How Can Procedural Reform Support Fair Share Housing Production? Assessing the Effects of California's Senate Bill 35

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Abstract

Land use regulation that constrains housing production risks social, economic, and environmental harm. California attempts to avoid these harms by mandating localities plan to accommodate their fair share of housing production to meet local and regional needs. Decades of inadequate affordable housing production galvanized the legislature to pass multiple laws to address regulatory obstacles to affordable housing production. One of those laws, Senate Bill 35, creates a ministerial approval pathway for qualifying housing in communities that have failed to meet their housing production targets in prior years. Lawmakers hoped that making affordable housing development faster and more predictable would facilitate building more housing at a lower cost. This article provides preliminary empirical support for that theory. In some cities, Senate Bill 35 is, in fact, speeding up housing approvals.

Introduction

Land use regulation that constrains housing production risks exacerbating and perpetuating economic and racial segregation, inhibiting economic growth, increasing the cost of housing, and worsening environmental harm (Glaeser, Gyourko, and Saks, 2005; Hsieh and Moretti, 2019; Lens and Monkkonen, 2016; Rothwell and Massey, 2009; Sterk, 2021).[1] California's housing law

[1] For example, municipal land use regulation tends to lower housing density and increase sprawl (Levine, 2005). Sprawl, in turn, leads to more resource-intensive households that contribute disproportionately to carbon emissions (Jones and Kammen, 2014).

attempts to avoid these outcomes by imposing "fair share housing production" requirements on local zoning and planning (Elmendorf et al., 2021a; HCD, n.d.a). Despite this planning framework, housing need has outpaced housing demand in many California communities for decades.

Inadequate production, particularly affordable housing production, has galvanized the California legislature to reform state housing law across many dimensions.[2] This article discusses just one of these recent reforms, enacted in 2017—Senate Bill 35 (SB 35).[3] SB 35 builds on the state's existing fair share production law by limiting procedural obstacles to some housing production. SB 35 preempts local power to impose a discretionary approval process on qualifying affordable or mixed-income housing in localities that have failed to approve adequate, affordable housing in prior years (Wiener, 2017). Lawmakers hoped that making affordable housing development faster and more predictable would allow for more housing to be built in more communities at a lower cost (Wiener, 2017). This article provides preliminary empirical support for that theory. In some cities, SB 35 is, in fact, speeding up housing approvals.

This article describes the relevant California housing and planning law, then explains SB 35's intervention within that framework. Next the authors explain how the Comprehensive Assessment of Land Use Entitlements Study (CALES) data (O'Neill-Hutson et al., 2022) lends itself to exploring the effect of SB 35 in selected cities. Then, the article offers findings on how SB 35 has operated in five important local jurisdictions: Berkeley, Los Angeles, Los Angeles County, Oakland, and San Francisco.

Background

California's Housing Element Law provides the state's legal and planning framework to meet housing demand and address residential segregation (Ramsey-Musolf, 2016). Housing Element Law in California "took shape in the 1970s in an era in which there was increasing concern with civil rights and the ability of minorities and low-income families to have an opportunity to live in suburbia, not just in inner-city or rural enclaves" (Lewis, 2003). Housing Element Law attempts to remedy economic segregation through comprehensive long-term planning processes that theoretically force localities to plan and zone for each jurisdiction's "fair share" of housing for all income levels.

Housing Element Law operates within California's broader comprehensive planning law. Cities and counties must update their Housing Elements every 5 or 8 years (HCD, n.d.b).[4] The Housing Element sets forth how the locality will support the production of sufficient housing units at

[2] California State Senate, Senate Committee on Transportation and Housing Analysis, March 2, 2019, page 4. *Senate Bill 35. Planning and Zoning: Affordable Housing: Streamlined Approval Process*. 2017–18 Reg. Sess., 4. https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB35.

[3] In addition to SB 35, the 2017–18 California legislature passed 15 pieces of legislation that aimed to, among other things, raise money to finance low-income developments, incentivize cities to plan neighborhoods for new development, allow cities to implement low-income requirements on developments, preserve existing low-income housing, require cities to plan for more housing, and enhance enforcement against cities that deny housing projects (Dillon, 2017). The legislature has continued to work actively in this area in the intervening years. Perhaps the most prominent changes have been California's allowing duplexes on most single-family lots statewide.

[4] Cal. Gov't. Code Sec. 65585(e)(3).

each of four income levels—very low, low, moderate, and above-moderate (HCD, 2020: 9).[5] The local government does not determine what is sufficient—production targets come from the state's Regional Housing Needs Assessment (RHNA) (Elmendorf et al., 2021a: 978; Lindgren and Mattas, 2022: Sec. 2.13).

The RHNA process begins with the California Department of Housing and Community Development (HCD) first determining the overall housing need for each region of the state based on state demographic data, working with regional planning bodies.[6] Each region then allocates its housing need between all the cities and counties within its region,[7] assigning a number of housing units to each locality for each income level.[8] Localities must then demonstrate that enough parcels in their jurisdiction are zoned to accommodate those targets and identify and correct for regulatory constraints on housing production (Elmendorf et al., 2021b: 611–12).[9]

Local governments submit their housing elements to HCD for approval. Following approval, localities must also submit annual reports on their progress in implementing the Housing Elements (HCD, n.d.a). HCD also has enforcement authority when communities fail to meet their obligations under Housing Element law.[10] If HCD decertifies a Housing Element, state law provides for several potential consequences: A local government may be unable to access state funding for community development, infrastructure, housing, and transportation and be exposed to lawsuits, with plaintiffs eligible for attorneys' fees (Elmendorf et al., 2021c; HCD, n.d.b). A court may also mandate the approval of building permits for affordable housing developments or suspend the local government's permitting authority altogether (HCD, n.d.c).[11]

Despite the ostensible force of Housing Element Law, California communities have failed to meet housing production needs. Indeed, research indicates that between 1994 and 2000, local compliance with Housing Element Law did not result in any more local housing production

[5] Cal. Gov't. Code Sec. 65585(c); California Department of Housing and Community Development, "Housing Element Sites Inventory Guidebook," p. 9, https://www.hcd.ca.gov/community-development/housing-element/docs/sites_inventory_memo_final06102020.pdf.

[6] Cal. Gov't. Code Sec. 65584.01(a).

[7] Cal. Gov't. Code Sec. 65584.03.

[8] These income categories are prescribed in the California Health and Safety Code, Section 50093, *et seq*. See also Cal. Gov. Code Section 65583. Notably, some argue that the allocations exacerbate existing income and racial segregation; one study found that the regional planning process led to assigning a disproportionate share of very low- and low-income units to jurisdictions with larger minority populations. See Bromfield and Moore (2017).

[9] At page 612, Elmendorf discusses Cal. Gov't. Code Sec. 65583(a), (c).

[10] Cal. Gov't. Code Sec. 65585(i)-(j); Assem. Bill 72, 2017-18 Reg. Sess., requiring HCD to review written findings about actions inconsistent with an adopted housing element and authorizing HCD to revoke a prior finding of compliance for a housing element, and AB 215 (2021), expanding HCD's mandate to notify the Attorney General to bring action to enforce state law violations in housing element and authorizes HCD to appoint its own counsel if the Attorney General declines to represent the department in such an action, including https://www.hcd.ca.gov/planning-and-community-development/accountability-and-enforcement. That enforcement authority has grown over time. Compare McDougall (1987)—following amendments to state law in 1984, the HCD must give prior approval to all local fair-share plans—with Elmendorf et al. (2021a) "The legislature has also authorized HCD to decertify housing elements midcycle for failures of implementation and has backstopped decertification with fiscal penalties and more."

[11] Cal. Gov't. Code Sec. 65755.

