

2020 MCLE Spectacular
Real Estate Section

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“State of the Art in Housing and Land Use Law in California”

I. Introduction to Housing Shortage

A. Recent study found that by 2025, 3.5 million new homes would be needed to address current housing crisis in California. Recent decades have seen in-state housing production fall far below this. Only 308 units created for every 1,000 new residents between 2005 and 2015. Housing is unaffordable to wide swaths of the population. California ranks 49th in homeownership. (See McKinsey Global Institute, 2016)

II. Introduction to Land Use

A. How decisions to approve housing projects have traditionally been made – with an emphasis on local decision making power (i.e. lots of local subjective discretionary control, CUP findings and conditions, Design Review, etc.).

B. General police power from the California Constitution.

C. Recent decades and recent years have altered this process for certain qualifying residential projects (i.e., Housing Availability Act; SB 330).

D. Examples of modern land use laws: (1) CEQA, (2) Housing Accountability Act (Gov. Code § 65589.5), (3) state Density Bonus Law (Cal. Gov. Code § 65589, et seq.), (4) Permit Streamlining Act (Gov. Code §. 65920 et seq.), (5) SB 330 (Housing Crisis Act of 2019), (6) SB 35 (affordable housing streamlined approval, 2017), (7) ADU (accessory dwelling unit) laws.

E. Even with new state laws, the California legislature is not drafting granular level of details, which can lead to broad latitude to local public agencies and vast differences among them in terms of the application of state laws. Recent legislative efforts have sought to change this and further limit local discretion for housing development projects.

III. Housing Accountability Act

A. Originally enacted in 1982, and has been expanded 22 times since then.

B. The most powerful state housing production law. For market rate housing development projects, those consistent with objective general plan, zoning, subdivision and design standards can only be denied by local agency if the agency can make significant health and safety findings. Qualifying affordable housing projects are even more difficult to deny. The HAA thus limits local discretion to deny housing projects.

IV. SB 330 – The Housing Crisis Act

- A. 5 year bill that expires January 2025.
- B. “Preliminary application” is a new mechanism. Upon filing preliminary application with 17 items, applicant has vested rights, which locks in rules in effect on the date of filing.
- C. Includes streamlining measures, establishes a 5 hearing limit upon the local agency (and continued hearings are included), and also shortens existing deadlines under the Permit Streamlining Act.
- D. Generally prohibits downzoning of residentially zoned property in urban areas, unless zoning changes in other areas of a jurisdiction result in no overall net loss of residential capacity.
- E. Includes new definition of “objective” development standards that further limits use of subjective judgment by local agencies when reviewing qualifying housing project applications.

V. Challenges of “one size fits all” Approach

- A. Unintended consequences.
- B. Because of long history of local control, localities are not equally suited to apply uniform state law.

VI. Practical Approaches in Dealing with Different Localities

- A. Dealing with different cities that have varied priorities, politics and resources for applying state laws.

VII. Looking Forward

- A. Solutions are complicated (intersection of law, politics and strategy).
- B. Exempting housing projects from CEQA?
- C. Cost-shifting mechanisms for filing CEQA lawsuits?
- D. Re-thinking appeal fees?
- E. Think about inputs that drive costs of housing and to whom those are ultimately passed.

VIII. Viewer Questions

IX. Additional Resources

- Land Use Developments Blog (Miller Starr Regalia)
[<https://www.landusedevelopments.com/>]
- *Golden Gates: Fighting for Housing in America*, Conor Dougherty