>
- barring local agencies from using zoning changes after the completion of an application as a basis for denying that application.

AB 1515 was passed as a partner bill to SB 167 and establishes a standard for deeming whether a proposed project is compliant with applicable requirements. It considers a project to be consistent, compliant, and in conformity with applicable plans, programs, and policies if there is substantial evidence that would allow a reasonable person to find it so.

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<sup>147</sup> Within SB 678/SB 167, a "housing organization" is defined as "... a trade or industry group whose local members are primarily engaged in the construction or management of housing units or a nonprofit organization whose mission includes providing or advocating for increased access to housing for low-income households and have filed written or oral comments with the local agency prior to action on the housing development project."

## Analysis

### *SB 540 and AB 73*

SB 540 and AB 73 will be funded by the Production Incentive Program subsection of SB 2, which will not be made available until the second year of SB 2's implementation. Therefore, it is unknown how large the financial incentive will be for AB 73 or how the loan and grant process will function for SB 540. Because these bills are being rolled out on a longer timeline, their implementation has a lower priority than those bills that went into effect on January 1, 2018.<sup>148</sup> Although much is still to be determined, a Policy Research Specialist at HCD predicts that the jurisdictions most likely to use the bills are jurisdictions that are already enthusiastic about producing housing and want to be rewarded for their good behavior.<sup>149</sup>

Based on interviews with city planners, we anticipate that these bills will not be invoked often. For larger, wealthier jurisdictions with hot markets and well-staffed planning departments, planners have found simpler ways to accomplish similar ends. Representatives from the Los Angeles City Planning Department and the Santa Monica Planning Department have said they do not plan on using these bills, as they

<sup>148</sup> Policy Research Specialist, California Department of Housing and Community Development, personal communication, May 24, 2018.

<sup>149</sup> Ibid.

have already been implementing plans and policies with similar effect.<sup>150</sup> In the case of the City of Los Angeles, the Cornfield Arroyo Seco Specific Plan was created with much the same intent, while Santa Monica planners cited their strong inclusionary requirements as fulfilling the affordability goals laid out in the bills.

Housing overlay zones may be most effective in general law cities that have less flexibility to make General Plan amendments.<sup>151</sup> When developers are constrained by older zoning codes that may not encourage density, other types of incentivizing, such as the streamlining offered in SB540 and AB 73, may be helpful. Jurisdictions failing to meet their Moderate income RHNA allocation may also want to take advantage of SB 540 and AB 73. This is often the segment worst served until the end of a business cycle, according to an experienced Los Angeles developer. Out of the 43 cities in Los Angeles County that sent progress reports to HCD in February 2018 (See Appendix C), 20 had met 0% of their Moderate housing goal, 26 had met 0% of their Low income housing target and four had met 0% of their Above-Moderate target. Of the 43 cities, 10 are meeting the

<sup>150</sup> Senior Planner, Los Angeles City Planning, personal communication, April 4, 2018; Planning Manager, Santa Monica City Planning, personal communication, April 26, 2018.

<sup>151</sup> In Los Angeles County there are 63 general law cities and 25 charter cities.

**When developers are constrained by older zoning codes that may not encourage density, other types of incentivizing, such as the streamlining offered in SB540 and AB 73, may be helpful, as the “Anti-NIMBY” Act.**

least percentage of their Moderate RHNA target out of the three income level RHNA targets. These cities tend to be meeting their Above-Moderate housing targets but not Moderate or Low income targets.<sup>152</sup> An interview with a planner for El Monte, which is both a general law city and a city meeting only a small fraction of its Moderate income RHNA target, revealed an interest in using SB 540 due to the city's large workforce population and the rapidly rising housing prices compared to wage growth.<sup>153</sup> The city has already identified an area where SB 540 could be used to help move projects forward more efficiently.

<sup>152</sup> These cities are Pasadena, Hawthorne, Santa Monica, Bell Flower, Los Angeles, Alhambra, Glendale, Baldwin Park, San Fernando and El Monte. Of these cities, Hawthorne, Bell Flower, Baldwin Park, El Monte and San Fernando are General Law cities.

<sup>153</sup> Planning Manager, City of El Monte, personal communication, May 18, 2018.

### Sidebar: SB 35 Projects in the Pipeline

The first project to invoke SB 35 is at 1900 Fourth Street in Berkeley. The mixed-use project contains 27,500 square feet of retail and 260 residential units, 50% of which will be affordable at 80% AMI. The second project is the Vallco Town Center, a large mall redevelopment project in Cupertino. This project contains 400,000 square feet of retail and entertainment, 1,810,000 square feet of office space, and 2,402 residential units. Half of these units will be provided below market rate, with 841 units affordable at 80% AMI and 360 units affordable at 50% AMI. The vast majority (75%) of the subsidized units will be studios, while the other 25% will be one-bedroom units, indicating that these units are not targeted towards families.

The third project is in San Francisco's Mission District, and it is the first use of SB 35 by an affordable housing developer. As a project of the Mission Economic Development Agency (MEDA) and the Tenderloin Development Corporation, 100% of the 130 residential units will be affordable. A relatively large proportion (42%) of units will be two-bedrooms or larger, and 30% of units will be set aside for formerly homeless families. There will be on-site supportive services and an affordable space for arts-focused production, distribution, and repair uses.

Other potential users are the smaller coastal cities such as Redondo Beach and Manhattan Beach. The Coastal Commission has long struggled against local governments, business and labor groups, developers, and coastal homeowners to both protect the coast and provide affordable housing.<sup>154</sup> Earlier versions of the Coastal Act placed affordability provisions on coastal zones but they were removed in the 1980s in order to return this authority to local jurisdictions.<sup>155</sup> With this history in mind, SB 540 and AB 73 offer flexible tools for local coastal governments to decide in how they incentivize affordable housing production without being mandated to do so.

### SB 35

Given the many conditions that must be met to achieve streamlining under SB 35, most of the developers and planners that we spoke to anticipate that the bill will mostly be used by affordable housing developers. In particular, experts suggest that the prevailing wage and on-site affordability requirements could prove too

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154 Created by the 1976 California Coastal Act as the State Coastal Zoning and Management Agency; Donald C. Bryant Jr. and P. C. Emmi, "Affordable housing in California's Coastal Zone: A tale of state authority vs. local autonomy," *Coastal Management*, 12, no. 4 (1984): 323-357. <https://doi.org/10.1080/08920758409361970>

155 Jordan Diamond et al., "The Past, Present, and Future of California's Coastal Act Overcoming Division To Comprehensively Manage The Coast," 2017. <https://www.law.berkeley.edu/wp-content/uploads/2017/08/Coastal-Act-Issue-Brief.pdf>.

burdensome for market-rate developers. Fully affordable housing projects are generally subject to prevailing wage requirements as a condition of financing, and therefore can meet this requirement without facing new costs. Despite these projections, SB 35 has been invoked three times since going into effect in January, twice by market-rate developers.

There are certain conditions for market-rate and affordable developers that make SB 35 projects feasible. For market-rate developers:

#### a. High median incomes

The two for-profit developments in the San Francisco Bay Area utilizing SB 35 were able to do so in large part because of the high median incomes in the area.<sup>156</sup> Providing units at low-income affordability is not prohibitively costly in these jurisdictions. A low-income family of four in Berkeley earns \$89,600 per year, while a low-income family of four in Cupertino earns \$94,450.<sup>157</sup> Building mostly studio units, as in Cupertino, also allows for higher per-square-foot rents than could be achieved by building larger units.

156 Senior Project Manager, Abode Communities, personal communication, April 27, 2018; Market-Rate Developer, personal communication, May 22, 2018.

157 Zachary Olmstead, "2018 State Income Limits Briefing Materials, California Code of Regulations, Title 25, Section 6932" [Memorandum]. Sacramento, CA: Department of Housing and Community Development. April 26, 2018. <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>.

**b. Lucrative retail and/or office space plus high market-rate rents**

The for-profit developments are located in places where market rents are particularly high, and where retail or office space is especially lucrative. These factors help offset prevailing wage and affordable housing requirements.<sup>158</sup> Because Vallco Town Center is located in Silicon Valley, the development is able to include a huge amount office space which can be rented at a premium; the project’s website identifies the inclusion of such a large amount of office space as integral to feasibility.<sup>159</sup> Additionally, Berkeley and Cupertino are both cities which command high market rents—the profits from the market-rate units are able to help offset the losses that come from providing affordable housing and paying prevailing wage.<sup>160</sup>

**c. Land already under ownership with a stalled development project**

Both of the for-profit SB 35 developments have been proposed by companies who owned the land since 2014 and had been struggling for years to develop it, encountering significant opposition

158 The Planning Report, “SB 35 & the Promise of Ministerial CEQA Review,” April 16, 2018. <https://www.planningreport.com/2018/04/16/sb-35-promise-ministerial-ceqa-review>.

159 At [http://revitalizevallco.com/vallco\\_town\\_center/](http://revitalizevallco.com/vallco_town_center/) the project’s description states that the large amount of office space is included “in order to make the project economically viable.”

160 Housing Advocate, personal communication, May 16, 2018.

from residents, as well as opposition from the City in the case of Cupertino. The developers were desperate for an opportunity to realize some profit from their investment. An experienced market-rate developer suggested that if the developers of the Berkeley and Cupertino projects were to purchase the land at 2018 prices, the projects would not be financially feasible. If this projection is true, it is possible that for-profit developers will not be able to purchase land with an express intent to use SB 35. A senior planner from the City of Los Angeles and a knowledgeable housing policy journalist have similarly suggested that SB 35 is likely to be used by market-rate developers only when a project is completely stuck and the developer is willing to comply with the requirements of SB 35.

For affordable developers:

**a. Support from the city**

Local political support and financial investment is a basic requirement for every affordable housing project. Affordable housing developers need to maintain good political relationships with elected officials, and overriding political opposition to a project may damage these relationships. Some affordable housing advocacy groups suggested that the use of a forceful streamlining bill such as SB 35 could sour relationships with local officials. An important opportunity for the use of SB 35 among affordable housing developers is situations in which there is neighborhood

opposition, but local politicians are supportive of the development.<sup>161</sup> A senior planning official in Santa Monica echoed this sentiment, suggesting that SB 35 provides cover for elected officials who would like to see housing built, but hesitate to provoke backlash from residents who oppose new construction.

Based on these conditions, it seems unlikely that market-rate developers will invoke the bill often in Los Angeles County. Median incomes are significantly lower in Los Angeles County than in Alameda and Santa Clara Counties, where the existing market-rate SB 35 projects are located. While the Cupertino project’s location in Silicon Valley presents an opportunity to fill a large amount of lucrative office space, there is less demand for such development in Los Angeles. There may also be fewer opportunities to find sites that are lucrative for retail. Anecdotal evidence from Los Angeles-based developers suggest that retail is not very profitable.

Affordable housing developers may benefit from use of this bill. Conversations with a senior planner from the city indicates that there is a supportive environment for the use of SB 35 among affordable housing developers in the City of Los Angeles. The City of Los Angeles has already hosted an SB 35 training for the development

161 Vice President of Governmental Affairs, California Housing Consortium, personal communication, April 13, 2018.

community. In jurisdictions in Los Angeles County in which the government supports the construction of affordable housing, this streamlining tool could be beneficial to affordable housing developers while providing cover for elected officials to approve development.

In jurisdictions that are not supportive of this streamlining measure, however, there is a loophole that may be exploited. Any development seeking streamlining under SB 35 must comply with existing zoning. If a jurisdiction wants to avoid the invocation of SB 35, it could choose to downzone a site or area to the point at which a development is no longer feasible. The bills in this package that strengthen the Housing Element may make it more difficult for jurisdictions to engage in significant downzoning, but given that many jurisdictions have a site inventory capacity that far exceeds their RHNA allocation, it is not infeasible that some jurisdictions could choose to downzone as a response to SB 35.

### **SB 678/167 and AB 1515**

One limitation to the utility of the HAA is that entities who believe their projects have been unduly blocked by a local agency need to pursue legal action against the city. Developers are generally wary of doing this, given that lawsuits are time consuming, expensive, risky, and can sour relationships with a city, making future opportunities for development more difficult. One of the

major benefits of SB 167 is that it entitles petitioners, including housing organizations, to reasonable attorney's fees and costs if they prevail in a case. This may motivate entities to take the risk of pursuing litigation if they believe they have a winning case. Advocacy groups such as the California Renters Legal Advocacy and Education Fund (CaRLA) are already pursuing this type of work. Since the passage of the HAA, CaRLA has sued the cities of Sausalito and San Mateo. In Sausalito, the city eventually approved the contested housing project, a three-unit development, and also paid attorneys fees.<sup>162</sup> In the San Mateo, litigation is currently in progress over a 10-unit project that was denied by the city's Planning Commission and City Council.<sup>163</sup> Another benefit of the recent changes to the HAA is that even in the absence of litigation, the threat of repercussions of HAA violations can serve to restrain jurisdictions from making indiscriminate or indefensible disapprovals. It will be difficult to measure the precise impacts of SB 678/167 and AB 1515 in this regard, as it is unknown how many projects are presently denied for reasons that would violate the new HAA. Anecdotally, it appears that some jurisdictions have been

<sup>162</sup> "448 Sausalito Blvd, Sausalito, CA," California Renters Legal Advocacy & Education Fund, May 1, 2018. [www.carlaef.org/legal-case/448-sausalito-blvd-sausalito-ca/](http://www.carlaef.org/legal-case/448-sausalito-blvd-sausalito-ca/).

<sup>163</sup> "San Mateo denies housing. CaRLA fights back," California Renters Legal Advocacy & Education Fund, 1 March 2018, <https://www.carlaef.org/2018/03/01/san-mateo-denies-housing-carla-fights-back/>.

pressured to administer land use standards and requirements more fairly and carefully as a response to these changes. In May of 2018, Santa Monica's city council rejected an appeal by a neighborhood council that was written to stop the development of a four-story, 47-unit apartment complex. Given the size of this project, had Santa Monica blocked the project, been sued, and found to have been in violation of the HAA, it could have incurred fines of close to half a million dollars (based on a minimum of \$10,000 per unit of housing denied) in addition to attorney's fees paid to the plaintiff. When discussing the City Council's decision, Councilmember Kevin McKeown stated that California law "prohibits local agencies from denying or diminishing housing projects, absent very difficult findings of a threat to public safety—findings which could not be made. On strong legal advice the Council had no real choice but to accept the project as proposed."<sup>164</sup> McKeown's language makes a clear reference to the legislation, signalling that the new laws likely influenced the City Council's decision to reject the neighborhood council's appeal.