(Lewis, 2005). Scholars offer multiple explanations for local failure to meet production targets.[12] The critique that Housing Element Law did not dismantle the procedural obstacles that can block the construction of new housing is of particular interest to this research (Monkkonen, Manville, and Friedman, 2019: 3). In theory, the law required localities to identify and mitigate regulatory constraints to housing production, but in practice, local governments offered little to no analysis of local constraints and doing so led to no consequences (Elmendorf et al., 2021b: 612). Prior research suggests that the systematic failure to identify and correct for procedural obstacles to production may significantly curtail housing production, even in cities that zone a lot of land for dense housing (O'Neill-Hutson et al., 2022).

Procedural obstacles in California communities can manifest in different ways. California law allows local governments latitude in how they approve residential development. Many communities use discretionary review processes when approving housing developments, even those that conform to base zoning and planning standards (that is, the density, use, setback, and other requirements that dictate what type of development can go on a parcel). Discretionary review refers to a local government's ability to impose conditions of approval—or deny approval altogether—when deciding whether to approve proposed development.[13] The discretionary approval process is best understood by contrasting it with a ministerial process in which a decisionmaker applies law to fact without using subjective judgment.[14] A discretionary process allows for uncertainty and delay, which can increase costs; a ministerial process suggests approval is certain if a project proponent meets specified requirements.[15]

Discretionary design, architecture review, site development review, and historical preservation review are all examples of discretionary processes that localities apply to development that conforms to all base zoning requirements (O'Neill-Hutson et al., 2022: 18). In past research, O'Neill-Hutson et al. found that nearly all dense developments studied went through a discretionary approval process—even in areas that cities have identified for dense development

[12] These factors include that Housing Element Law does not require localities to actually produce additional housing (Lewis, 2003; Monkkonen, Manville, and Friedman, 2019). Moreover, material consequences are few for failing to deliver on housing shares, and the planning process bases local housing need on past population growth, perpetuating exclusivity and unaffordability (Elmendorf, 2019; Kazis, 2020). Finally, the process frequently defers to affluent cities that lobby to keep their RHNA shares low (Monkkonen, Manville, and Friedman, 2019: 3).

[13] California's Housing Accountability Act (HAA) codified in Cal. Gov't. Code Sec. 65589.5 *et seq*. requires that a local government issue written health and safety findings when imposing conditions of approval that reduce density or outright denying approval for certain housing developments. The written findings must justify the denial "based on a preponderance of the evidence in the record" (65589.5(d)). Amendments to the HAA in 1999 also provided that the HAA limits the scope of local discretion over developments that conform to "objective" general plan and zoning requirements in Cal. Gov't. Code Sec. 65589.5(j). Also, penalties exist for bad-faith disapprovals in Cal. Gov't. Code Sec. 655589.5(l).

[14] For a definition of ministerial in California law, *see Prentiss v. City of S. Pasadena*, 15 Cal. App. 4th 85, 90, 18 Cal. Rptr. 2d 641 (1993), citing Cal. Code Regs., title 14 section 15268 (b)(1) "'Ministerial' describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out."

[15] For a discussion of what characterizes a discretionary action, *see Friends of Westwood, Inc. v. City of Los Angeles* 181 Cal. App. 3d 259, 269-74 (1987). When city employees can set standards and conditions for many aspects of a proposed building, the approval process is discretionary.

through zoning and planning designations (O'Neill-Hutson et al., 2022: 51–52).[16] Discretionary processes may enable local governments and homeowners to effectively block projects by creating costly delay and uncertainty (Elmendorf, 2019: 88).[17] In earlier work, O'Neill-Hutson et al. also found that median entitlement timeframes for discretionary projects can span a few months to many years, with timeframes varying widely across neighboring cities for similar developments subject to similar processes (O'Neill-Hutson et al., 2022: Table 8).

In California, local discretionary review also triggers state-mandated environmental review under the California Environmental Quality Act (CEQA). The California legislature enacted CEQA in 1970 as a tool to review and mitigate potentially significant environmental effects of public actions.[18] As relevant here, CEQA requires local governments to study and disclose the effects of their decisions, including discretionary housing approvals, on the environment (defined broadly) and to engage in a public participation process to guide that analysis of impacts.[19] Projects that are more likely to have a significant effect on the environment require more extensive study and disclosures. CEQA review also applies to local legislation. For example, if the local legislature would like to create a new ministerial pathway for housing approvals previously subjected to discretionary review, CEQA applies.[20]

Critics of CEQA argue that this environmental review process adds significant expense, time, and uncertainty to project development, potentially leading to fewer residential projects being pursued and built.[21] CEQA lawsuits have challenged or stalled the development of affordable housing, as well (Gray, 2021; Sedonaen, 2018). Indeed, some scholars argue that CEQA's deference to local agencies in the face of extensive delays and bad-faith tactics may allow development opponents to "launder" project denials through CEQA when the actual grounds for their option may have nothing to do with environmental concerns (Elmendorf and Duncheon, 2022: 17–23).

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[16] The CALES studied over 2,000 housing approvals for five or more units of housing. More than 80 percent required discretionary approvals.

[17] A recent appellate opinion demonstrates that project proponents and housing advocates may successfully seek judicial relief from local-level bad-faith denials under the HAA, partially ameliorating this problem. *See California Renters Legal Advocacy & Education Fund v. City of San Mateo*, 68 Cal. App.5th 820 (2021).

[18] See Cal. Pub. Res. Code Sec. 21002.

[19] Prior research found that most dense development of five units or more across 20 jurisdictions was subject to discretionary review, even in areas designated for dense development. As a result, most multifamily developments fell within CEQA's ambit (O'Neill-Hutson et al., 2022). Moreover, courts have interpreted CEQA broadly. Notoriously, a state court of appeal recently found that the University of California (U.C.) Berkeley's decision to increase student enrollment was a "project" subject to CEQA review and considered environmental effects, including "increased use of off-campus housing by U.C. Berkeley students (leading to increases in off-campus noise and trash), displacement of tenants and a consequent increase in homelessness, more traffic, and increased burdens on . . . public safety services." *Save Berkeley's Neighborhoods v. Regents of University of California*, 51 Cal. App.5th 226 (1st Dist. 2020). In this instance, the state legislature stepped in to supersede the court's decision by amending CEQA to state that enrollment increases on their own do not constitute a project under CEQA. Cal. Pub. Res. Code Sec. 21080.09.

[20] See, for example, *Union of Med. Marijuana Patients, Inc. v. City of Upland*, 245 Cal. App. 4th 1265, 1272 (4th Dist. 2016) "Ordinances passed by cities are clearly activities undertaken by a public agency and thus potential 'projects' under CEQA," quoting *Santa Monica Chamber of Commerce v. City of Santa Monica*, 101 Cal. App.4th 786, fn. 2 (2nd Dist. 2002). However, "a municipal ordinance that merely restates or ratifies existing law does not constitute a project . . ." *Union of Med. Marijuana Patients, Inc. v. City of Upland*, 245 Cal. App. 4th 1265, 1273 (4th Dist. 2016).

[21] See, for example, Hernandez (2018) and Gray (2021).

How Senate Bill 35 Operates

SB 35 reduces procedural hurdles to production. SB 35 does so by eliminating both local discretionary review and state mandated environmental review for qualifying urban housing developments in jurisdictions that have not met their state-set housing production targets or process requirements under the Housing Element Law.

If cities or counties failed to approve enough housing units in their most recent reporting period to meet their need allocation for certain income levels, they lose their discretionary authority over specified projects.[22] Instead, housing developers can apply to have the city use a state-required ministerial approval process.[23]

Under the SB 35 process, local governments may still impose their objective local zoning and design review standards.[24] However, SB 35 significantly reduces or eliminates parking requirements.[25] Local governments may not impose additional discretionary review, however. Importantly, SB 35 also provides for strict timelines for the approval process. The local government must adhere to 90- or 180-day time limits (depending on the size of the development) for design review and public oversight processes.[26] Affordable housing developments also receive extended expiration periods to complete construction.[27] If the project is not consistent with objective standards, the city must inform the developer in writing within 60 or 90 days.[28] Local governments may not impose additional fees or inclusionary housing requirements on these developments.[29] Because SB 35 does not allow for a discretionary approval process for qualifying projects, CEQA review is no longer required.

Which projects are eligible? SB 35 applies a ministerial approval process only to urban multifamily housing developments that meet specific affordability thresholds.[30] Additional criteria attempt to preserve affordability and prevent displacement: Eligible projects cannot involve the demolition

[22] Cal. Gov't. Code Sec. 65913.4(a)(4)(A). SB 35 initially provided that a jurisdiction that either permitted too few developments by income level *or* had not submitted their annual report for 2 consecutive years was required to perform a streamlined review for qualified developments. The state legislature later removed 2 consecutive years of nonreporting as a way for jurisdictions to fall under SB 35. *Compare* Stats.2017, c. 366 (S.B.35), Sec. 3, eff. Jan. 1, 2018 to Stats.2018, c. 92 (S.B.765), Sec. 2, eff. Jan. 1, 2019.

[23] See *Prentiss v. City of S. Pasadena*, 15 Cal. App. 4th 85, 90 (1993).

[24] Cal. Gov't Code Sec. 65913.4(a)(5).

[25] Localities may not impose parking standards for streamlined developments within one-half of a mile of public transit, within architecturally and historically significant historic districts, requiring on-street parking permits but not offering them to occupants of the development or within one block of a car share vehicle. For all other developments, parking standards cannot exceed one parking space per unit. Cal. Gov't Code Sec. 65913.4(d).

[26] Cal. Gov't Code Sec. 65913.4(c).

[27] Cal. Gov't Code Sec. 65913.4(e).

[28] Cal. Gov't Code Sec. 65913.4(b)(1).

[29] Localities cannot impose any increased fees or inclusionary housing requirements based solely or partially on the fact that the project has received streamlined approval under SB 35 per Cal. Gov't Code Sec. 65913.4(f).

[30] Cal. Gov't Code Sec. 65913.4(a).

of affordable or tenant-occupied housing.[31] The development must not require subdivision.[32] The development may not be sited in environmentally sensitive or significant areas.[33] A significant portion of the law also ensures developers using this streamlined process pay prevailing union wages to both contractors and subcontractors.[34]

Research Questions and Hypothesis

This article explores how SB 35 operated within specific study cities for project approvals in 2018, 2019, and 2020. The authors examine—

1. What types of developments benefited from SB 35 in these years in the study cities?
2. For development that benefited from SB 35, how did the SB 35 approval process unfold?
3. What effect does SB 35 have on approval processes within these cities?

In earlier research, O'Neill-Hutson et al. (2022) examined the pathways to approvals for developments of five or more units of housing issued in 2014, 2015, 2016, and 2017 in 20 jurisdictions. More than 80 percent of the more than 2,000 approved developments navigated a discretionary review process on the way to approval; that is, they required "entitlement" before they could proceed to the building department for permits to build.

For developments subject to a discretionary process, O'Neill-Hutson et al. found extreme differences in the time between a project's application and its entitlement, even between neighboring urban cities for similar housing development. The median timeframe to entitlement for multifamily development that conformed to all local planning and zoning requirements in San Francisco exceeded 25 months. Next door, in Oakland, the median for the same was 6 months. Both cities had similar regulations "on the books" and applied identical CEQA streamlining to satisfy state required environmental review.

The authors hypothesized that (as the legislature intended it to) SB 35 should curtail process time lags and risk of opposition for at least some mixed-income development. The authors hypothesized that SB 35 would have the greatest effect in cities with more onerous procedural hurdles—like Berkeley or San Francisco.

Methods

To understand SB 35's effect on entitlement processes in the study jurisdictions, the authors built on the research from O'Neill-Hutson et al. (2022) by adding analysis and data from the existing 20 case studies, an additional 8 case studies, and annual progress reports (APRs) for all 28 jurisdictions

[31] Cal. Gov't Code Sec. 65913.4(a)(7). Indeed, the project is ineligible if the proposed project is on a site that used to have tenant-occupied housing, but that tenant housing was demolished within the past 10 years. The code has additional anti-displacement provisions, as well.

[32] Cal. Gov't Code Sec. 65913.4(a)(9).

[33] Cal. Gov't Code Sec. 65913.4(a)(6).

[34] Cal. Gov't Code Sec. 65913.4(a)(8).

produced under state Housing Element Law. The CALES case studies used mixed-method research to understand planning, zoning, and approval pathways in 28 jurisdictions throughout the State of California. To identify which of these cities would provide insight into the potential effect of SB 35, the authors first used 2018 and 2019 annual progress reports to identify which of the 28 CALES study jurisdictions reported approving developments that used SB 35. Only five of the study cities reported approvals through SB 35 in these years, so the authors restricted this research to those five jurisdictions: Berkeley, Los Angeles, Los Angeles County, Oakland, and San Francisco. That said, that the other 23 jurisdictions initially reported no approvals under SB 35 is a notable fact about the law's early implementation, meriting further investigation.

Local governments implement SB 35, not the state. Whether developers use SB 35 depends partly on how localities provide information about their SB 35 procedures and whether they make prompt determinations about whether projects meet objective criteria. Thus, to better understand some factors that might drive local outcomes despite the state's attempt to standardize approval processes, the authors reviewed how these five local governments explain their implementation of SB 35 and how SB 35 fits into each jurisdiction's existing legal regime.

Next, the authors examined how SB 35-eligible projects navigated the SB 35 approval pathway in each city. The goal was to compare these processes with processes for similar developments in earlier years, which were explored using a housing approval dataset developed for each of the CALES case study cities.

Reviewing both APR data and local data portals, the authors found 49 potential observations of proposed developments across five jurisdictions.[35] The authors then confirmed whether these 49 observations did, in fact, benefit from SB 35 and expanded the data collection to determine if additional developments benefited from SB 35 in 2020 using documents each jurisdiction makes available through their local public portals. The authors then coded the data to allow for comparative analysis with similar developments entitled in 2014–17 in the same five jurisdictions.

The observations from prior years do not have all the details needed to conclusively determine that a project would have met SB 35 requirements. For example, the authors do not have information on whether developments entitled in 2014–17 met the statute's prevailing wage requirements. Therefore, the authors selected projects entitled prior to SB 35 that met SB 35's affordability, density, and siting requirements and that were consistent with objective zoning and design review standards. The authors then compared these pre-SB 35 entitlements with SB 35 approvals in later years. The authors focused on required steps and entitlement timeframes when comparing developments. Each jurisdiction requires its planning department to review whether the proposed development qualifies for review under SB 35, and approval under SB 35, to proceed to the next step of applying for a

[35] A quick review of the APR data across the entire state for these same years suggests that the total number of SB 35 approvals statewide may not be very high. Most reported SB 35 approvals in the 2018, 2019, and 2020 APR data (Table A) are incorrect. Jurisdictions appeared to report SB 35 approvals for single-family development (not allowed under the law). The APRs from those years indicate only around 125 possible SB 35 approvals across the state. The authors are unable in this research to fully explain why more development did not benefit from SB 35. Base zoning (density and use controls) in some urban communities could be the problem. Prevailing wage requirements could be problematic in some regional markets. Site characteristics might also present an obstacle.

building permit. The eligibility review process allows the authors to uniquely create a comparison between state ministerial approvals with local discretionary approvals in prior years.