As another example, one developer we spoke with noted that her organization is currently experiencing community

<sup>164</sup> Niki Cervantes, "Neighbors Lose Bid to Stop Apartment Complex on Santa Monica's Lincoln Boulevard," *Surf Santa Monica*, April 26, 2018. [https://www.surfsantamonica.com/ssm\\_site/the\\_lookout/news/News-2018/April-2018/04\\_26\\_2018\\_Neighbors\\_Lose\\_Bid\\_to\\_Stop\\_Apartment\\_Complex\\_on\\_Santa\\_Monicas\\_Lincoln\\_Boulevard.html](https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2018/April-2018/04_26_2018_Neighbors_Lose_Bid_to_Stop_Apartment_Complex_on_Santa_Monicas_Lincoln_Boulevard.html).

opposition to a potential project in an Inland Empire city, which she believes could influence the city to deny or impose conditions to reduce the size of the project.<sup>165</sup> The developer noted that, if necessary, her organization would use the “specter of the Housing Accountability Act” to remind the city that they cannot deny the project without acceptable findings as well as to remind them of the fines they could incur if they are found to have violated the HAA.

When asked about the utility of the HAA amendments in boosting housing production, developers and advocacy groups are not particularly sanguine. As one industry professional noted, “We cannot litigate our way to homebuilding.”<sup>166</sup> He and most others agreed that winning approval to develop housing on a case-by-case manner is not the silver bullet to solving California’s housing crisis. But it is another tool that can be used as needed, in particular to defend projects in jurisdictions that have traditionally harbored NIMBY-ish attitudes toward increased residential development. As noted by a CaRLA representative, the organization is aiming to expand its advocacy, educational, and legal assistance services throughout the state, with one important goal being to defend new housing construction in places that have disfavored

<sup>165</sup> Staff, National Community Renaissance, personal communication, May 23, 2018.

<sup>166</sup> Housing Advocate, personal communication, May 16, 2018.

**When asked about the utility of the HAA amendments in boosting housing production, developers and advocacy groups are not particularly sanguine given that lawsuits are time consuming, expensive, risky, and can sour relationships with a city.**

multi-family and/or affordable housing. Even one project defended using the HAA may serve as an instructive precedent for future development in that city. One limitation to using the HAA to its full potential is the low level of awareness of this law and its provisions among developers. This was a point of agreement among developers, lawyers, planners, and advocacy groups that we spoke with.<sup>167</sup> Because litigation must be pursued (or intimidated) in order for the HAA to have an effect on a specific project, the low level of awareness of this law is a critical barrier to its usability. To this point, several

<sup>167</sup> Regional Vice President of Real Estate Development, Mercy Housing, personal communication, May 21, 2018; Vice President of Real Estate, LA Family Housing, personal communication, May 4, 2018; Partner, Real Estate Department, Paul Hastings LLP, personal communication, April 30, 2018; City Planner, City of Los Angeles, personal communication, April 4, 2018.

interviewees noted that the law would be more effective if the Office of the Attorney General enforced it, instead of leaving it to individual entities to pursue litigation to demand enforcement of the law.<sup>168</sup>

There are also legal gray areas that remain for the HAA. One is around the treatment of projects that require conditional use permits (CUPs). While projects requesting CUPs would not follow “objective, quantifiable, written development standards, conditions and policies...”<sup>169</sup> as required to be protected by the HAA, in areas where CUPs are required by a zoning ordinance for certain types of housing developments, the question still remains on whether the HAA could be invoked if a CUP application were denied. Other legal gray areas have been brought up by the League of California Cities, including questions on the difference between “substantial evidence” and “preponderance of the evidence,” which was the change in the required standard of evidence that jurisdictions must show to legitimize

<sup>168</sup> Associate Professor of Urban Planning, UCLA, personal communication, May 17, 2018; Partner, Real Estate Department, Paul Hastings LLP, personal communication, April 30, 2018.

<sup>169</sup> California Government Code 65589.5.

their denial of housing.<sup>170</sup> The practical impact of this change is also an area that is unresolved. Some of these questions, such as the CUP question, will likely need to be addressed through court cases that would set precedents to elucidate these gray areas.

## Key Takeaways

The efficacy of these streamlining and accountability bills in driving housing production remains to be seen.

In terms of the streamlining bills, an analysis of existing overlay zones in California has illustrated that the more incentives a housing overlay zone provides, the more successful it tends to be.<sup>171</sup> For now, it remains to be seen if the incentives to be provided under AB 73 and SB 540 will be enough to spur meaningful levels of development. In terms of AB 678/SB 167 and AB 1515, these bills seem to be having an effect in pressuring local governments to administer their land use standards and requirements more fairly and consistently; however, it is questionable as to whether

this change will help boost housing production by levels that would make a dent in the housing shortfall we see today. The HAA also does not have any application to CEQA lawsuits that can be filed by entities outside of a local agency in order to block or delay certain projects.

City officials from El Monte, developers such as LA Family Housing, an academic from the University of Southern California, and a land use lawyer from Hastings LLP all stated that while these bills are a step in the right direction, they are short-term solutions for CEQA's underlying problems. In order to change its impact on development, CEQA must be reformed more generally. Hernandez, Friedman & DeHerrera offers several alternatives such as eliminating multiple CEQA lawsuits on one project and allowing for incomplete or incorrect environmental studies to be corrected rather than denying permit approvals.<sup>172</sup> The political feasibility of overhauling CEQA remains a challenge.

To further facilitate streamlining and hold jurisdictions accountable, another option to consider is a statewide expedited approvals

process for certain housing projects, similar to Massachusetts 40B.<sup>173</sup> Under this legislation, development projects submit approvals to a single local agency. It also sets a strict time limit for the approval process, which defaults to approval if not met. Finally, the legislation created a statewide Housing Appeals Committee to which a developer can appeal if their project is denied and they are in a jurisdiction that is not meeting its fair share requirements. While some components of Massachusetts 40B are similar to requirements under the HAA (e.g., strict timelines a local agency must follow, which defaults to the approval of an application if not met), the HAA is not explicitly designed to make housing production quick and easy by streamlining local approval processes. Adopting mechanisms like those in Massachusetts 40B, to work in conjunction with the protections of the HAA, may help boost housing production by making the entitlement process more simple, fast, and fair throughout the state.

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170 Betsy Strauss and Barbara Kautz, "Housing Elements and Housing Approvals: Get ready for Change on January 1, 2017," *League of California Cities*, November 1, 2017. [https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2017/City-Attorney-Webinar-Paper\\_Final.aspx](https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2017/City-Attorney-Webinar-Paper_Final.aspx).

171 Public Advocates, "Factsheet: Housing Overlay Zones," July 27, 2010. [http://www.reimaginerpe.org/files/HOZ\\_Fact\\_Sheet\\_FINAL\\_7-27-10\(2\).pdf](http://www.reimaginerpe.org/files/HOZ_Fact_Sheet_FINAL_7-27-10(2).pdf).

172 Jennifer Hernandez, David Friedman, and Stephanie DeHerrera, "In The Name Of The Environment: How Litigation Abuse Under the California Environmental Quality Act Undermines California's Environmental, Social Equity and Economic Priorities - and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse," *Holland & Knight*, 2015. <https://www.hklaw.com/publications/in-the-name-of-the-environment-litigation-abuse-under-ceqa-august-2015/>.

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173 Carolina K. Reid, Carol Galante, and Ashley F. Weinstein-Carnes, "Borrowing Innovation, Achieving Affordability: What We Can Learn From Massachusetts Chapter 40B," *UC Berkeley Turner Center for Housing Innovation*, August 2016. [http://turnercenter.berkeley.edu/uploads/California\\_40B\\_Working\\_Paper.pdf](http://turnercenter.berkeley.edu/uploads/California_40B_Working_Paper.pdf).

*In Depth Look: Labor Market Challenges to Affordable Housing*

The construction sector’s reliance on a low-road approach of low wages and inadequate training has led to low industry productivity and a shortage of skilled workers.<sup>174</sup> As can be seen in Figure 2.9, the number of construction workers in Los Angeles County has not rebounded since the recession. However, new public investment in infrastructure and affordable housing means increased demand for construction labor. Many labor economists suggest that the only way to ensure an adequate workforce is through a state industrial policy where a high-road approach of labor market standards and training is central. One important way that the state can achieve this is through the notion of value capture, where policies like prevailing wage requirements, project labor agreements and apprenticeship training are tied to policies intended to overcome regulatory obstacles to density in the already built environment.<sup>175</sup>

**Figure 2.3.2 Construction Labor Shortage, Los Angeles, 2000-2017**



Source: Construction Employment: United States Census Bureau, Quarterly Workforce Indicators, Los Angeles County, yearly averages; Housing units: <https://www.scag.ca.gov/Documents/LosAngelesCountyLP.pdf>

174 Erin Baldassari and Marisa Kendall, “Hidden cost of housing: How a shortage of construction workers is making our crisis worse,” *Mercury News*, February 26, 2018, <https://www.mercurynews.com/2018/02/25/hidden-cost-of-housing-how-a-shortage-of-construction-workers-is-making-our-crisis-worse/>.

175 Research and Advocacy Director, San Francisco Electrical Construction Industry, personal communication, April 30, 2018.

The streamlining bills in the housing package include provisions to require prevailing wage rates for residential projects, and skilled and trained workers are required.<sup>176</sup> Prevailing wage was incorporated partly because of a consensus by lawmakers that paying a living wage to those workers who build affordable housing, especially immigrant and workers of color in high-cost regions, can help to close the gap between construction wages and housing costs for hundreds of thousands of California families.<sup>177</sup> (In Los Angeles County, 42% of households supported by construction work qualify for housing subsidies). Further, research shows that there are a multitude of beneficial outcomes that come with prevailing wage laws, such as worker safety, workforce training investment, family-sustaining wages, health coverage, good pensions and higher productivity, which may offset any increase in spending on wages and benefits.<sup>178</sup>

Affordable housing developers, for the most part, have been required to use prevailing wage for decades. But market-rate developers have expressed concern that despite the streamlining benefits that SB 35 and SB 540 provide, the inclusion of prevailing wage requirements disincentives using it. In some cases, they are concerned that the requirements will make it difficult to attract equity investors to finance projects. It is true that the cost of residential construction has steadily increased, and the impact of wages is uneven, varying by developer, project types and project financing structures. Estimates on how prevailing wage affects California residential construction costs, especially affordable housing, therefore differ greatly, with researchers disagreeing on how they take into account worker productivity and savings from decreased public subsidies such as Medicaid reliance and housing subsidies.<sup>179</sup>

One study found that there are more important sources of cost variation for nonprofit development such as “large business cycle effects, fair market rents, average county construction wages, local government impact fees, and above-average architecture and

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176 Leah Samuel, “The Prevailing Question,” *Shelterforce*, September 23, 2006, [https://shelterforce.org/2006/09/23/the\\_prevailing\\_question/](https://shelterforce.org/2006/09/23/the_prevailing_question/).

177 Alex Lantsberg, “The Value of Linking Good Construction Jobs to California’s Housing Reforms,” *Smart Cities Prevail*, March 24, 2017. [www.smartcitiesprevail.org/wp-content/uploads/sites/24/2017/03/SCP\\_HousingReport.0314.pdf](http://www.smartcitiesprevail.org/wp-content/uploads/sites/24/2017/03/SCP_HousingReport.0314.pdf).

178 Mark Price, “Prevailing Wage Opponents Fail to Look at the Research,” *Third and State* (blog), April 3, 2012, (12:42 p.m.) <https://www.thirdandstate.org/2012/april/prevailing-wage-opponents-fail-look-research>.

179 Liam Dillon, “Here’s How Construction Worker Pay Is Dominating California’s Housing Debate,” *Los Angeles Times*, May 12, 2017, [www.latimes.com/politics/la-pol-sac-construction-workers-housing-20170512-htmstory.html](http://www.latimes.com/politics/la-pol-sac-construction-workers-housing-20170512-htmstory.html).

engineering costs.”<sup>180</sup> Other studies have found that residential construction industry profits have far outpaced the cost of labor or materials since 1992 and that the inflation-adjusted wages of California construction workers have declined dramatically, indicating that developers may be profiting at the expense of workers and taxpayers.<sup>181</sup>

Nevertheless, developers’ various experiences with prevailing wage, based on their size, specialty and location, impact the development of housing. For example, there is some concern that the small-scale developers, who are key to communities in California that cannot attract large-scale housing projects, typically do not have access to deep financing and will therefore have to avoid projects that require prevailing wages or affordable housing units.<sup>182</sup> For those developers that produce mixed-income buildings, sources of financing are more limited and developers rely on public subsidies that trigger required prevailing wage policies, which some developers claim are challenging for them to afford. Thus, there are calls for the state to create incentives for the small-development sector and to deepen subsidies to developers of mixed-income buildings so that both affordable housing and living wages are secured.

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<sup>180</sup> Scott Littlehale, “Revisiting the Costs of Developing New Subsidized Housing: The Relative Import of Construction Wage Standards and Nonprofit Development,” *Berkeley Planning Journal* 29, no. 1 (2017), 103.

<sup>181</sup> Alex Lantsberg, “If residential builders pay prevailing wages it would help - not hurt - California’s housing crisis,” *Los Angeles Times*, May 19, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-lantsberg-prevailing-wage-20170519-story.html>.

<sup>182</sup> Jon Lum, “A report on the California Housing Crisis Conference, What Next? Where do we Go from Here?” *The American Institute of Architects, California Council*, February 28, 2018, <http://www.aiacc.org/2018/02/28/report-california-housing-crisis-conference-next-go/>.

## 2.4 Capturing Land Value

### Background

Land value capture is a method of financing public improvements by capturing the increases in private property values that result from public investment in public goods like transit or open space. Land value capture tools allow public benefit to accrue from public investment in land, as opposed to relinquishing rising land values to the private sector. While property taxes are perhaps the most well-known land value capture tool, there are a variety of other mechanisms, such as inclusionary housing, density bonuses, and linkage fees, that promote similar outcomes. These mechanisms can be used to reinvest in transportation, affordable housing, and economic development on behalf of the public.