An important limitation of this study, and data, is that findings from each study city are not representative of how entitlement (or SB 35) operates across the state. The authors rely on case studies to explain entitlement (and the application of SB 35) in specific cities—and do not draw conclusions about how SB 35 operates in California, more generally, although the authors hope these findings help build toward that larger understanding. Also, these study observations are limited to proposed developments that were successfully entitled in 2014–17 or successfully qualified for SB 35's ministerial process in 2018, 2019, or 2020. In other words, these data represent those developments that developers likely believed had a high enough probability of success that they were willing to pursue entitlement in the first place. Thus, the authors cannot rigorously evaluate whether SB 35 is changing the quantity or type of project proposed by developers, who make those decisions in light of the applicable local legal regime. Even so, to the extent that this research shows a faster and more predictable approval process under SB 35, the authors would expect that developers adjust their behavior accordingly. Finally, the authors did not find complete data in all five cities that would allow for comprehensive timeframe calculations for all five cities.

Findings

Although SB 35 provides criteria about when and where it applies and imposes time constraints on planning department eligibility review, it is not possible to extract a fully standard approach to reviewing and processing applications from the language of the statute. Indeed, none of the five jurisdictions studied modified their procedural rules in exactly the same way. Thus, the authors begin each city-specific discussion with how the local government complied with the state law's eligibility review requirements. How cities respond to the time constraints on the eligibility review process is significant in California, because past efforts to impose time constraints on procedure have had mixed results, at best.[36] Fully understanding the findings with respect to SB 35's project-level effects requires contextualizing those findings with cities' still-disuniform procedures for accessing the SB 35 process. Having provided that context, the authors then discuss the effect of SB 35 on development approvals, offering comparisons with similar developments in prior years where possible.

[36] For example, the Permit Streamlining Act requires that local governments make completeness determinations within 30 days of a project application date, or the project application is "deemed complete" and ready for planning department review. The authors observed that many cities ignore this requirement entirely, whereas others do not make completeness determinations but do capture "deemed completed" dates within planning review tracking software.

The City of Los Angeles

Los Angeles' Senate Bill 35 Processes Add More Steps to Determining Eligibility, but the City's Application of Density Bonus Law Allows More Developments to Qualify

Separate from SB 35, the city of Los Angeles generally provides a ministerial process for code compliant development, up to 49 units.[37] California's Density Bonus law further allows some code compliant developments larger than 49 units to benefit from Los Angeles' local ministerial process.[38] A property owner that qualifies for ministerial approval under local law applies for a building permit directly with the Department of Building and Safety. If the development does not qualify for ministerial review, the building department refers the project to the Department of City Planning for planning review.

In contrast, to access SB 35 ministerial review, a project proponent begins with the Department of City Planning and navigates multiple steps before proceeding to the Department of Building and Safety. Los Angeles created an administrative procedure, the Streamlined Infill Project (SIP) process, to review and track housing developments that qualify for SB 35.[39] The goal of the SIP process is to confirm that eligible projects meet the city's objective zoning standards necessary to access SB 35's ministerial review. The SIP process requires multiple reviews, including from the Department of City Planning and the Housing and Community Investment Department, before proponents submit plans to the Los Angeles Department of Building and Safety (City of Los Angeles Department of Regional Planning, 2023). Under the current procedures, it appears that applicants for ministerial review under SB 35 are required to pay an "expedite fee" for this service, in addition to the regular fee for a plan check (City of Los Angeles Department of Regional Planning, 2023). Notably, SB 35 forbids the levying of "increased fees" based solely or partially on the fact that the project has received this ministerial approval process, although it is unclear whether the prohibition extends to processing fees.[40]

Los Angeles states that it will determine whether the application is consistent with objective design standards within SB 35's required timeframes. Any amendment to the original submission, however, restarts that review clock (City of Los Angeles Department of Regional Planning, 2023). Moreover, the city requires a project proponent to complete a "Pre-Application Review Process" to determine eligibility. The city interprets SB 35's time limitations to apply only after this preliminary review (Glesne, n.d.). It is unclear whether these preapplication review process requirements are consistent with SB 35.

[37] Site Plan Review (the blanket discretionary provision with Los Angeles' local code) generally applies at 50 units per Los Angeles Municipal Code §16.05 (C)(1). Additional criteria (related to specified planning areas) may also pull what would be ministerial into a discretionary approval pathway. Community Design Overlays can also render what would be ministerial discretionary (see § 13.08 (E)).

[38] Los Angeles Municipal Code §12.22 A.25(g).

[39] The same process is used to approve supportive housing projects that qualify for streamlined review under Assembly Bill 2162 (2018).

[40] Cal. Government Code § 65913.4(h)(1) provides "A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive ministerial or streamlined approval pursuant to this section."

A final interpretive issue arising in Los Angeles' implementation of SB 35 concerns the application of density bonuses to SB 35 projects. SB 35 applies only to projects where one-half of units are affordable but, until recently, did not provide clear language on whether the minimum affordability threshold was to be calculated prior to or after a density increase.[41] The city interpreted SB 35 to allow for "[a] minimum of 50 percent of the total units in the development, *calculated prior to any density increase*, must be affordable" (City of Los Angeles Department of Regional Planning, 2023). This calculation parallels how the city applies the state Density Bonus Law to its own local ministerial process. Notably, in September 2022, the state legislature amended the law to provide that the minimum affordability threshold should be calculated prior to the application of a Density Bonus, consistent with what Los Angeles was already doing.[42]

Senate Bill 35 Appears to Cut Approval Times in Los Angeles

So, how did the city's SIP operate? Overall, the SIP appears to have reduced approval timeframes for 18 developments (exhibit 1 and exhibit 2). The median approval timeframe for the developments that qualified for SB 35 was less than 3 months (or 2.7 months). CALES data yielded 11 similar developments entitled in prior years that have project and site characteristics that would seem to qualify for SB 35—had the state law applied in those prior years. The median time to entitlement for the developments in earlier years was approximately 7 months, which indicates that SB 35 reduces approval timelines for some multifamily affordable housing developments in Los Angeles.

To illustrate the effect of SB 35 on individual developments, the authors examined two examples from the same neighborhood. The authors compared 459 Hartford Avenue S and 1218 Ingraham Street; both are 100-percent affordable developments in the Westlake neighborhood. The development at 459 Hartford Avenue S, a 101-unit development sited on what was once surface parking, took 132 days to reach its final entitlement in 2017. The development at 1218 Ingraham Street, a 121-unit development also sited on a former surface parking lot, took 71 days to approve under SB 35.

In terms of affordability mix, the 11 comparable pre-SB 35 developments were all 100 percent affordable.[43] After SB 35, the city approved 18 developments through SB 35. Of the 18 developments, 16 were 100 percent affordable. The city also approved one development that was 37 percent affordable and another that was 34 percent affordable. In both instances, the developments received density bonuses, and the city appears to have calculated the affordability mix prior to applying the bonuses based on its interpretation of SB 35.

[41] Cal. Gov't Code § 65913.4(a)(4)(B)(ii) (2021).

[42] Stats.2022, c. 658 (Assembly Bill 2668), Sec. 1, eff. Jan 1, 2023.

[43] Developments with all but one or two units designated as affordable units are defined as 100 percent affordable, because those units are typically set aside as managers' units.

Exhibit 1

City of Los Angeles 2014–17 Observations With Senate Bill 35 Qualifying Criteria

Project	Total Units	Total Affordable Units	CEQA Compliance Pathway	Months to Approval to Proceed to Building Department	Opposition Through Local Administrative Appeal
7843 N Lankershim Blvd.	50	50	Mitigated Negative Declaration	4.3	Not appealed
3200 W Temple St.	59	59	CEQA Exempt (Class 32)	3.7	Not appealed
307 N Wilmington Blvd.	176	174	Mitigated Negative Declaration	10.8	Appealed (land use)
1307 W 7th St.	76	75	Mitigated Negative Declaration	8	Appealed (land use)
649 S Wall St.	55	54	Mitigated Negative Declaration	6.9	Not appealed
2631 S Crenshaw Blvd.	50	49	Mitigated Negative Declaration	11.4	Not appealed
13366–13380 W Beach Ave.	21	20	CEQA Exempt (Class 32)	4.5	Not appealed
655 San Pedro St. S	81	80	CEQA Exempt (Class 32)	6.5	Not appealed
4306 Adams Blvd. W	38	37	CEQA Exempt (Class 32)	2.6	Not appealed
4339 Adams Blvd. W	48	47	Mitigated Negative Declaration	7.8	Not appealed
459 Hartford Ave. S	101	100	Addendum to Prior Mitigated Negative Declaration	4.4	Not appealed

CEQA = California Environmental Quality Act.

Source: Comprehensive Assessment of Land Use Entitlements Study data (O'Neill-Hutson et al., 2022)

Exhibit 2

City of Los Angeles 2018–20 Senate Bill 35 Approvals (1 of 2)

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
3200 Temple St. W	64	63	2.1
1218 Ingraham St. W	121	120	2.4
14142 Vanowen St. W	64	63	2.9
4200 Pico Blvd. W	54	53	2.8
4719 Normandie Ave. S	43	42	4.0
5627 Fernwood Ave. W	60	59	6.9
456 9th St. W	91	90	Unknown
7022–7026 South Broadway and 235 W 71st St.	52	51	2.6
2106, 2108, 2112 South Central Ave.	57	56	2.8

Exhibit 2

City of Los Angeles 2018–20 Senate Bill 35 Approvals (2 of 2)

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
1601–1647 North Las Palmas Ave.	202	69	8
1104–11014 Santa Monica Blvd.	51	50	4.1
5501, 5511 South Main St.	57	56	3.5
401–411 E 6th St. and 522 S San Julian St.	94	93	5.6
4219–4227 S Broadway	87	87	2.3
1040 N Kenmore Ave., 4904–4920 W Santa Monica Blvd.	62	61	1.5
3300–3322 W Washington Blvd.	84	31	2.9
407–413 E 5th St.	150	150	6.3
6576–6604 S W Blvd.	64	63	2.1

Source: Authors' original data

San Francisco

Senate Bill 35 Simplifies San Francisco's Project Application Procedures for Qualifying Projects

San Francisco's local application process provides important context to understand the effect of SB 35. San Francisco applies discretionary review to all development. San Francisco's procedural requirements provide multiple opportunities for discretionary review, public hearings, and neighborhood opposition that often begin *before* a developer applies for entitlement.[44] These preapplication hearing requirements are supposed to air out potential opposition to the proposed development and mediate disputes with neighbors. However, they can add years to the entitlement process before the start of formal planning review (and environmental review). Moreover, San Francisco historically has not applied time constraints once formal planning review begins.[45] Another unique feature of San Francisco local law is that it provides a catch-all opportunity for "interested parties" to request Discretionary Review of any permit, including code compliant development.[46] This process is separate from the processes for local administrative appeal of housing approvals, which offer additional opportunities for neighborhood opposition post-entitlement. In practice, the opportunity to request Discretionary Review allows project opponents anywhere within the city to present previously undisclosed complaints about the proposed development when the proposed development is on the eve of entitlement.[47] In the CALES study

[44] San Francisco requires all development proposals of more than 10 units of housing to complete a Preliminary Project Assessment (PPA) *before* they may file a Project Application. (City of San Francisco Planning Department, 2022). The PPA triggers a mandatory public notice and hearing that precedes the formal planning review process (and required hearings).

[45] Specifically, San Francisco has openly acknowledged its failure to make completeness determinations (consistent with the Permit Streamlining Act) when reviewing Project Applications (City and County of San Francisco Board of Supervisors, n.d.). The authors found that to be true in the 2014–17 dataset.

[46] Municipal Business and Tax Regulations Section 26(a).

[47] Although the Planning Commission may only "take" Discretionary Review under "extraordinary circumstances," a hearing will allow the interested party to request Discretionary Review.

of San Francisco, O'Neill-Hutson et al. (2022) found that when the Planning Commission takes Discretionary Review, it imposes a new set of conditions of approval. O'Neill-Hutson et al. also heard from stakeholders that even when the Planning Commission does not take Discretionary Review, the request alone may trigger last-minute negotiations that alter the proposed development.

San Francisco's implementation of SB 35 creates a comparatively simplified and time-constrained initial review process and eliminates the notice and hearing requirements typically required of development proposals. Importantly, SB 35 eliminates the preapplication hearings *and* the opportunity for project opponents to request Discretionary Review. Applicants seeking to use SB 35 must complete only the appropriate applications and submit architectural plans to initiate review of whether SB 35 applies (City of San Francisco Planning Department, 2020: 2–3). SB 35, thus, eliminates substantial sources of unpredictability. Developers can be certain that if the proposed development conforms to planning and zoning law and meets all SB 35 criteria, San Francisco will approve the plans for development as proposed and allow the developer to proceed to the Department of Building Inspection.

The city also provides an informational packet that summarizes the major objective criteria a project must meet under the statute and describes the application process (City of San Francisco Planning Department, 2020).[48] Like Los Angeles, San Francisco specifies that any changes to the application will restart the statutorily required 90- and 180-day review timelines.

SB 35 Shortens Approval Timeframes for Qualifying Developments in San Francisco

In San Francisco, the CALES data yield only *one* multifamily affordable housing development out of 140 entitlements issued in 2014–17 that offered an opportunity for meaningful comparison. In fact, there are five 100-percent affordable developments in the San Francisco 2014–17 entitlement dataset. Four of them are not suitable for comparison because of process or site characteristics.[49]

Exhibit 3 shows that the pre-SB 35 development is a 94-unit, 100-percent affordable development in the Mission/Dolores neighborhood for formerly homeless seniors who satisfied the city's application of its inclusionary ordinance on another parcel slated for mixed-use development. This project took just more than a year to entitlement (367 days).[50] This affordable development conformed to all planning and zoning and qualified for a streamlined environmental review process.[51] The planning department applied its priority processing, as well. The proposed affordable housing did not require any approvals other than environmental review.

[48] San Francisco has also dedicated a section of its city website to information on SB 35 in English, Mandarin, Spanish, and Tagalog (San Francisco Planning, n.d.).

[49] These four were not suitable for different reasons: One required demolition of housing for sensitive populations, one required a conditional use permit, and two required general plan amendments. These characteristics would have disqualified these projects from benefiting from SB 35.

[50] This calculation is from the date of application. San Francisco also requires a mandatory preapplication review process, a PPA, for large projects (more than 10 units). Calculating the total timeline from the PPA application date would add another 59 days to the entitlement timeframe.

[51] The development qualified for tiering under section 15183.3 of the California Environmental Quality Act guidelines and Public Resources Code Section 21094.5.

Exhibit 3

City and County of San Francisco 2014–17 Observations With Senate Bill 35 Qualifying Criteria

Project	Total Units	Total Affordable Units	CEQA Compliance Pathway	Months to Entitlement	Opposition Through Local Administrative Appeal
1296 Shotwell	94	94	Tiering (15183 Community Plan Exemption)	12.2	Appealed

CEQA = California Environmental Quality Act.

Source: Comprehensive Assessment of Land Use Entitlements Study data (O'Neill-Hutson et al., 2022)

After entitlement, someone appealed the Planning Commission's decision to use streamlined environmental review[52] (consistent with the planning department's recommendation). [53] The Board of Supervisors upheld the Planning Commission approval, but the local administrative appeal hearing and decision added another 76 days to the 367 days to entitlement.