In 1978, California passed Proposition 13, which significantly impeded the state's ability to use property taxes as a land value

capture mechanism. Recent statewide legislation - AB 1505 - and local measures, like Proposition JJJ have now made it possible for jurisdictions to take advantage of existing and new land value capture strategies that go beyond taxation.

### *Inclusionary Housing*

Inclusionary housing, also known as inclusionary zoning or mixed-income housing, is a mechanism by which jurisdictions in the United States facilitate the co-production of market-rate and affordable housing units. Inclusionary housing policies either require or incentivize developers to produce a certain number of on- or off-site units that are set aside for households earning below a designated income threshold. Across the United States, these set-aside stipulations range from 5%-25% of the total number of units a project provides and target different levels of affordability.<sup>183</sup> However, developers may opt out of building units by paying an in-lieu fee which is typically deposited into an affordable housing trust fund. Inclusionary housing provides “opportunities both to supplement limited public sector resources and to tap for social purposes some part of the wealth being created in the real estate market.”<sup>184</sup> Because inclusionary housing links market-rate and affordable housing development, it is a tool best put to work

183 Nico Calavita and Alan Mallach (eds.), *Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion, and Land Value Recapture* (Cambridge, MA: Lincoln Institute of Land Policy, 2010), 34.

where is a strong housing market.

Inclusionary housing emerged in the 1970s and became a widely accepted affordable housing development strategy by the mid-1990s. As of 2015, 512 jurisdictions across the United States had implemented some form of inclusionary housing policy.<sup>185</sup> In California, the number of jurisdictions with inclusionary housing policies grew from 64 in 1994 to 170 in 2007.<sup>186</sup> In the middle of this growth period, a 2001 court case, *Home Builders Association of Northern California v. City of Napa*, affirmed that mandatory inclusionary policies did not constitute an unconstitutional taking and could be used to promote affordable housing development.<sup>187</sup> As of 2008, California's 170 ordinances have produced 65,000-70,000

184 Nico Calavita and Alan Mallach (eds.), *Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion, and Land Value Recapture* (Cambridge, MA: Lincoln Institute of Land Policy, 2010), 34.

185 Ibid., 25. Rick Jacobus, “Inclusionary Housing Creating and Maintaining Equitable Communities,” (Cambridge, MA: Lincoln Institute of Land Policy, 2010), 8.

186 Calavita and Mallach, *Inclusionary Housing*, 45. In 2014, the CLT Network listed just under 170 inclusionary programs in California. CLT Network, “National Directory of Inclusionary Housing Programs,” 2014, <http://cltnetwork.org/wp-content/uploads/2014/08/National-Directory-of-Inclusionary-Housing-Programs-8-26-14.pdf>.

187 “Court Says City of Napa Ordinance Advances a Government Interest,” *California Planning and Development Report*, July 1, 2001, <http://www.cp-dr.com/articles/node-1093>.

units of affordable housing, with 25,000-30,000 units produced from 1999 to 2006.<sup>188</sup>

In Los Angeles County, nine cities have inclusionary housing ordinances. The cities of Avalon and Santa Monica were the first to adopt inclusionary in 1983, and were joined by West Hollywood in 1986.<sup>189</sup> Agoura Hills, Calabasas, Long Beach, Monrovia, Pasadena, and Rancho Palos Verdes followed suit in the 1990s through early 2000s. All but Long Beach and Monrovia’s ordinances are mandatory. California state redevelopment law has also required inclusionary housing in certain cases and the specific plan for Central City West in the City of Los Angeles, adopted in 1991, includes mandatory provisions. It was this specific plan which triggered the 2009

188 See Calavita and Mallach, *Inclusionary Housing*, 25-6 for the lower bound and Non-Profit Housing Association of Northern California (NPH), “Affordable By Choice,” 2007, 10 for the upper bound; these figures include in-lieu fee units and anticipated units at the time of data collection.

189 The CLT Network states that Avalon’s inclusionary policy was introduced in 1979. See CLT Network, “National Directory,” 2.

*Palmer v. City of Los Angeles* lawsuit and its

**Table 2.4.1: Los Angeles County Jurisdictions with Inclusionary Housing Ordinances redress in 2017 with AB 1505.**

City	Policy Type	Year Adopted	Removed Post <i>Palmer</i> Decision?	Current Status
Agoura Hills	Mandatory	1987	Unknown	Unknown
Avalon	Mandatory	1983	No	Ordinance under review
Calabasas	Mandatory	1998	No	Ordinance in effect
Long Beach	Voluntary	1991	Unknown	Ordinance under review
Monrovia	Voluntary	1992	Unknown	Unknown
Pasadena	Mandatory	2001	No	Ordinance under review
Rancho Palos Verdes	Mandatory	1997	Unknown	Unknown
Santa Monica	Mandatory	1983	No	Ordinance in effect
West Hollywood	Mandatory	1986	No	Ordinance in effect
Central City West Specific Plan	Mandatory	1991	Yes	Ordinance under review

Source: Vinit Mukhija, Lara Regus, Sara Slovin, and Ashok Das, “Can Inclusionary Zoning Be an Effective and Efficient Housing Policy? Evidence from Los Angeles and Orange Counties,” *Journal of Urban Affairs* 32, no. 2 (2010): 229-252. DOI: 10.1111/j.1467-9906.2010.00495.x; Planning Director, City of Avalon, personal communication, May 3, 2018; Professional City Planner, San Fernando Valley City, May 3, 2018; Housing

Inclusionary is not universally accepted as a valid tool to build affordable housing. Supply-side arguments often contend that it constrains development. Even the most enthusiastic proponents acknowledge that inclusionary is “no panacea” and is one of many strategies available to local governments to promote the development of affordable housing units.<sup>190</sup> However, research conducted in 2009 in Los Angeles and Orange Counties found that inclusionary ordinances are leading to more affordable homes. In Los Angeles and Orange Counties combined, inclusionary policies produced around 9,000 units of affordable housing and generated roughly \$55,000,000 in in-lieu fees by 2006<sup>191</sup>. In comparison with LIHTC, inclusionary policies produced more or a comparable number units of affordable housing from 1998-2005 in Los Angeles and Orange Counties, even though LIHTC produces more housing at the aggregate national level.<sup>192</sup> Examining local housing permits, the 2009 research also finds that inclusionary housing does not constrain housing in Los Angeles and Orange Counties.<sup>193</sup>

190 Mukhija et al., “Can Inclusionary,” 229.

191 This figure is as of Summer 2006 and includes units already completed, in development, and created by in-lieu fees. The cities with the largest production of units were in Orange, not Los Angeles County. In Los Angeles, Calabasas and Rancho Palos Verdes’ programs had yielded no physical units and had none in development in the Summer of 2006 when the data was collected.

192 Mallach and Calavita, *Inclusionary Housing*, 25. Jacobus, “Inclusionary Housing,” 8.

193 Mukhija et al., “Can Inclusionary,” 245.

Table 2.4.2 Comparison of Affordable Units Produced: 1998- 2005

City	Inclusionary Zoning Affordable Housing (a)	Low-Income Housing Tax Credit Units (b)
Avalon	88	36
Pasadena	346 (c)	480
Santa Monica	303	166
West Hollywood	37	42

a. Reflects only affordable units built directly by market-rate developers on- or off-site according to the inclusionary zoning rules in each jurisdiction; figures do not include units in approval or incomplete at the end of 2005. In-lieu fee collections are also ignored in this comparison.

b. These fees include Low-Income Housing Tax Credits (LIHTC) units developed for senior citizens.

c. Pasadena’s inclusionary zoning program started in 2001.

Source: Mukhija et al., “Can Inclusionary,” 242.

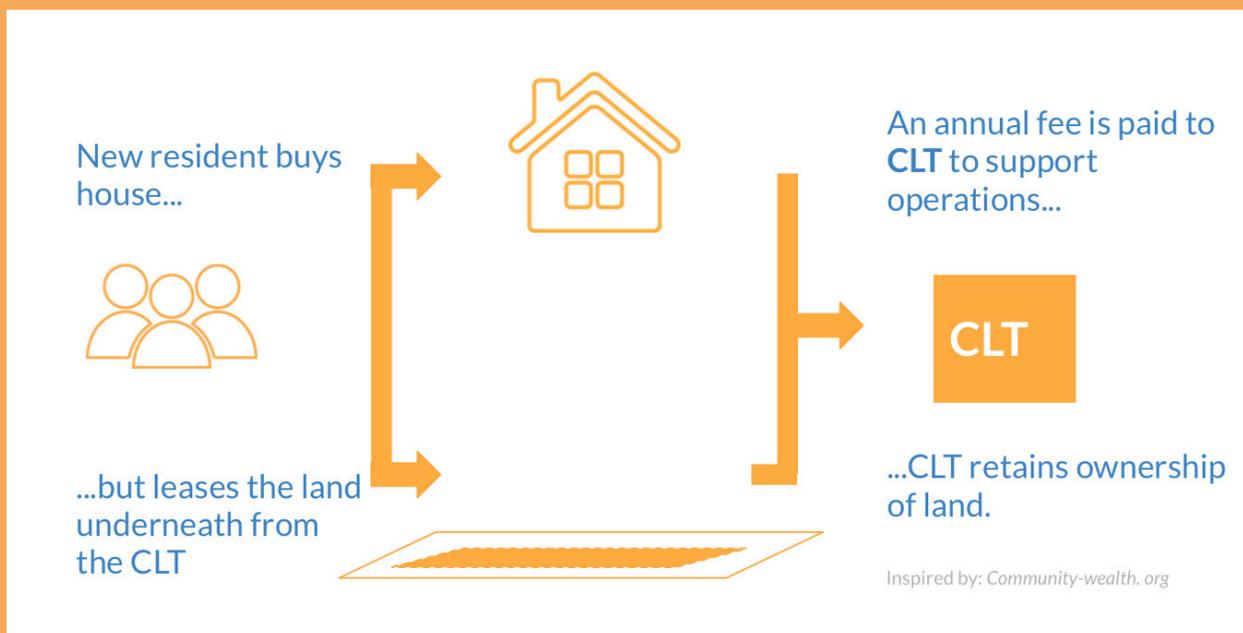


Sierra Bonita Apartments, West Hollywood

## In Depth Look: A New Avenue for Inclusionary Housing: Community Land Trust Partnerships

AB 1505 and AB 1521 aim to address the preservation of affordable housing and strengthen tenants rights in California. However, there are no bills within the 2017 Housing Package that acknowledge alternative models to land stewardship, including community land trusts (CLTs), as a solution to addressing the housing crisis in California. Although there are numerous forms of alternative stewardship models, this portion of the report will focus on CLTs, providing an overview of how CLTs operate and identifying existing organizations supporting CLTs in Los Angeles County. By taking stock of existing CLTs in Los Angeles and highlighting their strengths, interested Angeleno communities may be encouraged to explore this alternative method of land stewardship and tenure. Additionally, this section will discuss challenges to CLT formation, and what governments could do to encourage the growth of this model.

Community Land Trust Diagram



By partnering with community land trusts (CLTs), municipalities can use inclusionary and affordable housing policies to promote the creation of permanently affordable housing. Like traditional CLTs, city-initiated CLTs own the land on which housing units are created or establish restrictive covenants that make home ownership or rentals affordable. However, instead of being formed by community members and community organizations, CLTs that work directly with cities are often established by the local governing bodies themselves. Varying in policy design and administration, some municipalities explicitly describe the local government-land trust interaction via ordinance or plan, others simply list the transferral of property ownership to a non-profit entity as a menu option to comply with the inclusionary policy. Whether formally or informally, cities that work directly with CLTs expressly encourage relationships between developers and CLTs to expand the affordable housing pool in perpetuity.

Figure 2.4.2. Municipalities working with CLTs: Inclusionary + Affordable Housing Programs

Municipality	CLT Name	CLT Year Established	Total Units
Burlington, Vermont	Champlain Housing Trust (Merge- Burlington Community Land Trust)	1984 Merge - 2006	2,765 <sup>194</sup> Rentals-2,200 Homes- 565
Irvine, California	Irvine CLT	2006	327
Chapel Hill, North Carolina	Community Home Trust	2000	315 <sup>195</sup>
Denver, Colorado	Colorado Community Land Trust	2002	200 <sup>196</sup> (2011)

An inclusionary ordinance could mandate that all affordable units are managed by a community land trust or similar non-profit organization. One municipality that spearheaded the creation of a citywide CLT was Chicago. To combat the rising cost of housing, the municipality established a citywide community land trust called the Chicago CLT (CCLT) in 2006.<sup>197</sup>

194 "About Champlain Housing Trust," accessed May 31, 2018, <http://www.getahome.org/about-us>.

195 "Overview," accessed May 31, 2018, <https://communityhometruster.org/overview/>.

196 Realtor, CCLT, Personal Communication, May 29, 2018.

197 "Planning and Development," accessed May 31, 2018, [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/chicago\\_communitylandtrust0.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/chicago_communitylandtrust0.html).



Champlain Housing Trust  
Burlington, Vermont

Through the city's Affordable Requirements Ordinance (ARO), Chicago outlined development thresholds that would require developers to provide 10% of residential units as affordable housing or donate \$100,000 per required unit to the city's Affordable Housing Opportunity Fund.<sup>198</sup> Developments receiving financial aid from the city had to designate 20% of residential units as affordable housing. All of the housing units rehabilitated or created by the ARO are managed by CCLT. Revised in 2015, the ARO now requires affordable units to be provided on-site, encourages developers to work directly with the Chicago Housing Authority, and incentivizes the provision of affordable units in transit oriented developments. Instead of a ground lease, CCLT uses a restrictive covenant to maintain affordability and limits the sale of units to income-qualified candidates that make no more than 120% of the AMI.<sup>199</sup> Homeowners that choose to live in a CCLT property receive subsidies and reduced property taxes that keep the property affordable by agreeing to sell only to similar low-income qualified purchasers. Although there have been only 70 CCLT units preserved to date, these units will be held affordable in perpetuity.



*For sale ARO units Stewarded by CCLT*

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198 Ibid.