Following the implementation of SB 35, San Francisco approved 12 100-percent affordable developments and 1 group housing development (with 53 percent of the beds below market rate) under SB 35 in 2018, 2019, and 2020 (exhibit 4). The median timeframe to approval for the 13 developments was 141.5 days, or approximately 4.5 months. There is one outlier in terms of approval timeframes. The entitlement process for 4840 Mission Street began in 2016 several months before California State Senator Scott Weiner proposed SB 35 and years before SB 35's applicability. If we calculate the timeframe to approval from the date the developer initiated a new application for SB 35 eligibility in March 2019, the approval period was 3.5 months.

Exhibit 4

City and County of San Francisco 2018–20 Senate Bill 35 Approvals (1 of 2)

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
2340 San Jose Ave.	130	130	6.2
266 4th St.	70	69	4.5
3001 24th St.	45	45	5.2
457 Minna St.	270	143	6.1
681 Florida St.	130	130	1.6
833 Bryant St.	146	145	5.3
1360 43rd Ave. (originally proposed as 1351 42nd Ave.)	135	135	3.5
921 Howard St.	203	203	1.4
78 Haight St.	63	63	3.1

[52] Sec. 15183.3 of CEQA Guidelines and Section 21094.5 of the CA Public Resources Code allow for Community Plan Exemptions (or the ability to "tier" off of a plan Environmental Impact Report (EIR) in specified circumstances).

[53] San Francisco's online portal provides no additional detail about the administrative appeal or the party that appealed the approval. The record states "an appeal was filed" instead of naming the party that filed the appeal. The archived website no longer provides access to 2017 hearings in front of the Board of Supervisors.

Exhibit 4

City and County of San Francisco 2018–20 Senate Bill 35 Approvals (2 of 2)

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
180 Jones St.	70	70	3.9
4840 Mission St.	137	137	33.4
436 Geary Blvd.	130	130	1.5
1064–1068 Mission St.	260	260	4.9

Source: Authors' original data

Comparing specific developments with the pre-SB 35 development reveals more. For example, one SB 35 development was five blocks from the pre-SB 35 site previously described, and its entitlement under SB 35 took 157 days. This approval timeframe is less than one-half of the timeframe for its pre-SB 35 neighbor. Although a local administrative appeal process further delayed the pre-SB 35 project, SB 35 removed this opportunity for administrative appeal as an obstacle altogether.

The City of Oakland

Senate Bill 35's Effect on Oakland's Project Application Procedures Are Unclear

As of summer 2022, Oakland offered scant resources explaining its SB 35 procedures. The extent of its SB 35 public education resources appears to be a two-page checklist and brief description of the SB 35 ministerial process (City of Oakland, n.d.). The checklist details the major requirements for accessing ministerial review.[54] The checklist states that approval decisions will be made within SB 35's required timelines of 90 days for developments of 150 or fewer units and 180 days for developments of greater than 150 units but does not mention the separate 60- and 90-day deadlines for determining consistency with objective design standards. The document does not provide information on what forms developers must submit to qualify. Unlike the city of Los Angeles and San Francisco, Oakland does not specify whether application revisions restart the clock (City of Oakland, n.d.).

Oakland's application procedures are more difficult to ascertain from public written documents than San Francisco's, but it does not necessarily mean that they are more burdensome. In prior work, O'Neill-Hutson et al. (2022) found Oakland's discretionary timeframes to entitlement for development (including noncode compliant development) comparatively short.[55]

[54] The checklists track the law's requirements and include the level of affordability, percentage of affordable units, zoning, siting, construction worker compensation, conformity with objective standards of the planning code, and potential for tenant displacement.

[55] Timeline data are much more difficult to pull out of Oakland compared with San Francisco. Almost one-half of all the authors' observations are missing applications and, therefore, application dates, whereas nearly all San Francisco observations have application documents that the authors used to determine application dates. Fortunately, the observations within Oakland with timeline data, combined with interviews, allowed the authors to draw some conclusions about how Oakland compared with its neighbors.

It Is Unclear Whether Senate Bill 35 Shortens Approval Timeframes in Oakland, Given a Lack of Pure Senate Bill 35 Developments

The authors found seven entitlements in the 2014–17 dataset that offer valuable comparisons with developments that benefited from SB 35. All were 100 percent affordable. The authors have complete timeframe data for only five. The entitlement timeframes ranged from 4 to 41 months (exhibit 5).

Exhibit 5

City of Oakland 2014–17 Entitlement Observations with Senate Bill 35 Qualifying Criteria

Project	Total Units	Total Affordable Units	CEQA Compliance Pathway	Months to Entitlement	Opposition Through Local Administrative Appeal
0 7th St.	79	79	Tiering (15183 Community Plan Exemption)	18.8	Not appealed
2126 Martin Luther King Jr. Way	62	62	CEQA Exempt (Class 32)	4.8	Not appealed
2201 Brush St.	59	59	CEQA Exempt (Class 32)	41.9	Not appealed
445 30th St.	58	57	CEQA Exempt (Class 3)	–	Not appealed
0 35th Ave.	181	179	Tiering	–	Not appealed
1415 Harrison St.	81	81	CEQA Exempt (Class 3)	4	Appealed on land use grounds
344 13th St.	66	65	CEQA Exempt (Class 3)	4	Not appealed

CEQA = California Environmental Quality Act.

Note: – means a timeframe calculation is not possible.

Source: Comprehensive Assessment of Land Use Entitlements Study data (O'Neill-Hutson et al., 2022)

In 2018–20, Oakland approved two developments under SB 35, both 100 percent affordable (exhibit 6). It took 10 months to approve a project of 97 units and around 14 months for a project of 60 units. These eligibility review timeframes are longer than the median pre-SB 35 timeframes.

Exhibit 6

City of Oakland 2018–20 Senate Bill 35 Approvals

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
2125 Telegraph Ave.	97	97	10.3
2372 International Blvd.	60	59	13.9

Source: Authors' original data

However, a closer exploration suggests these projects were not approved entirely within the SB 35 framework (and, indeed, exceeded the statutory SB 35 time limits).[56] These two developments both required approvals outside of the SB 35 process. The 97-unit development revised its plans to allow for more units after obtaining a lot line adjustment, which may have delayed the final

[56] SB 35 holds local government to strict time limits. For projects of 150 units or fewer, they must respond within 60 days if a project conflicts with any standards and 90 days to complete design review and public oversight. Cal Gov't. Code § 65913.4(c)(1)-(d)(1).

approval. The 60-unit project involved subdividing an existing parcel into two lots, which required a separate application outside the SB 35 process.[57] The approval documents suggest that the city of Oakland allowed the project to qualify for ministerial review under SB 35 while also requiring the developer to separately process the subdivision application, a process that perhaps did not strictly adhere to SB 35 but did facilitate approval. Moreover, the 60-unit project appears not to have requested review under SB 35 when it first sought approval in 2019, only doing so in 2020.

Oakland's approval process for the 97-unit project also raises a fundamental question of what qualifies as "objective" design criteria under SB 35. In this case, the developer and city disagreed over whether historic district design criteria were objective. The criteria required, for example, that new construction be "compatible [. . .] in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing" and provide "high visual interest."[58] The developer argued that the criteria were subjective and, therefore, should not be applied during design review. The city maintained that the criteria were objective but ultimately found that the project satisfied them.

The City of Berkeley

Berkeley's Senate Bill 35 Eligibility Determination Processes Are Complex But Senate Bill 35 Importantly Modified Berkeley's Use Permit Requirements

The city of Berkeley provides several SB 35 specific forms and resources on its website with considerable detail about requirements for the use of the ministerial process and the necessary documentation to satisfy these requirements (City of Berkeley, 2022a). Berkeley's checklist adds documentation requirements beyond those of SB 35, including affordable housing, landscaping, and green building documentation depending on the project's specifications (City of Berkeley, 2022b). Although SB 35 does not enumerate these requirements, they fall under the local objective criteria provision of SB 35. Notably, the Berkeley checklist also "strongly encourage[s]" the project proponent to convene a "pre-application neighborhood meeting," even though SB 35 does not allow the imposition of additional requirements on projects solely or partially, because they are receiving ministerial review under SB 35 (City of Berkeley, 2022b).

Berkeley's local regulations are comparatively difficult to understand and access, relative to the other cities studied, which makes determining whether a project qualifies for SB 35 more difficult. In other words, determining what is "code compliant" is difficult in Berkeley. SB 35 does not resolve this issue, because it does not modify local density and use controls—it intervenes in process. Unlike the other four jurisdictions discussed in this article, Berkeley does not automatically disqualify proposed development that is inconsistent with current zoning provisions. Instead, it allows applicants an opportunity to "reconcile[e] those discrepancies and demonstrate how the development will be consistent" (City of Berkeley, 2022b). SB 35 had another major effect in Berkeley: Berkeley's local law requires all developments to obtain a use permit, even

[57] Under SB 35, lot subdivisions disqualify a project from ministerial review unless the subdivision falls under one of two exceptions per Cal. Gov't. Code § 65913.4(a)(9).

[58] Oakland Planning Code Sec. 17.136.055(B)(2).

when the project fulfills all objective criteria for development. One of SB 35's provisions voids this requirement for qualifying developments.[59]

Notably, Berkeley considered SB 35 a major imposition on its control of land use, arguing in litigation against the constitutionality of the statute under California home rule law. The narrow dispute at issue concerned whether a project proposed to be built on an Ohlone shellmound burial ground could receive a ministerial permit under SB 35 (Huang, 2018). However, when a developer sued because Berkeley declined to apply SB 35, Berkeley's arguments extended far beyond the contested issues of the case, which concerned whether the burial site was a historic "structure" and challenged the state's authority to intervene in charter cities' land use processes.[60] These arguments, made by a liberal city in the context of a site of cultural significance to Native American tribes, echoed those made by the conservative city of Huntington Beach in related litigation. In both cases, courts ultimately found in favor of the state and affirmed that SB 35 was reasonably related to the statewide issue of insufficient low-cost housing and narrowly tailored to address the issue (Szabo, 2021). However, this litigation may indicate the practical importance of SB 35 in Berkeley; the city considered the law sufficiently intrusive to challenge the statute as a whole during litigation.

Senate Bill 35 Approvals Moved Quickly in Berkeley

In Berkeley, two multifamily affordable developments were approved prior to the passage of SB 35 that can be compared with three SB 35 developments (exhibit 7). Of the two developments from 2014–17, the authors were not able to determine the application date for one and could not calculate an entitlement timeframe. The other took more than 34 months to entitlement.[61] In 2014, the developer sought approval for modifications to reduce parking and make minor adjustments to the building, which it secured in 2017. One of the pre-SB 35 projects was 100 percent affordable; the other was 57 percent affordable.

Exhibit 7

City of Berkeley 2014–17 Entitlement Observations With Senate Bill 35 Qualifying Criteria

Project	Total Units	Total Affordable Units	CEQA Compliance Pathway	Months to Approval to Proceed to Building Department	Opposition Through Local Administrative Appeal
2748 San Pablo Ave.	23	13	CEQA Exempt (Class 32)	34.7	Not appealed
3132 Martin Luther King Jr. Way	42	42	Unknown	Unknown	Not appealed

CEQA = California Environmental Quality Act.
Source: Authors' original data

Two of the three projects approved under SB 35 were significantly larger (142 and 87 units) than the two projects from the 2014–17 dataset (23 and 42 units). Two of the SB 35 projects moved quickly (exhibit 8). One took approximately 3.4 months and the other just under 2 months to

[59] Cal. Gov't Code § 65913.4(a).

[60] The City of Berkeley also unsuccessfully argued for other narrowing constructions of the statute. *Ruegg*, 63 Cal. App. 5th at 318–319 (2021).

[61] It also appears that the development was entitled in prior years, as well. The authors found a similar entitlement from 2007.

secure planning approval. The authors were unable to confirm the application date for the third SB 35 project, but press coverage described the process as swift (Hicks, 2019).[62] All three of these projects were 100 percent affordable.

Exhibit 8

City of Berkeley 2018–20 Senate Bill 35 Approvals

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
2012 Berkeley Way	142	141	1.9
2001 Ashby	87	86	3.4
1601 Oxford	37	34	Unknown

Source: Authors' original data

Los Angeles County

Los Angeles County Provides Substantial Guidance on How to Quality for Senate Bill 35

Los Angeles County created several SB 35 documents to explain how to access this process. At the time of writing, the County provided English- and Spanish-language factsheets. It now offers those at request but still provides information about the basics of SB 35, including the major criteria for projects, what ministerial review entails, and SB 35's approval timelines (Los Angeles County Department of Regional Planning, n.d.a.). A "Preexisting Site Condition Questionnaire" takes developers through six questions about the site location that determine whether or not it is eligible for SB 35 review (Los Angeles County Department of Regional Planning, n.d.b). The county also provides a frequently asked questions list and memorandum that go into greater detail about the SB 35 process (Los Angeles County Department of Regional Planning, n.d.a).

Los Angeles County also provides more information than the previously discussed five jurisdictions regarding approval expiration. In addition to notifying developers that approvals are valid for 3 years, the county provides that privately funded project proponents can extend the approval for 1 year and certain publicly funded affordable housing projects have no approval expiration date (Los Angeles County Department of Regional Planning, n.d.a). Finally, Los Angeles County updated its Housing Element in November 2021. The Housing Element includes basic provisions relating to SB 35.

The county's support for SB 35 applicants is not limited to written materials. The county's Department of Regional Planning also established a team of Affordable Housing Case Planners that serves as the point of contact for all SB 35 applicants (Los Angeles County Department of Regional Planning, 2021: 16).

[62] https://www.berkeleyside.org/2019/01/17/berkeley-approves-two-affordable-housing-projects-in-record-time-under-new-state-law-sb-35. The authors were able to locate the date of the SB 35 Checklist, but not the date for the main application document, so the authors cannot confirm the application date. If the Checklist date is the same as the application date, then the approval timeframe is 31 days.

Los Angeles County Applies Senate Bill 35 Broadly—Even to Small Market-Rate Developments

Before the passage of SB 35, Los Angeles County entitled two multifamily affordable developments between 2014 and 2017 (exhibit 9).

Exhibit 9

County of Los Angeles 2014–17 Observations With Senate Bill 35 Qualifying Criteria

Project	Total Units	Total Affordable Units	CEQA Compliance Pathway	Months to Approval to Proceed to Building Department	Opposition Through Local Administrative Appeal
6218 Compton Ave.	30	29	Unknown	7.9	Not appealed
1854 E. 118th St.	100	100	Hybrid exemption (Transit Priority Project)	4	Not appealed

CEQA = California Environmental Quality Act.

Source: Comprehensive Assessment of Land Use Entitlements Study data (O'Neill-Hutson et al., 2022)

Following SB 35, the county entitled seven qualifying projects between 2018 and 2020 (exhibit 10). What is also notable is the time range until approval across SB 35 developments. Although many took only a few months, one took more than 9 months, and another took almost 20 months to approval. Thus, among the seven SB 35 approvals, the timeframes vary considerably. Indeed, one 10-unit development accounted for the near 20-month timeframe, whereas another 10-unit development required only 2 months. In this county, SB 35 did not lead to predictable entitlement timeframes for qualifying projects. However, the authors lack the detail needed to understand why certain projects in Los Angeles County exceeded the statutory timelines in SB 35. Hypothetically, the story may involve projects with non-SB 35 components, or which changed their approval process midway through the entitlement process, as in Oakland, but it is unknown.