199 Desiree Hatcher, "Community Land Trust Model: Opportunities and Challenges of Preserving Affordable Housing - Federal Reserve Bank of Chicago," *Pro itWise News and Views* 2, 2016, <https://www.chicagofed.org/publications/profitwise-news-and-views/2016/community-land-trust-model-opportunities-and-challenges-of-preserving-afford-able-housing>.

Jurisdictions may also include community land trust governance as a compliance option rather than a mandate. Similar to CCLT, the Irvine Community Land Trust (ICLT) works in conjunction with the City of Irvine’s inclusionary or affordable housing program. Outlined in the City of Irvine’s 2006 Housing and Strategy Implementation Plan, the ICLT was established to help the city reach its goal to create 9,700 affordable housing units by 2025. According to Irvine’s Inclusionary Housing Ordinance, for every residential project, developers must designate 15% of these units as affordable housing.<sup>200</sup> If these units are developed off-site there are a menu of options that the developer may choose from in order to comply with the city-mandated provisions. One of the menu options is to transfer control of the units to a city approved non-profit housing organization, like ICLT. In this capacity ICLT functions to maintain these transferred units as affordable housing. Additionally, ICLT works in other capacities to preserve and create affordable housing ownership and rentals, by working with other non-profits and developers. Such projects include the Native Spring development with Habitat Humanity- Orange County, and the Nightmist development with Chelsea Investment Corporation.



*Alegre Apartment Homes  
Irvine, California*

*Figure 2.4.3. ICLT Projects<sup>201</sup>*

Project Name	Type	Number of Units	Status
Scattered Site Program	Homeownership	9	In operation
Alegre	Affordable Housing Rental Project	104	In operation
Parc Derian	Affordable Housing Rental Project	80	In operation
Dorian	Affordable Housing Rental Project	134	ICLT acts as the lender on this project.
Native Spring	Homeownership	68	Pre-development
Nightmist	Affordable Housing Rental Project	80	Pre-development

<sup>200</sup> City of Irvine, 2013-2021 Housing Element. 5 ICLT, personal communication, May 2018.

<sup>201</sup> ICLT, personal communication, May 2018.

## Relevant Legislation

### *The Palmer Decision and AB 1505*

Mandatory inclusionary housing ordinances for rental units was struck down by a 2009 California Appeals Court decision in the case of *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*. The suit was originated by real estate developer Geoff Palmer. He argued that the Central City West Specific Plan, enacted in 1991 with mandatory inclusionary provisions, violated the Costa Hawkins Act by preempting his ability to set the price for his new rental units.<sup>202</sup> In response, the California Superior and Appeals courts removed the inclusionary provisions of the Central City West plan. The courts left inclusionary requirements intact for developments receiving federal subsidies and for-sale units because homeownership is exempt from rent control provisions in California.

The impact of the *Palmer* decision on California jurisdictions' use of inclusionary housing from 2009 to 2017 is difficult to assess. In Los Angeles County, at least five out of the nine cities with inclusionary continued to enforce their ordinances, exposing their municipality to the threat of lawsuits from developers.<sup>203</sup> No legal

<sup>202</sup> The Costa Hawkins Act is a state law that limits the type of rent control policies jurisdictions can enact. Elijah Chiland, "Costa Hawkins, California's rent control law, explained," *LA Curbed*, April 26, 2018, <https://la.curbed.com/2018/1/12/16883276/rent-control-california-costa-hawkins-explained>.

<sup>203</sup> Policy Advocate, Western Center on Law and Poverty, personal communication, April 30, 2018. Planning Director,

challenges against these municipalities were introduced. However, an interview with the Executive Director of the affordable housing advocacy organization Tenants Together suggests that the *Palmer* decision may have introduced a climate hostile to inclusionary projects, even in jurisdictions where inclusionary remained in effect.<sup>204</sup> Further research is necessary to better understand whether the *Palmer* ruling had a marked influence on the number and location of inclusionary projects.

AB 1505, known accordingly as the "Palmer Fix," reaffirms mandatory inclusionary housing ordinances as a positive, productive tool in affordable housing development and clarifies jurisdictions' ability to use it. According to one housing policy professional, AB 1505's main achievement is that it allows local governments to reinstate their ordinances and possibly draft stronger language than before.<sup>205</sup> For those jurisdictions that kept their ordinance in place as well as for those without ordinances, AB 1505 creates an environment in which inclusionary can be implemented without fear of lawsuits. Because California is a stronghold of inclusionary policies in the United States,

City of Avalon, personal communication, May 3, 2018; Professional City Planner, San Fernando Valley City, May 3, 2018; Housing Program Manager, City of Santa Monica, personal communication, May 18, 2018.

<sup>204</sup> Executive Director, Tenants Together, personal communication, Monday, May 21, 2018.

<sup>205</sup> Policy Advocate, Western Center on Law and Poverty, personal communication, April 30, 2018.

some advocates have expressed hope that the passage of AB 1505 may spark a proliferation of inclusionary ordinances around the nation.<sup>206</sup>

AB 1505 also introduces a mechanism for HCD to review the economic feasibility of inclusionary ordinances requiring more than 15% of units targeted for households at or below 80% AMI. Ordinances are subject to review if adopted by jurisdictions which have failed either to submit their Housing Elements for two years or to meet 75% of their share of regional housing needs for Above-Moderate income households over a five-year period. The review mechanism was included in the final stages of bill revision to assuage the opposition.<sup>207</sup>

<sup>206</sup> Zach Murray, "In California, a Victorious "Fix" for Inclusionary Housing," *Shelterforce*, November 29, 2017, <https://shelterforce.org/2017/11/29/california-victory-inclusionary-housing/>.

<sup>207</sup> Urban Planning Professor Emeritus, San Diego State University, personal communication, May 2, 2018.

### Proposition JJJ

Proposition JJJ in the City of Los Angeles offers another land value capture strategy that will complement the recently passed linkage fee (discussed in Section 2.2). JJJ was passed in 2016 and fills a critical hole in the state density bonus law. In the past, developers could circumvent the affordability requirements of the state density bonus law by getting a General Plan Amendment to achieve the same densities. JJJ conditions a General Plan Amendment with affordability and labor requirements. It also offers an incentive program that includes density bonuses, setback reductions, and looser height restriction through the Transit Oriented Communities (TOC) program.



*JJJ Poster  
Los Angeles, California*

In order to qualify for the TOC program incentives a project must be within  $\frac{1}{2}$  mile of a major transit stop and must offer certain percentages of Low income, Very-Low income and Extremely-Low income units based on distance from the transit stop. There are four zones from each hub and closer zones have higher density allowances and more affordability requirements. This ranges from 8%-11% Extremely-Low income, 11%-15% Very-Low income and 20%-25% Low income. The closer to the transit stop a project is, a higher the percentage of affordable units must be provided and consequently a greater increase in density is provided. Up to an 80% increase in density may be provided, as well as FAR increases, parking reductions, setback and open space reductions. The ordinance also stipulates that community plan updates must be assessed to ensure there is no loss of capacity for affordable housing or impediment of other local and state affordable housing programs. Written with labor unions, JJJ aimed to create better jobs as well and thus all uses of the ordinance require prevailing wage and have local hire provisions. All affordable rental housing is required a 55-year covenant and there is a no-net loss provision requiring a plan to avoid displacement of tenants.

## Analysis

### AB 1505

Interviews with city planners in Los Angeles County speak to the positive uses for inclusionary ordinances, even in areas without a notably strong housing market. One planner described her city as “isolated” from affordable housing markets and with “extremely limited opportunities for the development of housing that is not geared towards the ‘second home market.’” Her city is largely sustained by a tourist economy and “a high percentage of [the] year round population is employed in the hospitality industry.”<sup>208</sup> Even though this city’s inclusionary program has created a small number of units over the years, the planner still viewed it as an important mechanism for generating housing for those who lived and worked in the community, rather than forcing individuals to seek housing farther afield. Another city planner from a small city in the San Fernando Valley remarked that inclusionary offers a method to create diverse housing options in an affluent community. In this city, “the general lack of development has limited the number of affordable housing units that have been produced, but it would have been zero if not for [the] affordable housing requirement.”<sup>209</sup>

The gaps in AB 1505 fall into two main categories: facilitation and monitoring.

208 Planning Director, City of Avalon, personal communication, May 3, 2018.

209 Professional City Planner, San Fernando Valley City, personal communication, May 3, 2018.

While it reasserts the constitutionality of inclusionary housing for rental units, AB 1505 does not require jurisdictions to adopt an inclusionary ordinance. The mere reversal of the *Palmer* decision may encourage jurisdictions to develop inclusionary ordinances, but there is no guarantee that this shift will overcome political opposition, particularly in locations such as the City of Los Angeles where resistance from local officials has been enduring.<sup>210</sup> Even when political resistance can be overcome with advocacy at the grassroots and local government levels, the reinstatement of older ordinances and the creation of new ordinances will likely be a “slow burn” as localities have much to grapple with following the passage of the 2017 Housing Package.<sup>211</sup> At least one city in Los Angeles County whose ordinance is under review for reinstatement has no timeline for implementation, though no roadblocks are anticipated at this time.<sup>212</sup>

HCD’s review mechanism has also generated concerns. While it is unclear how many jurisdictions would be subject to review in the future, HCD’s requirement of a feasibility study—an additional hurdle for jurisdictions small and large—might deter

210 Steven Sharp, “Councilmember Calls for Phased Approach to Inclusionary Zoning in City West,” *Urbanize.LA*, April 12, 2008, <https://urbanize.la/post/councilmember-calls-phased-approach-inclusionary-zoning-city-west>.

211 Policy Advocate, Western Center on Law and Poverty, personal communication, April 30, 2018.

212 Planning Director, City of Avalon, personal communication, May 3, 2018.

cities and counties from adopting strong inclusionary ordinances in fear of triggering HCD oversight. The executive director of the advocacy organization Tenants Together stressed that even when feasibility studies are done, their methodology prioritizes developer profits rather than affordable housing development. He questioned whether the HCD oversight mechanism would provide a way to push back against local governments seeking to implement bold inclusionary policy.

Finally, AB 1505 does not require jurisdictions using inclusionary to gather uniform data on the achievements of their programs or empower HCD to aggregate and review local data for all cities and counties with inclusionary.<sup>213</sup> Similarly, there is no oversight on the fate of inclusionary units after their affordability covenants expire. Consequently, it is difficult to track the long-term impact that inclusionary housing has on housing supply.

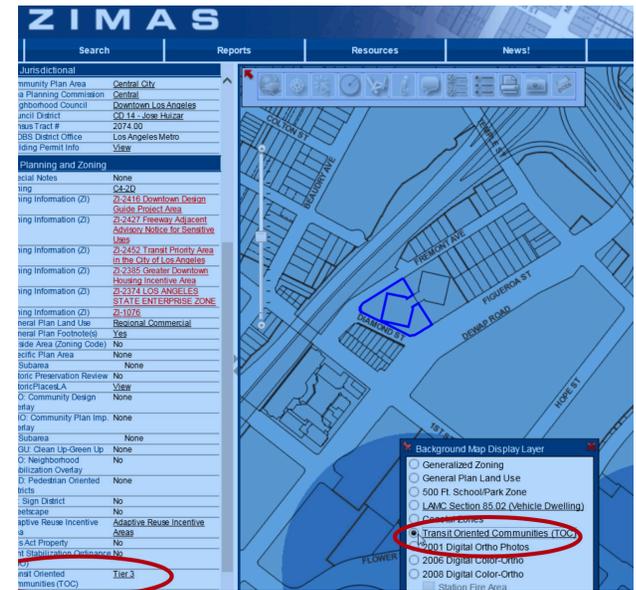
213 NPH, "Affordable by Choice," 33.

Additional changes to the California Government Code could require jurisdictions with inclusionary to submit annual reports on units produced, in-lieu fees collected, the ultimate use of in-lieu fees, and expiring inclusionary units not covered by new affordability covenants.

### Proposition JJJ

According to the Los Angeles Department of City Planning and JJJ authors, the TOC program has been a success. At least 700 affordable units have been proposed, most of which are targeted for the Extremely Low income level. Building to this level of affordability has been historically difficult to finance as it requires significant subsidies. To further encourage building by ensuring the TOC ordinance does not interfere with the linkage fee, the city also intentionally coordinated affordability requirements of the two ordinances. The linkage fee exempts projects that have 40% Moderate income units, 20% Low income units, or 11% Very-Low income units. These are the same affordability requirements for low income and very low income units required in order to use the TOC program. This was intentional to encourage the use of the TOC incentive program. There is also an in-lieu option to JJJ that also feeds into the Affordable Housing Trust Fund established by the linkage fee. The authors of JJJ, local activist group ACT-LA indicated that they intended for the ordinance to be Los Angeles specific<sup>214</sup>.

214 Campaign Director, ACT LA, personal communication, May 15, 2018.



TOC Map  
ZIMAS, City of Los Angeles

Compared to an inclusionary ordinance, JJJ has more specificity in its application, since it only pertains to projects requiring a General Plan Amendment or within the geographic boundaries created by the TOC program. The question remains if the combination of JJJ and the linkage fee is rigorous enough to produce a consequential number of affordable units. JJJ is an effective land value capture strategy in that it circumvents spot zoning. However, the large increases in the density bonus may be not be effectively capturing enough land to contribute meaningfully to addressing the housing crisis. Further investigation into what economic analyses were done prior to writing of the TOC ordinance will provide more insight. Additionally, workforce housing may be at risk with the General Plan Amendments requiring prevailing wage labor. According to one developer, much of the workforce housing built in cheaper areas of the San Fernando Valley required general plan amendments and will now be unlikely to pencil out with prevailing wage requirements.<sup>215</sup>

The issue remains that these programs may still not be a helpful workaround for some of the key roadblocks that affect non-profit affordable developers. The conditions for specifically affordable developers to take advantage of JJJ are dependent on the precarity of other funding sources. A recent project in LA attempting to use both JJJ and H funds was denied

<sup>215</sup> Los Angeles-based market-rate developer A, personal communication, April 22, 2018.

councilperson approval required by H and the project is now in limbo. While the community plan integration is laudable, the incentives offered might dwindle with time although the affordability requirements must be kept in.<sup>216</sup> ACT-LA has stated they will be producing a toolkit to support the preservation of affordability in the community plan updates.