Exhibit 10

2018–20 Observations Los Angeles County

Project	Total Units	Total Affordable Units	Months to Approval to Proceed to Building Department
10928 S. Inglewood Ave.	10	0	19.9
7220 Maie Ave.	192	29	9.2
1351 W 95th St.	57	56	3.6
1619 Firestone Blvd.	12	2	3.5
Valley Blvd. and Workman Mill Rd.	81	80	.1
4101–4111 Whittier Blvd.	34	33	1
11503 S New Hampshire Ave.	10	2	2.2

Source: Authors' original data

The longest approval timeline of the county's SB 35 projects may be explained by its small size and lack of affordable units. Overall, the county's SB 35 projects had a range of affordability levels. Of the seven multifamily affordable developments approved using SB 35, three were 100-percent

affordable developments, but the remaining developments were mixed income, with affordable rates at 15, 17, and 20 percent of total units. The final development, of 10 units, had no affordable units, however. The application of SB 35 to the market-rate 10-unit building may suggest that Los Angeles County interprets SB 35 to also apply to market-rate developments of under 10 units, meeting the other site and project criteria. SB 35 requires that to be eligible for ministerial review, a development must be "subject to a requirement mandating a minimum percentage of below market-rate housing" based on one of several criteria.[63] In one such scenario, SB 35 provides that a project of more than 10 units must make 10 percent of units affordable but does not specify that projects of 10 units or fewer do not need to meet the requirement of being subject to a minimum percentage of below market-rate housing.[64] Los Angeles County advises in its materials that to be eligible for SB 35 review, a "project with more than 10 dwelling units must include a 10-percent affordable housing set-aside for lower or very low-income households" (Los Angeles County Department of Regional Planning, n.d.a). The development without any below market-rate units had an approval timeframe of 597 days. Although the authors are unsure exactly how or why Los Angeles County applied SB 35 to this project, it appears to be an outlier in multiple respects.

Discussion

SB 35 is a state intervention in local discretionary review of a select group of developments that meet predetermined affordability, site, and other project criteria. It also provides local planning departments and developers relief from state mandated environmental review. SB 35 does not disrupt local choices around density, use, or design. For researchers and policymakers, the form of SB 35 poses important questions about whether a procedural intervention alone can catalyze meaningful or marginal increases in housing production. Because SB 35 requires planning review to determine whether a proposed development qualifies for the state-level ministerial process, the statute also creates a unique opportunity to compare the effect of state law on preentitlement processes within that state ministerial framework with preentitlement processes under local discretionary review. Future research may want to compare ineligible developments approved within the same period.[65]

This preliminary review indicates that in the first years following the statute's effective date, few developments statewide used SB 35. Many explanations are plausible. First, SB 35 modifies process, not density and use controls. The parcels that meet the state law's site criteria may not have zoning in place to allow for multifamily developments, or developments big enough to be financially feasible given the required affordability thresholds. Second, in some places, only certain developers can benefit from SB 35. In four of the cities studied (Berkeley, Los Angeles, Oakland, and San Francisco), the threshold to qualify for SB 35 was 50 percent of units being affordable, but most SB 35-approved development was 100 percent affordable.[66] Third, it could be that developers

[63] Cal Gov't Code Sec. 65913.4(a)(4)(B).

[64] Cal Gov't Code Sec. 65913.4(a)(4)(B)(i).

[65] Future research may want to compare the effect of SB 35 on qualifying developments with proposed developments that do not meet SB 35's site criteria, for example, or prevailing wage requirements.

[66] Each city had a requirement of 50 percent affordable, except Los Angeles County, which had a 10-percent affordable requirement.

and planners were uncertain about how to apply the new state law within the context of local legal regimes. Local use of SB 35 may change over time as various actors learn how SB 35 applies and interacts with other laws (like the state density bonus law in question in Los Angeles) and as courts and the state legislature perhaps provide more clarity.

Nonetheless, these case studies provide preliminary evidence that SB 35 likely will quicken approval timeframes for qualifying developments. Certainly, SB 35 approval processes are worth tracking statewide. San Francisco and Los Angeles best illustrate how SB 35 can shorten approval timeframes, with what appear to be meaningful reductions in timelines and increases in predictability.

Also important, in some cities, SB 35 will offer a ministerial pathway to approval for mixed income and 100-percent affordable development where none existed. This ministerial approval pathway is especially important to affordable developers in cities with complex local rules that repeatedly invite opportunity for neighborhood opposition—like Berkeley and San Francisco. Thus, SB 35's effect on planning review processes is significant, even if it has been limited to only a handful of jurisdictions in the first years of the statute's implementation.

These case studies also signal that SB 35 is unlikely to fully standardize how cities and counties determine eligibility. These five jurisdictions adjusted their local planning review processes to implement SB 35 differently. For example, San Francisco's process changes infused simplicity into a procedural maze, whereas the city of Los Angeles imbued more complexity into its Planning Department review process. These distinctions reflect interactions between SB 35 and the local rules previously in place: the SB 35 eligibility review in Los Angeles is more complicated than Los Angeles' local ministerial review, while SB 35 eligibility review in San Francisco eliminated lengthy preapplication requirements and San Francisco's use of a sometimes disruptive, blanket Discretionary Review provision. The city of Los Angeles' SB 35 process, thus, highlights the importance of functional differences between what local ministerial processes and the state ministerial process created by SB 35 can offer developers in terms of ease and efficiency. Other differences in local application of SB 35 included the calculation of affordability when density bonuses are applied—an issue subsequently clarified by state legislation—as well as how to apply SB 35 when approvals ineligible for SB 35 (like subdivision) are required project components.

Still, outcomes from these jurisdictions also suggest that SB 35 is working—at least in some cities—to accelerate approval of affordable housing development. Reforms that affect only procedure are inherently insufficient to promote housing production in all places. In many jurisdictions, the underlying substance of the zoning code provides the binding constraints on development. However, where the base zoning purportedly permits development—whether by local initiative or due to separate state-level interventions—procedural reforms can play a critical role.

Appendix: Additional Tables

Exhibit A1

Comparable Developments (Neighborhoods and Affordability)

	2014–17 Entitlement Observation	SB 35 2018–20 Observations
Jurisdiction	San Francisco	San Francisco
Neighborhood	Mission	Mission
Number of units	94	63
Percent affordable	100%	100%
Entitlement timeframe	367 days	92 days
Jurisdiction	Oakland	Oakland
Neighborhood	Uptown	Uptown
Number of units	62	97
Percent affordable	100%	100%
Entitlement timeframe	143 days	308 days
Jurisdiction	City of Los Angeles	City of Los Angeles
Neighborhood	Westlake	Westlake
Number of units	101	121
Percent affordable	100%	100%
Entitlement timeframe	132 days	71 days
Jurisdiction	City of Los Angeles	City of Los Angeles
Neighborhood	Westlake	Westlake
Number of units	76	64
Percent affordable	100%	100%
Entitlement timeframe	240 days	64 days
Jurisdiction	City of Los Angeles	City of Los Angeles
Neighborhood	West Adams-Baldwin Hills-Leimert	West Adams-Baldwin Hills-Leimert
Number of units	38	54
Percent affordable	100%	100%
Entitlement timeframe	78 days	84 days
Jurisdiction	City of Los Angeles	City of Los Angeles
Neighborhood	West Adams-Baldwin Hills-Leimert	West Adams-Baldwin Hills-Leimert
Number of units	48	64
Percent affordable	100%	100%
Entitlement timeframe	235 days	63 days
Jurisdiction	City of Los Angeles	City of Los Angeles
Neighborhood	Central City	Central City
Number of units	81	94
Percent affordable	100%	100%
Entitlement timeframe	198 days	169 days

SB 35 = Senate Bill 35.

Source: Comprehensive Assessment of Land Use Entitlements Study data (O'Neill-Hutson et al., 2022)

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