### Key Takeaways

AB 1505 affirms the statewide constitutionality of mandatory inclusionary housing, while the City of Los Angeles' Measure JJJ conditions General Plan amendments on affordability requirements and incentivizes affordable housing development for Transit Oriented Community (TOC) projects. Though their ultimate impact cannot yet be assessed, both AB 1505 and Measure JJJ take initial steps toward ensuring that market-rate development provides housing units for households living below Area Median Income.

#### AB 1505

The passage of AB 1505 offers a tool for jurisdictions that have outdated inclusionary ordinances or may have struggled to have such legislation passed, but there are some key areas in which it could be strengthened for greater effectiveness.

<sup>216</sup> Senior Planner, Los Angeles City Planning, personal communication, April 4, 2018.

1. **Track HCD Review Mechanism:**  
 Due to concerns about the purpose of the HCD review mechanism, it would be beneficial to track its use and the conclusions of the feasibility studies it requires and publishes. If the review mechanism is infrequently used, perhaps legislation can be updated to remove this additional layer of oversight of inclusionary housing. If the feasibility studies are consistently promoting developer interests rather than affordable housing construction, HCD may wish to draft guidelines regarding the methodology and purposes of the feasibility studies.
2. **Promote state-level tracking of inclusionary housing policy impact:**  
 Because data on the use and outcomes of inclusionary housing policy is inconsistently tracked across jurisdictions (in multiple cities in Los Angeles County data is not tracked at all), additional changes to the California Government Code could require jurisdictions with inclusionary to submit annual reports on units produced, in-lieu fees collected, the ultimate use of in-lieu fees, and expiring inclusionary units not covered by new affordability covenants.



**act·LA**

*act LA Rally  
Los Angeles, California*

### 3. Advocate for the adoption of statewide inclusionary housing guidelines:

Although AB 1505 does not mandate that jurisdictions implement an inclusionary housing policy, HCD can take a stronger stand on promoting the use of inclusionary housing by creating implementation guidelines. These guidelines should be based on current research on best practices and may include the following elements of a successful inclusionary housing policy:

- Mandatory program
- Adequate in-lieu fees to cover construction costs of an affordable unit
- Use of tracking systems to monitor construction and use of in-lieu fees

### *Proposition JJJ*

In the City of Los Angeles, the combination of the existing land value capture mechanisms of JJJ and the linkage fee are a strong force. While JJJ is an optional program, the linkage fee is mandatory. The combination of the two creates both a reliable source of funding while also giving ensuring upzoning is tied to the creation of affordable housing. JJJ offers a more community-based approach than a state intervention could because it was produced by local interest groups and tailored to Los Angeles. Monitoring for these local initiatives will likely not present problems. The City has already begun tracking how many units are using JJJ and because the linkage fee requires a monetary transaction, the likelihood of stringent monitoring is higher.

Looking forward, grassroots organizations such as ACT-LA are pushing for a realignment in land use to be more transit oriented. Large infrastructure investments in the pipeline such as the Purple Line Extension, the LAX/Crenshaw line and the Regional Connector will generate large increments in land value in the next decade that can be captured by these tools. The land value capture mechanisms put in place by JJJ and the linkage fee can help institutionalize this for the city of Los Angeles and its communities.

## 2.5 Preserving Affordable Units

### Background

According to the Joint Center for Housing Studies at Harvard University, the United States is home to 9.9 million low-income renters as of 2010.<sup>217</sup> At the same time, the nation's supply of affordable rental housing is in decline and is short approximately 5.1 million rental units in "adequate physical condition and affordable to [low-income renters]."<sup>218</sup> In the City of Los Angeles, 57% of the renter households are cost-burdened and 32% are severely cost-burdened, paying more than 50% of their income on housing.<sup>219</sup>

217 Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2012," 2012, [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2012\\_bw.pdf](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2012_bw.pdf). 25.

218Ibid.

219 United States Census Bureau, "2016 American Community Survey," 2017.

For low-income families, the preservation of affordable housing units is essential during a time of rising housing costs and shrinking incomes.

The preservation of affordable housing stock not only aids low-income households but also provides cost savings for local governments. Reduced funding spent on new affordable housing construction helps local governments and non-profit developers stretch their limited budgets.<sup>220</sup> Although costs such as maintenance expenses may be higher over the life of a redeveloped property, rehabilitation is still more cost effective overall than new construction, especially when the rising price of urban land is taken into consideration. Research has also shown that restoration benefits neighborhoods through increased investment and reductions in violent crime.<sup>221</sup> Preservation and redevelopment of affordable housing is thus beneficial to both tenants and municipalities.

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220 For example, affordable rentals redeveloped through the MacArthur Foundation's Window of Opportunity initiative cost roughly half of comparable new units. MacArthur Foundation, "Window of Opportunity: Investment Summary," 2009.

221 Alex Schwartz, "New York City and Subsidized Housing: Impacts and Lessons of the City's \$5 Billion Capital Budget Housing Plan," *Housing Policy Debate* 10, no. 4 (2010).

In the City of Los Angeles there are at least 9,380 affordable units with subsidies and/or affordability protections which will expire in the next five to ten years or are at risk of their owners prepaying their subsidized mortgages.<sup>222</sup> While any policy that extends a unit's affordability will benefit households in subsidized housing, owners must also be incentivized to continue their contracts or sell to owners committed to maintaining affordability.

### Relevant Legislation

#### AB 1521

Only one of the bills from the 2017 Housing Package focuses on the preservation of existing housing units. Assembly Bill 1521, co-authored by Assemblymembers Richard Bloom (D-District 50) and David Chiu (D-District 17), strengthens the state's Affordable Rental Housing Preservation Act primarily through requiring rental housing with expiring federal or state subsidies and/or affordability protections to be offered for sale to qualified purchasers at market value. By requiring owners of expiring housing units to accept *any* market-rate offer from qualified buyers intending to maintain the units' affordability, the bill aims to ensure that as many affordable units as possible are preserved.

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222 Housing Data Analyst, California Housing Partnership Corporation, personal communication, April 17, 2018.

The state's current Housing Preservation Law requires owners to take certain actions before prepaying subsidized mortgages, terminating rental subsidies, or allowing agreements protecting the affordability of rental units to expire. These actions include:

- Notifying tenants and local governments of the impending loss of affordable units six and twelve months in advance.
- Notifying qualified preservation entities of the opportunity to submit a non-binding offer to purchase covered properties.

AB 1521 strengthens the Housing Preservation Law and addresses the above points by:

- Requiring owners to notify tenants and local governments of the impending loss of affordable units three years in advance.
- Prohibiting owners of expiring housing units from accepting any other offers if a bona fide offer from a qualified preservation entity has been submitted within 180 days from the date of the notice.
- If the owner chooses not to accept the bona fide offer from a qualified preservation entity, then they must declare to HCD that they will not sell the property for at least five years from the

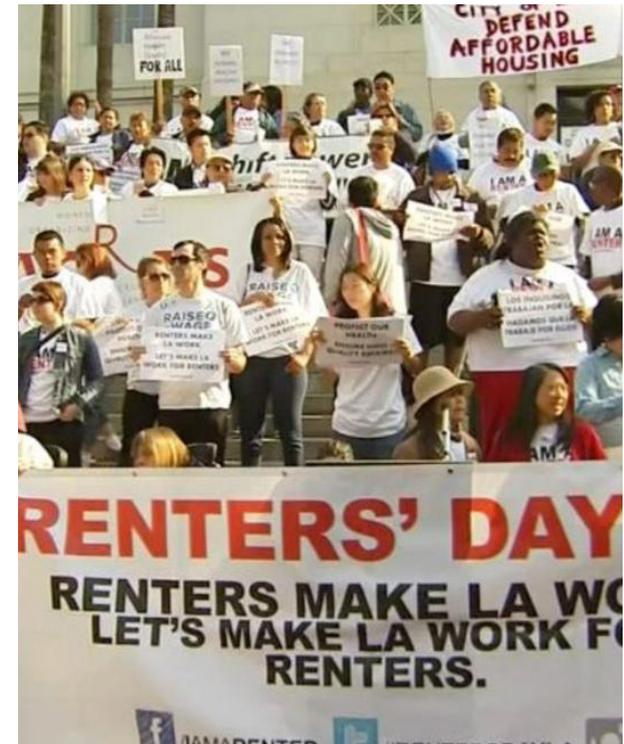
date of declaration.

In addition to these actions, AB 1521 provides injunctive relief to enforce tenant and qualified developer requirements. This includes covering attorney and court costs for the prevailing plaintiff as well as allowing local governments to enforce AB 1521 notification requirements.

By requiring owners of expiring units to sell if a bona fide offer is received, AB 1521 increases the possibility of expiring units being preserved for additional covenant terms. While the previous version of the Housing Preservation Law required owners to send notices to qualified developers, there was nothing in the law requiring them to accept or consider their offers. According to the Western Center on Law & Poverty, some owners of expiring use projects do not comply with the requirement to notify qualified developers of their intention to allow affordability restrictions to expire.<sup>223</sup> Failure to do so will now result in legal action. The expansion of notice requirements from one year to three years provides additional time for prospective purchasers to apply for funding to move forward with the purchase.

Under AB 1521, qualified developers must fall under one of the following categories:

<sup>223</sup> Housing Data Analyst, California Housing Partnership Corporation, personal communication, March 28, 2018.



*Renters Day LA Rally 2017  
Los Angeles, California*

1. The tenant association of the development.
2. Local nonprofit organizations and public agencies
3. Regional or national nonprofit organizations and regional or national public agencies
4. Profit-motivated housing organizations or individuals

HCD will now be tasked with certifying and maintaining an active list of qualified developers; the criteria to be certified as a qualified developer now includes:

- The buyer must be financially capable of managing the housing for its remaining useful life
- The buyer must agree to maintain the housing development's affordability for either a 30-year period or the remaining term of the existing federal government assistance, whichever is greater
- The buyer must agree to maintain the occupancy of Very-Low, Low, and Moderate income tenants in the approximate percentages that existed at time of purchase
- The buyer must agree to renew subsidies, if available, and if the subsidies are sufficient to maintain the projects viability
- The buyer must **not include** a board member with financial interest in the property under purchase

Prior to AB 1521, qualified developers could self-certify by affirming the above criteria and submitting a "Qualified Entity Certification Form" to HCD.<sup>224</sup> This self-certification will stay the same and HCD is expected to vet any submitted self-certification forms. However, HCD's process for vetting self-certification forms to ensure compliance with Government Code Section 65863.11 (e, (f amended by AB 1521 remains unelaborated.

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<sup>224</sup> Current HCD records show 39 qualified developers being listed for Los Angeles County. California Department of Housing and Community Development, "Current List of Qualified Developers," accessed May 4, 2018, <http://www.hcd.ca.gov/community-development/preserving-existing-affordable-housing/docs/hpd00-01.xlsx>.

## Analysis

### Affordable Housing Units At Risk in the City of Los Angeles

AB 1521 will impact the preservation of affordable housing units throughout California. According to data from the California Housing Partnership Corporation (CHPC), in the City of Los Angeles 159 properties with 9,380 units are at risk of losing their affordability protections in the next 5-10 years. In the County, this includes another 78 properties and 4,784 affordable units. These figures are low estimates as CHPC's data only account for units funded through U.S. Department of Housing and Urban Development (HUD), U.S. Department of Agriculture (USDA), and Low-Income Housing Tax Credit (LIHTC ) funds. Units funded through local and state programs and incentives are also at risk of expiration.

Table 2.5.1 At-Risk Housing Units in Los Angeles City vs. County

Balance of Los Angeles County			City of Los Angeles			
	Properties	AH Units	Total Units	Properties	AH Units	Total Units
At-Risk in Next 5 Years	59	3,549	3,549	123	7,890	7,898
At-Risk in Next 5-10 Years	19	1,235	2,006	36	1,490	2,101
Total	78	4,784	5,555	159	9,380	9,999

Note that the "total units" column includes manager and market rate units.

Source: California Housing Partnership Corporation Data (only captures HUD, USDA, and LIHTC-funded projects)

The City of Los Angeles' 2013-2021 Housing Element, which includes properties assisted with HUD, Housing Authority of the City of Los Angeles (HACLA), City of Los Angeles Housing and Community Investment Department (HCIDLA), Community Redevelopment Agency of the City of Los Angeles (CRA/LA), and California Housing Finance Agency (CalHFA) funds as well as properties receiving local concessions such as density bonuses, reveals a more complete tally of at-risk units.

In total, LA's Housing Element details 595 properties containing 22,777 units of which approximately 88% (19,947) are restricted.<sup>225</sup> Of those, 155 properties containing 6,520 units (5,465 of which are affordable) are at risk in the next five years. While there are more locally funded properties than federally funded properties, federal funds have produced more units than local funds and incentives.

As CHPC and Housing Element figures indicate, AB 1521 has the potential to impact a large number of housing units in the City of Los Angeles.

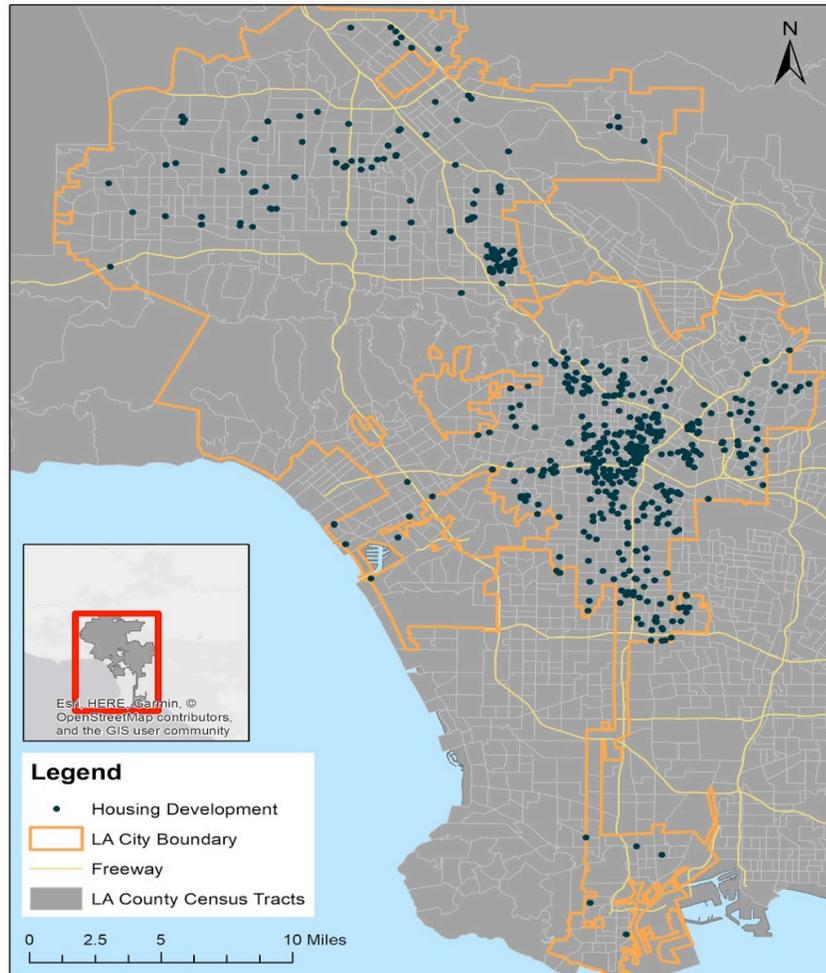
*Table 2.5.2 Housing Units At Risk of Loss in the City of Los Angeles*

Funding Source	Properties	Total Units	Restricted Units
Local	297	9,460	7,147
State	33	1,850	1,761
Federal	265	11,467	11,039
Total	595	22,777	19,947

Source: City of Los Angeles, 2013-2021 Housing Element

<sup>225</sup> City of Los Angeles, 2013-2021 Housing Element.

Figure 2.5.1 Expiring Affordable Housing Units in the City of Los Angeles



Data Source: 2013-2012 Los Angeles City Housing Element

## Key Takeaways

AB 1521's main purpose is to provide more enforcement power to existing Housing Preservation Law. However, AB 1521 only applies to properties with expiring covenants. Owners who wish to prepay their mortgages and remove affordability restrictions do not face additional requirements. This is particularly important for properties located in hot housing markets where rapidly rising land values may incentivize owners to prepay.

According to the Housing Element Law, owners' expiring affordability notice needs to include: 1) a statement of the owner's intent to terminate the subsidy contract or rental restrictions or the fact the unit's affordability requirements will expire, 2) the anticipated date of the unit's affordability requirement termination, 3) a statement explaining the impact that the unit's loss of affordability will have on tenants, 4) a statement of whether governmental assistance will be provided to tenants residing in the units at the time of affordability termination, 5) a statement that any changes in rents will be advertised at least six-months in advance, and 6) a notice of the opportunity to submit an offer to purchase the development.

AB 1521 does not stipulate any notification procedure requirements beyond stating that notices must be placed in an area accessible to all tenants. For example, the bill does not require that the notice be printed in different languages or proof that the notice was read by affected tenants. A more detailed notification process tailored to the needs of tenants would make it more likely that those who live in subsidized affordable housing developments are able to take advantage of AB 1521's provisions. According to HCD's website, the creation of guidance and forms related to AB 1521 will occur in the summer of 2018 with initial public outreach beginning in the spring.<sup>226</sup> This process is an opportunity for affordable housing and tenants rights organizations to ensure AB 1521 requirements lead to notice guidelines that protect tenants and allow qualified developers to preserve as many units as possible.

Finally, following the federal preservation programs of the 1990s, AB 1521 allows tenant associations to be certified as qualified developers. However, in the absence of funding for intensive technical assistance to support tenant acquisition, it remains unlikely that such groups will take advantage of their inclusion as qualified developers.<sup>227</sup>



LA Tenants Union (LATU) Flier

<sup>226</sup> California Department of Housing and Community Development, "California's 2017 Housing Package," <http://www.hcd.ca.gov/policy-research/lhp.shtml#ab1521>.

<sup>227</sup> California Office of the State Treasurer, "California Tax Credit Allocation Committee Regulations Implementing The Federal And State Low Income Housing Tax Credit Laws," 2017.

# SECTION 3: CONCLUSION AND RECOMMENDATIONS

## 3.1 Trends and Common Themes

### *Education and Training*

The 2017 housing bills and associated processes are extremely complex and sometimes confusing. Even those who rely on this legislation for their day-to-day work, like city planners, housing developers, and advocates, frequently cannot take the time to delve into the full implications of each bill. This situation must be remedied, as this package of legislation offers many opportunities and tools for those who wish to create or preserve housing. Education and training are integral to the proper implementation of these housing bills, and should be a priority for the state's Housing and Community Development department (HCD).

### *State vs. Local Power*

This bill package, in addition to its concrete policy goals, reignites a long-standing power struggle between state and local governments. By challenging the near-absolute control local jurisdictions have over land use policy, bills like SB 35 and AB 678 attempt to overcome local reticence to building multifamily housing. They attempt to reconfigure, if only slightly, the relationship between state and local government, emphasizing that the statewide crisis is due to local inaction and that the state bureaucracy will act to push housing construction forward.

### *Complexity and Capacity*

Planners and consultants expressed a general aversion to the ever-increasing complexity of planning for housing. Many jurisdictions in the Los Angeles region, for instance, do not have the staff or technical capacity to implement greater requirements and already outsource a great deal of their housing planning by hiring consultants to create their Housing Elements. Partially as a result of this resistance to added layers of planning, some bills that foster the creation of special zones (AB 73 and SB 540) were met with tepid reactions from most cities. Two cities noted that they already possessed the tools to make these changes, and that further overlays on existing land use were likely not helpful or necessary.

### *Fair Share of What?*

Planning housing is not the same as producing housing. At the state level, California has developed a robust and intricate system to push each jurisdiction to plan for its fair share of housing, but cities and counties cannot mandate development. The site inventories that California's jurisdictions create appear to have only a tenuous relationship with actual development patterns. Furthermore, the Regional Housing Needs Assessment cycle is eight years long, and real estate market conditions can swing widely over the course of a cycle. Fair share policy can only accomplish so much, and relying on these tools too heavily as mechanisms to create housing would be an insufficient strategy.

### *Inefficient “Big Tent” Funding Strategies*

State funding bills were passed with the political support of a wide constituency, and this political compromise is reflected in a complex allocation of funding to a variety of housing types and geographies. While spreading the money around helps a wider variety of developers, places, and residents, it can also lead to inefficiencies in the process. For instance, some smaller jurisdictions will receive allocations which are far too small to support housing production at any substantive scale, and these funds would be better allocated to a city or county with the complementary resources to make use of them.

### *Challenges to Permanent Supportive Housing in Los Angeles*

In the City of Los Angeles, the push for adequate Permanent Supportive Housing (PSH) will continue. New sources of funding for capital expenditures (Measure HHH) and services (Measure H) are huge steps, as is the city’s new Permanent Supportive Housing Ordinance to streamline these projects. However, the resistance to construction of this project type all over the city, which provide lasting housing solutions for the homeless, coupled with the veto power wielded by the city councilmembers, means that PSH developers are facing an uphill battle to meet the city’s target of 10,000 units.<sup>228</sup>

<sup>228</sup> Emily Alpert Reyes, “Here’s how easy it is to block a homeless housing project in L.A.,” *Los Angeles Times*, May

### *Displacement Concerns*

Resistance to the 2017 package’s prominent streamlining bill, SB 35, was generally based on the bills’ potential to open the door for increased market-rate housing production with less community input.<sup>229</sup> Market-rate housing may have the potential to exacerbate existing patterns of displacement in rapidly changing neighborhoods, a concern not directly addressed in any of the legislation. While SB 35 sparked some conversation of displacement, the issue has played a more prominent role in the discourse surrounding 2018’s housing bills.

31, 2018, <http://www.latimes.com/local/lanow/la-me-ln-homeless-housing-letters-20180531-story.html>.

<sup>229</sup> Land Use Policy Analyst, Mission Economic Development Agency, personal communication, May 18, 2018.



*Apartment Building on Washington Blvd.*

### **What about Existing Tenants?**

The 2017 session reflected a groundswell of interest and concern around affordable housing in the State of California, but the content of the bills is largely confined to issues of housing supply. Protections for existing tenants are notably missing from this package, despite the rising rent burdens and high eviction rates faced by renters in the state.<sup>230</sup> The population of renters and those experiencing high rent burdens continue to grow as a percentage of California residents and housing policy needs to shift to address this reality. This report details the dozens of changes made to state and local housing law, and

their potential benefits. However, with the marked exception of a permanent funding source for affordable housing through SB 2, little has fundamentally changed for housing in California. The state has devised a number of ways to hold jurisdictions accountable for avoiding or denying housing development. It has tweaked requirements to make it more likely that expiring affordability covenants will be preserved, and has provided for the streamlining of a small number of qualified projects. These are all undeniably positive developments. However, the scale of the problem is enormous. To say that little has fundamentally changed because of these bills is not mere fatalism. In fact, such an observation can serve as a call for continued action. California has an opportunity in a moment of profound housing crisis to push forward legislation that will make housing more affordable, planning more equitable, and tenants more secure. Housing advocates are lucky enough in 2018 to benefit from a rare level of momentum, citizen and civil society engagement, and political will among lawmakers. Hopefully, politicians and advocacy groups will be able to seize this opportunity.

The momentum built by the passage of the 2017 Housing Package has created

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230 Executive Director, Tenants Together, personal communication, May 21, 2018.

## 3.2 Future State Housing Legislation

an opportunity for bold new housing legislation to be considered in the current legislative session. At this stage, it is difficult to determine which bills will succeed and which will fail or undergo significant changes. However, we can identify emergent trends in the legislation which reflect the impact of the 2017 package on the housing discussion statewide.

One trend is a continued effort towards state preemption of local land use control, represented by SB 35 author Senator Scott Wiener's two key bills of the 2018 session: SB 827 and SB 828. Another trend is towards the inclusion of tenant protection policies. While the legislature is also considering a significant number of other housing bills, we see these two considerations as particularly notable since the former continues the momentum established by the 2017 bills and the latter fills a major gap in them.

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Introduced in January of 2018 by Senator Scott Wiener, SB 827 was arguably the most controversial bill to emerge from the legislature in an effort to address the housing crisis. Also known as the Transit Zoning Bill, SB 827 would have made it easier for developers to build mid-rise apartments near transit by overriding local zoning standards within a ½ mile radius of a major transit stop or a ¼ mile radius of a high-quality bus corridor. A “transit-rich housing project” would exempt eligible projects from meeting minimum parking requirements and maximum controls on FAR, density, and height.<sup>231</sup>

Although the bill did not make it through committee, it ignited fierce discussion and debate statewide and raised fundamental questions regarding our approach to housing and land use policy. The core grievance with SB 827 was not its goal—many affordable housing advocates are in agreement that California needs more affordable housing near transit—but its lack of nuance. While the bill was amended to include a number of tenant protections, it would have created dramatic land value increases without sufficient value capture mechanisms to

<sup>231</sup> Scott Wiener, “SB 827: Transit-Rich Housing Bonus,” 2018, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB827](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB827).

accompany them. This created a strong fear of increased displacement pressures in Los Angeles' vulnerable communities and could have possibly overridden local attempts to mitigate displacement.<sup>232</sup> The heated debate around SB 827 indicates that issues of displacement must be a critical consideration as the state continues developing streamlining legislation.

<sup>232</sup> ACT-LA, “Re: SB 827 (Wiener) Planning and Zoning - Transit-Rich Housing Bonus - OPPOSE,” February 12, 2018, <http://allianceforcommunitytransit.org/l-a-community-organizations-oppose-sb-827/>.



LA Tenants Union (LATU) Flier

SB 828, also proposed by Senator Weiner in January of 2018, would strengthen Housing Element law by requiring jurisdictions to identify enough land in their inventory of sites to meet 125% of the jurisdiction's share of the regional housing need for all income levels. Quite radically, the proposed bill makes explicit that the intent of housing planning is to reduce racial and wealth disparities.<sup>233</sup> Yet the bill may have little impact. The analysis in this report concludes that most jurisdictions in Los Angeles County already have a site inventory with capacity greater than 125% of their RHNA allocation.

Among the several tenant protection bills in front of the legislature is Assemblymember David Chiu's AB 2343, which would extend the timeline of the eviction process. Under this bill, the 3-day notice provided through unlawful detainer action would no longer include judicial holidays, including Saturday and Sunday.

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<sup>233</sup> Scott Wiener, "SB 828," 2018, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB828](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB828).

<sup>234</sup> David Chiu, "AB 2343," 2018, [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180AB2343](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2343).

<sup>235</sup> Executive Director, Tenants Together, personal communication, May 21, 2018.

The bill would also require that an eviction notice provide more information regarding the tenant's lease violation and what accommodations the landlord can make in order to help a disabled tenant perform the duties of the lease. The extension to the eviction timeline provided in the current version bill was shortened from that in earlier versions, and this bill is likely to continue facing tough opposition.<sup>234 235</sup> Additionally, Assemblymember Richard Bloom has introduced AB 2364, a bill which would amend the Ellis Act in important ways.<sup>236</sup> It extends the period that a housing unit must be withdrawn from the market post-eviction from two to five years. It also broadens the circumstances under which a displaced tenant may accept an offer of accommodation from a landlord, eliminating the necessity for the tenant to provide a 30-day written notice. The rental agreement or lease that is offered must be the same as at the time of displacement.<sup>237</sup>

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<sup>236</sup> The Ellis Act is a provision in California Law (California Government Code 7060-7060.7) that provides landlords in California with a legal way to go out of the rental market business. It is widely considered to be a key loophole that allows landlords to evict tenants from rent controlled properties.

<sup>237</sup> Richard Bloom, "AB 2364: Withdraw from Accommodation," 2018, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2364](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2364).  
<sup>238</sup> Executive Director, Tenants Together, personal communication, May 21, 2018

While it was voted down on May 31, 2018, AB 2925 would have represented significant progress for tenants in the state.<sup>238</sup> Authored by Assemblymember Rob Bonta, this bill would have required that landlords statewide provide a just cause for eviction. Until amendments were made on May 29, the bill placed limits on what is considered a just cause, excluding foreclosure, sale of property, and the ending of a lease as just causes for eviction.<sup>239</sup>

Perhaps the most notable battle for tenant protections will be happening on the November 2018 Ballot, as citizens across California will vote on whether or not to repeal the Costa-Hawkins Rental Housing Act. Costa-Hawkins is a 1995 law which places several limits on what jurisdictions may include under rent control ordinances.<sup>240</sup>

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<sup>239</sup>Rob Bonta, "AB 2925," 2018, [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB2925](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2925).

<sup>240</sup>Costa Hawkins mandates vacancy decontrol, allowing a landlord to raise rents to market rate when a unit is vacated. It precludes jurisdictions from protecting single family homes and duplexes under rent control, and it freezes in time the date at which a rent control ordinance was established in a given jurisdiction, meaning that new buildings may not be subject to rent control. In the City of Los Angeles, this is 1978. If a jurisdiction adopts a new rent control ordinance, no building constructed after 1995 may be covered by the ordinance.

If voters choose to repeal Costa-Hawkins, jurisdictions will be able to significantly expand rent control ordinances. Rent control ordinances would be able to cover single family homes and units built after 1995, and jurisdictions could implement vacancy controls. Los Angeles Mayor Eric Garcetti has expressed that if Costa-Hawkins were repealed, he would "absolutely" consider expanding rent control in the City of Los Angeles.<sup>241</sup>

It is too early to tell which bills from the 2018 legislative session will be signed into law, as well as what amendments may be applied to them. The many housing bills currently under consideration in the legislature represent a continued push toward resolving the state's housing crisis and indicate the political will to create fundamental change. The 2017 Housing Package has shaped discussions on housing statewide, and the ways in which the 2018 legislation both continues its trends and expands the conversation into new arenas indicates the historical importance of this package.

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<sup>241</sup>Emily Alpert Reyes and David Zahniser, "Garcetti says he would consider expanding rent control in L.A.," *Los Angeles Times*, April 23, 2018, <http://www.latimes.com/local/lanow/la-me-ln-garcetti-costa-hawkins-20180422-story.html>.

### 3.3 Recommendations

A number of recommendations emerge from this report's analysis.

#### *Planning and Siting*

- Instead of requiring Housing Element site inventories, HCD should consider requiring jurisdictions to conduct their inventories at a neighborhood scale. This change would aggregate the capacity of the sites up to a broader geography to more honestly reflect the impact that zoning has on housing production and better reflect developer interest.
- Given the severity of the housing crisis, jurisdictions should explore immediate housing options. For example, altering zoning laws that limit practical solutions such as micro trailers on vacant lots could be considered.<sup>242</sup> In March 2018, Los Angeles approved a motion

requesting that the countywide Los Angeles Homeless Services Authority develop a “framework of an Emergency Response to Homelessness Plan, outlining what steps and what funds would be required to provide an alternative to encampments for 100% of the Los Angeles homeless population by December 31, 2018.”<sup>243</sup> The motion argues that response to homelessness should be akin to responses for natural disasters such as the recent wildfires. On the state level, declaring a state of emergency to allow for more immediate but possibly temporary solutions could be extremely valuable in order to prevent the further worsening of the crisis until the impact of the housing package is fully felt .

#### *Funding Affordable Housing*

- As the funding bills are rolled out, it will be important to ensure that funds are not diverted from the most important issues. The many provisions which contribute to their political feasibility also open opportunities for the money to be diverted away from programs which serve those most in need. Creating a high level of visibility of the

243 Mike Bonin and Marqueece Harris-Dawson, “City of Los Angeles ordinance,” February 20, 2018, [http://clkrep.lacity.org/onlinedocs/2015/15-1138-s32\\_mot\\_02-20-2018.pdf](http://clkrep.lacity.org/onlinedocs/2015/15-1138-s32_mot_02-20-2018.pdf).



*Persons without homes tents in L.A.*

emerging fund distribution process will help to allow stakeholders to monitor the allocation process. Additionally, streamlining the funding system by enabling a one-stop shop process through a single NOFA or RFP process could remove some technical challenges and help facilitate housing production.

242 Senior Project Manager, Abode Communities, personal communication, April 27, 2018.

## Streamlining, Special Zones, and Accountability

- SB 35 represents a shift toward creating state-mandated streamlining mechanisms. Dramatic streamlining bills are likely to return in subsequent legislative sessions, and lawmakers should seriously consider including provisions that could mitigate the displacement pressures caused by such legislation. Mission Economic Development Agency, the affordable housing developer invoking SB 35, has been one of the equity-based groups pushing for a “safe harbor provision” to be included in streamlining legislation.<sup>244</sup> This provision would use a displacement risk index, and areas of high displacement risk would not be subject to streamlining. The methodology for determining displacement risk would be devised at the state level, and the state would develop a set of protocols around which high risk areas would interact with streamlining legislation.<sup>245</sup> It is important to consider policy innovations such as this as we move to increase housing supply in California. Adopting a firm stance on equity is

essential for protecting the Californians most impacted by the housing crisis, and new policy solutions must respond to community demands for protection from displacement.

- A key benefit of streamlining legislation is providing developers with the opportunity to bypass the cumbersome CEQA process. However, the conditions tied to the special streamlining zones detailed in AB 73 and SB 540 may prove to be overly complicated, resulting in the infrequent use of these bills. Ultimately, CEQA reform would be a more effective way to facilitate housing production by creating a more efficient and equitable environmental review process. CEQA reform is very politically difficult, however, and is unlikely to happen without significant political will.
- One limitation to using the HAA to its full potential is the low level of awareness of this law and its provisions among developers. Because litigation must be pursued (or intimated) in order for the HAA to have an effect on a specific project, the low level of awareness of this law is a critical barrier to its usability. To this point, the law would be more effective if the Office of the Attorney General enforced it, instead of leaving it to individual entities to pursue litigation to demand enforcement of the law.

244 Mission Economic Development Agency, “Delivering the Promise of the Mission’s 681 Florida Community Benefit,” February 14, 2018, <http://medasf.org/delivering-promise-missions-681-florida-community-benefit/>.

245 Land Use Policy Analyst, Mission Economic Development Agency, personal communication, May 18, 2018.



*TRUST South LA Ride*

### *Capturing Land Value*

- In the case of inclusionary housing programs and the implementation of AB 1505, it may be beneficial to create state-level tracking of inclusionary housing policy impacts, while simultaneously ensuring that the feasibility studies in HCD's review mechanism are transparent. Compiling a set of best practices could also help jurisdictions create inclusionary ordinances. Alternative models such as community land trusts should be considered as an innovative component to inclusionary programs.
- Though governments have been increasingly receptive to Community Land Trust (CLT) models, local governments can take a more active role in helping CLTs. For instance, in Columbus, Missouri, the municipality has a staff member dedicated to assisting community land trusts. Governments can also explore starting their CLT and creating provisions within policies and affordable housing requirements, encouraging CLT growth.

### *Preserving Affordable Units*

- Future legislation could go further than AB 1521 to defend vulnerable tenants. The protections in the bill could be extended to properties in which owners seek to prepay their way out of affordability covenants. Additionally, the legislation must be clarified to ensure that notices of sale or expiration truly reach affected tenants and mandate that notifications be posted in the tenants' primary languages.

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# SECTION 5: APPENDIX

## APPENDIX A SB 2 IMPLEMENTATION

### *Year 1: 2018*

The collected revenue will mainly be allocated to local jurisdictions, but money will also flow through the California Department of Housing and Community Development (HCD) administration of its Multifamily Housing Program (MHP) and funding for CalHFA, a self-supporting government agency. To address the urgency of the current housing crisis in the statute's first year, 2018, funding will be split between HCD and local governments 50%-50%. HCD will target the funds for homelessness assistance, which includes, but is not limited to providing rapid rehousing, rental assistance, navigation centers, and the construction, rehabilitation, and preservation of permanent and transitional rental housing. Funds set aside for local governments will be allocated by application for planning grants, with the intention they will be used for activity to

update planning documents and zoning ordinances in order to streamline housing production

### *Year 2: 2019*

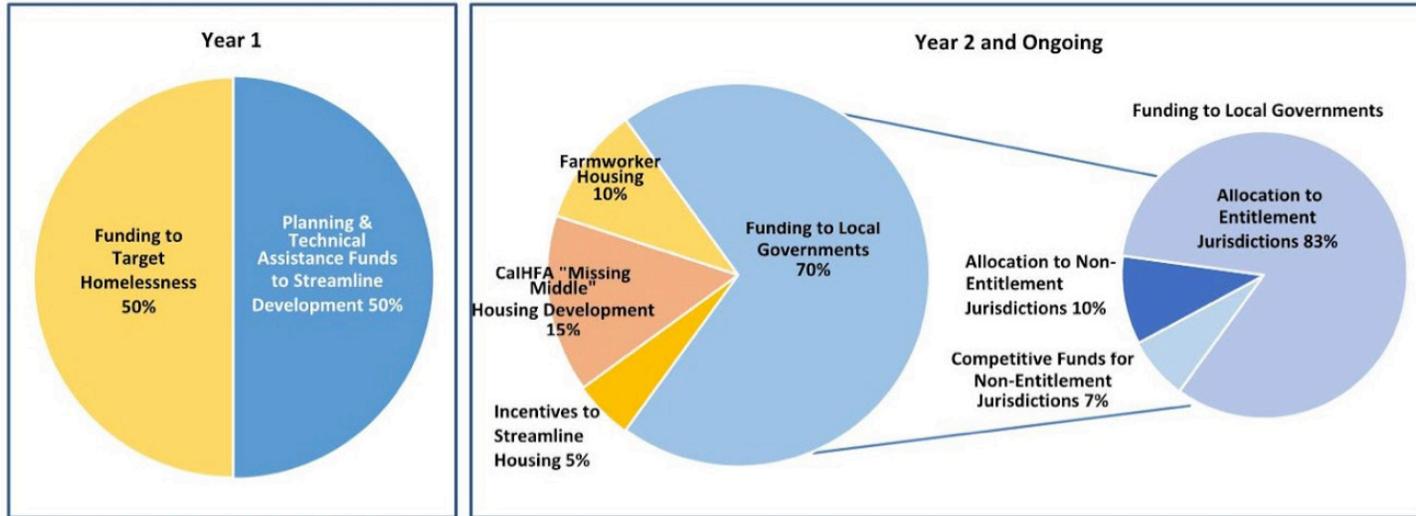
In the second and following years of funding, from 2019 onwards, revenue from the fee will shift more towards local governments and split 70% Local and 30% HCD. Fundwide, it will be required that 20% of all money to be expended for affordable owner-occupied workforce housing. Although "workforce housing" is not officially defined by the state, this in practice typically results housing for households between 80% and 120% of area median income (AMI).

The vast majority of the local money (83%) will be allocated according to the US Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) formula among entitlement jurisdictions and 10% will be allocated among non-entitlement jurisdictions. The remaining seven percent (7%) will also be for non-entitlement areas but awarded through competitive grant programs. Non-entitlement applicants will receive priority points for areas with population 200,000 or less, those not receiving awards in 2016, and local governments using funds for homelessness

assistance. Local governments are restricted to using a maximum of 5% of their allocation for administrative costs.

HCD's uses (30% of the total revenue) will include continuous appropriation of money to California Housing Finance Agency (CalHFA) for creating mixed income multifamily residential housing for Lower to Moderate income households. Across the entire fund, 5% will be used for "state incentive programs", which appear to be in development through the current and ongoing stakeholder process and include those established by SB 540 and AB 73. These funds may revert to HCD's MHP if not enough applications are received. Additional fundwide requirements are that 10% will be used for affordable homeownership and rental housing for agricultural workers and their families and 15% will be used by CalHFA for creating mixed income multifamily residential housing for Lower to Moderate income households.

## SB 2 Ongoing Housing Funding Allocations



### Funding to Local Governments Eligible Uses

Funding to Local Governments	Eligible Uses
Low-Income Housing	Low-income multifamily housing development; capitalized reserves for permanent supportive housing; acquisition and rehabilitation of foreclosed or vacant homes; accessibility modifications.
Moderate-Income Housing	Home rental and ownership for middle-income families; homeownership opportunities, including down payment assistance.
Homelessness	Rapid rehousing, rental assistance, navigation centers, emergency shelters, and permanent and transitional housing.
Local Matching Funds	Local or regional housing trust funds; Low and Moderate Income Housing Asset Fund.
Incentives	Incentives or matching funds for permitting new housing.

<sup>1</sup> Note: Funds unused for the 5% set aside for Incentives to Streamline Housing revert to the state Multifamily Housing Program at the end of a given fiscal year. The bill's provisions specify funds in other set-asides will revert to this program if unused after 5 years. The Funding to Local Governments follows 2017 federal Community Development Block Grant "Entitlement" and "Non-Entitlement" distinctions and allocation formulas. In Year 2 and ongoing, 20% of all funds are required for expenditure on affordable owner-occupied workforce housing.

Source: California Department of Housing and Community Development, <http://www.hcd.ca.gov/policy-research/docs/sb2-ongoing-housing-funding-allocations.pdf>

# APPENDIX B CDBG ALLOCATIONS

## City of Los Angeles and California State CDBG Allocations, 2003-2017

(Nominal figures not adjusted for inflation)

CDBG Allocations			
Year	California	Los Angeles City	Percentage
2003	\$ 562,607,000	\$ 89,171,936	15.85%
2004	\$ 555,228,661	\$ 87,424,859	15.75%
2005	\$ 526,561,028	\$ 82,783,415	15.72%
2006	\$ 474,319,943	\$ 74,453,491	15.70%
2007	\$ 473,207,266	\$ 74,142,574	15.67%
2008	\$ 456,494,879	\$ 71,453,145	15.65%
2009	\$ 461,058,363	\$ 72,177,668	15.65%
2010	\$ 498,630,012	\$ 77,983,283	15.64%
2011	\$ 416,405,347	\$ 65,155,585	15.65%
2012	\$ 351,573,471	\$ 52,677,491	14.98%
2013	\$ 367,204,607	\$ 53,304,104	14.52%
2014	\$ 359,959,007	\$ 51,090,928	14.19%
2015	\$ 356,864,263	\$ 49,954,532	14.00%
2016	\$ 356,855,242	\$ 49,744,488	13.94%
2017	\$ 356,887,970	\$ 49,416,902	13.85%

CDBG Allocations			
Year	Local Median	Median as % of Total State Allocation	Local Average
2003	\$ 1,454,304	0.26%	\$ 3,329,036
2004	\$ 1,413,000	0.25%	\$ 3,209,414
2005	\$ 1,332,929	0.25%	\$ 3,026,213
2006	\$ 1,171,800	0.25%	\$ 2,679,774
2007	\$ 1,194,997	0.25%	\$ 2,688,678
2008	\$ 1,132,522	0.25%	\$ 2,564,578
2009	\$ 1,103,454	0.24%	\$ 2,547,284
2010	\$ 1,190,528	0.24%	\$ 2,754,862
2011	\$ 993,792	0.24%	\$ 2,300,582
2012	\$ 793,476	0.23%	\$ 1,900,397
2013	\$ 822,732	0.22%	\$ 1,974,218
2014	\$ 855,267	0.24%	\$ 1,935,263
2015	\$ 839,771	0.24%	\$ 1,908,365
2016	\$ 818,625	0.23%	\$ 1,898,166
2017	\$ 833,205	0.23%	\$ 1,898,340

# APPENDIX C FEBRUARY 2018 LOS ANGELES COUNTY RHNA PROGRESS REPORT

JURISDICTION	VLI RHNA	VLI PERMITS	VLI (DR) UNITS	VLI (NDR) UNITS	VLI REMAIN UNITS	VLI % COMPLETE	LI RHNA	LI PERMITS	LI (DR) UNITS	LI (NDR) UNITS	LI REMAIN UNITS	LI % COMPLETE	MOD RHNA	MOD PERMITS	MOD REMAIN UNITS	MOD % COMPLETE	ABOVE MOD RHNA	ABOVE MOD PERMITS	ABOVE MOD REMAIN UNITS	ABOVE MOD % COMPLETE	RHNA TOTAL	TOTAL PERMITS	TOTAL RHNA REMAIN
AGOURA HILLS	31	0	0	0	31	0.0%	19	0	0	0	19	0.0%	20	0	20	0.0%	45	34	11	75.6%	115	34	81
ALHAMBRA	380	0	0	0	380	0.0%	224	8	8	0	216	3.6%	246	3	242	1.6%	642	67	401	37.5%	1,492	78	1,239
BALDWIN PARK	142	47	47	0	95	33.1%	83	17	17	0	66	20.5%	90	0	90	0.0%	242	71	171	29.3%	557	135	422
BELL	11	0	0	0	11	0.0%	7	0	0	0	7	0.0%	8	3	5	37.5%	21	10	11	47.6%	47	13	34
BELLFLOWER	263	0	0	0	262	0.4%	164	6	6	0	148	9.8%	178	6	172	3.4%	462	178	231	50.0%	1,067	190	813
BEVERLY HILLS	1	4	2	2	0	100.0%	1	3	3	0	0	100.0%	1	2	0	100.0%	0	75	0	#DIV/0!	3	84	0
BURBANK	694	11	11	0	683	1.6%	413	0	0	0	413	0.0%	443	0	443	0.0%	1,134	308	826	27.2%	2,684	319	2,365
CALABASAS	88	8	8	0	80	9.1%	54	0	0	0	54	0.0%	57	0	57	0.0%	131	35	94	28.2%	330	43	285
CARSON	447	0	0	0	447	0.0%	263	0	0	0	263	0.0%	280	46	234	16.4%	708	83	625	11.7%	1,698	129	1,569
CUDAHY	94	0	0	0	94	0.0%	60	0	0	0	60	0.0%	67	0	67	0.0%	180	0	180	0.0%	401	0	401
DUARTE	87	42	42	0	45	48.3%	53	1	1	0	52	1.9%	55	0	55	0.0%	142	0	142	0.0%	337	43	294
GARDENA	98	0	0	0	98	0.0%	60	0	0	0	60	0.0%	66	20	46	30.3%	173	63	110	36.4%	397	83	314
GLENDALE	508	83	83	0	425	16.3%	310	60	60	0	250	19.4%	337	1	336	0.3%	862	2,495	0	100.0%	2,017	2,639	1,011
GLENDORA	171	0	0	0	171	0.0%	100	0	0	0	100	0.0%	108	0	108	0.0%	307	399	0	100.0%	686	399	379
INGLEWOOD	250	0	0	0	250	0.0%	150	0	0	0	150	0.0%	167	0	167	0.0%	446	20	415	7.0%	1,013	20	982
LA CANADA FLINTRIDGE	92	0	0	0	92	0.0%	57	0	0	0	57	0.0%	62	0	62	0.0%	132	23	109	17.4%	343	23	320
LAKEWOOD	107	0	0	0	107	0.0%	63	0	0	0	63	0.0%	67	0	67	0.0%	166	72	94	43.4%	403	72	331
LOMITA	12	0	0	0	12	0.0%	7	2	0	2	5	28.6%	8	16	0	100.0%	20	0	20	0.0%	47	18	37
LONG BEACH	1,773	137	137	0	1,636	7.7%	1,066	22	22	0	1,044	2.1%	1,170	0	1,170	0.0%	3,039	966	2,073	31.8%	7,048	1,125	5,923
LOS ANGELES	20,427	2,467	2,467	0	17,748	13.1%	12,435	2,007	2,007	0	9,835	20.9%	13,728	235	13,453	2.0%	35,412	41,111	0	100.0%	82,002	45,820	41,036
LOS ANGELES COUNTY	7,841	226	226	0	7,615	2.9%	4,644	0	0	0	4,644	0.0%	5,052	0	5,052	0.0%	12,562	2,923	9,639	23.3%	30,099	3,149	26,950
MALIBU	1	0	0	0	1	0.0%	1	0	0	0	1	0.0%	0	0	0	#DIV/0!	0	29	0	#DIV/0!	2	29	2
MONROVIA	142	0	0	0	142	0.0%	88	0	0	0	88	0.0%	96	2	93	3.1%	241	479	0	100.0%	567	481	323
NORWALK	75	0	0	0	75	0.0%	46	0	0	0	46	0.0%	50	8	42	16.0%	126	11	115	8.7%	297	19	278
PALMDALE	1,395	0	0	0	1,395	0.0%	827	0	0	0	827	0.0%	898	0	898	0.0%	2,332	137	2,195	5.9%	5,452	137	5,315
PARAMOUNT	26	0	0	0	26	0.0%	16	0	0	0	16	0.0%	17	0	17	0.0%	46	10	36	21.7%	105	10	95
PASADENA	340	135	135	0	201	40.9%	207	38	38	0	169	18.4%	224	45	179	20.1%	561	1,352	0	100.0%	1,332	1,570	549
RANCHO PALOS VERDES	8	4	4	0	4	50.0%	5	0	0	0	5	0.0%	5	0	5	0.0%	13	100	0	100.0%	31	104	14
ROSEMEAD	153	0	0	0	153	0.0%	88	0	0	0	88	0.0%	99	0	99	0.0%	262	0	262	0.0%	602	0	602
SAN DIMAS	121	0	0	0	121	0.0%	72	0	0	0	72	0.0%	77	0	77	0.0%	193	28	165	14.5%	463	28	435
SAN FERNANDO	55	28	28	0	27	50.9%	32	14	4	10	18	43.8%	35	0	35	0.0%	95	36	59	37.9%	217	78	139
SAN GABRIEL	236	1	0	1	233	1.3%	142	0	0	0	142	0.0%	154	60	91	40.9%	398	81	291	26.9%	930	142	757
SAN MARINO	7	0	0	0	7	0.0%	5	0	0	0	5	0.0%	5	2	3	40.0%	0	17	0	#DIV/0!	17	19	15
SANTA FE SPRINGS	82	0	0	0	82	0.0%	50	0	0	0	50	0.0%	53	0	53	0.0%	139	207	0	100.0%	324	207	185
SIGNAL HILL	44	44	44	0	0	100.0%	27	27	27	0	0	100.0%	28	19	9	67.9%	70	4	66	5.7%	169	94	75
WALNUT	246	0	0	0	246	0.0%	144	0	0	0	144	0.0%	155	1	154	0.6%	363	337	26	92.8%	908	338	570
WEST COVINA	217	0	0	0	217	0.0%	129	0	0	0	129	0.0%	138	0	138	0.0%	347	518	0	100.0%	831	518	484
WEST HOLLYWOOD	19	69	69	0	0	100.0%	12	74	74	0	0	100.0%	13	39	0	100.0%	33	1,212	0	100.0%	77	1,394	0
DOWNNEY	210	0	0	0	210	0.0%	123	6	6	0	117	4.9%	135	70	65	51.9%	346	69	277	19.9%	814	145	669
EL MONTE	529	137	137	0	378	28.5%	315	36	36	0	273	13.3%	352	2	344	2.3%	946	63	878	7.2%	2,142	238	1,873
HAWTHORNE	170	0	0	0	170	0.0%	101	127	127	0	0	100.0%	112	34	78	30.4%	300	324	0	100.0%	683	485	248
SANTA MONICA	428	210	210	0	218	49.1%	263	103	103	0	160	39.2%	283	18	265	6.4%	700	653	47	93.3%	1,674	984	690
WHITTIER	228	0	0	0	228	0.0%	135	0	0	0	135	0.0%	146	162	0	100.0%	369	38	331	10.3%	878	200	694

Source: California Department of Housing and Community Development

## APPENDIX D SUMMARY STATISTICS ASSUMPTIONS- HOUSING ELEMENT SITE INVENTORY ANALYSIS

Uses	Total	Percentage	Units by Type	Percentage	Units by Type (w/o outlier)	Percentage
Single Family Home	69	53.08%	311	12.25%	311	17.18%
Vacant	14	10.77%	808	31.82%	79	4.36%
Commercial	13	10.00%	671	26.43%	671	37.07%
Multifamily	23	17.69%	189	7.44%	189	10.44%
Office	4	3.08%	98	3.86%	98	5.41%
Parking Lot	4	3.08%	120	4.73%	120	6.63%
Mixed Use	1	0.77%	15	0.59%	15	0.83%
Industrial	2	1.54%	327	12.88%	327	18.07%
<b>Total</b>	<b>130</b>		<b>2539</b>		<b>1810</b>	

Costs	City	Per-unit Land Cost	Per Unit Total Cost			
	Inglewood	\$174,293	\$408,293			
	Azusa	\$158,917	\$392,917			
	Santa Monica	\$380,286	\$614,286			
Rents	City	MM Submarket	MM Q4	Post Loc. Adjustment	Inflated (50% of MM YOY growth)	
	Inglewood	South Bay / Long Beach	\$2,015	\$2,015	\$2,073	
	Azusa	San Fernando Valley / Tri-Cities	\$1,955	\$1,564	\$1,610	
	Santa Monica	Westside Cities	\$3,085	\$3,085	\$3,193	
Feasibility	City	NOI	Return on Cost			
	Inglewood	\$1,286	3.78%			
	Azusa	\$998	3.05%			
	Santa Monica	\$1,980	3.87%			

## Detailed Assumptions and Methodology

### *Sampling Procedure*

Housing Element Sites were extracted from the city's Housing Inventories and placed into Microsoft Excel. The program's random number generator was then used to randomly select sites. The sample size chosen was a statistically significant representative sample given the number of sites included in the city's housing inventory.

### *Price Estimates*

For the vast majority of sites, the parcel's "Zestimate" was used. Available from Zillow, a Zestimate is a hedonic price analysis of the site, given site characteristics and recent nearby sales. When a Zestimate was unavailable, the authors identified comparable for-sale properties.

### *Comparative Analysis as Needed for Commercial, Vacant, and Multifamily Properties*

Multifamily comparables used a cost per unit based on Loopnet multifamily properties currently for sale in the respective city. In Azusa, due to the lack of available multifamily comparable properties, a price per land square foot was extracted from commercial and industrial comparables respectively, and then applied to the total square footage of the Housing Element Sites.

In Santa Monica, multifamily comparable for-sale projects were largely small buildings, and were priced very high on a per-unit basis, likely reflecting higher intensity development potential on the sites. In order to adjust a bit for the lower per-unit costs of larger projects, these costs were discounted based on the size of the project. Sites with capacity < 20 units were discounted by 10%, sites 20-50 units by 20%, sites 50-100 units by 30%, sites 100-200 units by 40%, sites 200-400 units by 50%, and sites >400 units by 60%.

### Development Cost Assumptions

- Avg. unit size = 750 square feet (assumption for consistency across cities)
- Construction Cost = \$240 per square foot
- Soft Costs as a percentage of Hard Costs = 30% (assumption)

38%, based on assumptions used in Los Angeles' Nexus Study for its Linkage Fee.<sup>4</sup>

### Feasibility Assumptions

- Return on Cost required per market was drawn from Realty Rates market reports from the fourth quarter of 2017.<sup>5</sup>

### Rent and Operating Expenses Assumptions

- *Santa Monica*: Westside cities effective rent per unit = \$3,085. YOY change is 7.1% in 4th quarter 2017, so increase for 2018 would likely be similar.<sup>1</sup>
- *Inglewood*: Used the South Bay / Long Beach region as the closest analogue. Effective rent per unit = \$2,015. YOY change is 5.8% in 4th quarter 2017, so increase for 2018 would likely be similar.<sup>2</sup>
- *Azusa*: Used the San Fernando Valley / Tri-Cities region as the closest analogue. Effective rent per unit = \$1,955. YOY change is 5.9% in 4th quarter 2017, so increase for 2018 would likely be similar.<sup>3</sup>
- Operating Expenses were assumed at

<sup>1</sup> Marcus and Millichap, "Multifamily Research Market Report - Los Angeles County - 4th Quarter 2017," 2017, <http://www.marcusmillichap.com/research/researchreports>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Bae Urban Economics, "Los Angeles Affordable Housing Linkage Fee Nexus Study," 2016, [https://planning.lacity.org/ordinances/docs/AHLF/LA\\_Linkage\\_Fee\\_Final\\_Report\\_9-21-16.pdf](https://planning.lacity.org/ordinances/docs/AHLF/LA_Linkage_Fee_Final_Report_9-21-16.pdf)

<sup>5</sup> RealtyRates.com, "Market Survey - 4th Quarter 2017," 2017, <http://www.realtyrates.com/learnmore.html>