

Delays, Discretion, and Denials: State Legislative Reforms to Local Land Use Processes

Executive Summary

The United States needs more housing. Debates over how to produce it have historically centered on substantive land use restrictions like density caps, minimum lot sizes, and parking minimums. However, emerging evidence suggests that the local procedures governing how development is reviewed and approved can impose independent and substantial costs and delays on housing production.

Drawing on the NYU Furman Center's Land Use Reform Tracker, this brief provides a roadmap of state reforms to these procedures. It first summarizes the development process and the case for procedural reform. It then surveys these reforms, which fall into two broad categories: reforms that constrain local discretion over land use decisions and reforms to judicial review of those decisions. This survey is illustrative rather than comprehensive, highlighting examples of important differences in the approach that states are taking rather than cataloguing every reform. Finally, the brief discusses issues policymakers should consider in designing reforms.

The case for reform. Discretionary land use processes and protracted litigation can work against housing production. A small but growing body of rigorous research suggests that streamlining local land use processes and making them ministerial, rather than discretionary, speeds approvals and can, under at least some conditions, increase housing production. A thinner body of research, largely on the “builder’s remedy,” likewise links reforms of judicial review of land use decisions to increased production.

Reforms to local discretion over land use. The surveyed state reforms to local discretion over land use intervene in five primary ways, sometimes implemented together but often separately. First, they authorize higher density development by right. Second, they constrain discretionary reviews by eliminating them or prescribing their criteria. Third, they limit project-level public input. Fourth, they limit localities’ discretion to change the criteria that apply to a development mid-application. And fifth, they impose deadlines on localities for making land use decisions and specify consequences for missing those deadlines.

Reforms to judicial review of local land use decisions. The surveyed state reforms to judicial review of local land use decisions intervene in four primary ways. First, they reform legal standing by expanding who can challenge project denials or narrowing who can challenge approvals, and on what basis. Second, they reform evidentiary requirements by shifting the burden of demonstrating legal compliance to local authorities, raising the standard of proof, and requiring that localities make written findings. Third, they reduce judicial deference to localities, direct courts to resolve ambiguity in favor of housing, prohibit stays, and toll the expiration of development approvals while litigation is pending. And fourth, they shift attorney’s fees to deter unsuccessful or weak third-party challenges to local approvals and reduce the cost of challenging local denials.

Considerations for policymakers. The surveyed reforms implicate important values that the status quo protects: local control, legitimate public and legal concerns, regulatory flexibility, and political feasibility. States can calibrate the intensity of their intervention to how much weight they put on these competing values and to their confidence that local processes are obstructing housing. Where there is not sufficient evidence to justify such confidence, states can consider reforms aimed at learning how local land use procedures and judicial review of the decisions they produce contribute to housing shortages. In a housing shortage where process can translate to longer approval timelines, higher costs, and fewer homes, finding the right balance between the needs the process serves and the goal of more production matters.

Contents

Introduction	5
The development process and the case for its reform	7
The development process	7
The case for process reform	9
The case for reform to local land use discretion	9
The case for reform to judicial review of local land use decisions	11
Surveying state reforms of land use procedures	14
Reforms to local land use discretion	15
Authorizing higher density by right	15
Constraining review of by-right housing projects	16
Limiting project-level public input	19
Limiting discretion to change decision criteria	19
Imposing shot-clocks on local decisionmaking	20
Synthesis of primary reform differences	22
Considerations for policymakers	24
Reforms to judicial review of local land use decisions	26
Reforms to statutory standing to initiate judicial review	27
Reforms to judicial review of evidence	28
Reforms to how much the courts defer to local land use decisions	31
Reforms to legal costs	33
Synthesis of primary reform differences	33
Considerations for policymakers	35
Conclusion	38
Acknowledgements	38

Introduction

The United States needs more housing. Estimates of the national housing deficit range from 1.5 to 7.3 million homes.¹ In many jurisdictions, the gap is considerable and has sometimes been growing for decades, while in others, there's a surplus.² The consequences of housing shortages are well-documented: for millions of renters, rental expenses consume more than half of their incomes,³ workforce housing scarcity distorts regional labor markets,⁴ and homeownership has become financially out of reach for an increasing number of households.⁵

The policy conversation about supply has historically centered on substantive land use restrictions—density caps, minimum lot sizes, parking minimums, and the like.⁶ A parallel body of evidence and commentary has increasingly emerged, however, suggesting that some of the procedures governing how development is reviewed and approved can impose independent and substantial costs and delays on housing production. In particular, many jurisdictions subject a substantial number of proposed projects to discretionary review, with the path from application to permit frequently running through public hearings, environmental review, changing regulatory criteria, and the specter of legal challenge.

These procedural costs are not neutral. They can increase financing, legal, and other costs through delay, introduce uncertainty that deters investment, and create opportunities for opposition to use delay tactics against housing that could not be denied on the merits. Because states have historically delegated land development regulation to local governments—which are structured to respond to incumbent residents rather than those priced out of the jurisdiction⁷—these procedures have often been shaped in ways that disadvantage new housing. In response, states are increasingly subjecting local development procedures to reform.

1. See CRISTIAN DERITIS ET AL., MOODY'S ANALYTICS, BRINGING THE HOUSING SHORTAGE INTO SHARPER FOCUS (2025).

2. See, e.g., *id.* at 7, Chart 5; Peter Salins, New York City's Housing Gap, tbl. 2, Manhattan Institute (1996) (showing a growing gap in New York City's housing shortage growing since the 1980s).

3. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING 2025, at 31–32 (2025) (reporting 12.1 million severely burdened renters, i.e., those who spend over half of their income on housing).

4. Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 AM. ECON. J.: MACROECON. 1 (2019).

5. JOINT CTR., *supra* n. 3, at 24–28.

6. See, e.g., Edward L. Glaeser & Joseph Gyourko, *The Impact of Building Restrictions on Housing Affordability*, 9 Fed. Rsrv. Bank N.Y. ECON. POL'Y REV. 23 (2003); Joseph Gyourko, Albert Saiz & Anita A. Summers, *A New Measure of the Local Regulatory Environment for Housing Markets*, 45 URB. STUD. 693 (2008).

7. See WILLIAM FISCHER, THE HOMEVOTER HYPOTHESIS (2001); Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?*, 102 J. URB. ECON. 76 (2017).

This brief provides a roadmap of state efforts to reform local land use regulatory procedures in order to reduce development costs and increase the supply of housing. It first describes stages in the development process and summarizes their common features. Although the approval process will vary from place-to-place, the common thread across jurisdictions is *how* decisions get made and reviewed. Generally, where local governments are exercising their power to approve a development, the decision can i) entail the exercise of significant local discretion rather than using a ministerial process with objective standards, and ii) be subject to different forms of judicial review. An emerging body of both theoretical and empirical work relates these features to housing supply. Second, drawing from the NYU Furman Center's Land Use Reform Tracker, this brief surveys the reforms states are making to localities' regulatory land use decisions and the judicial review of those decisions, and discusses considerations these reforms raise for policymakers.

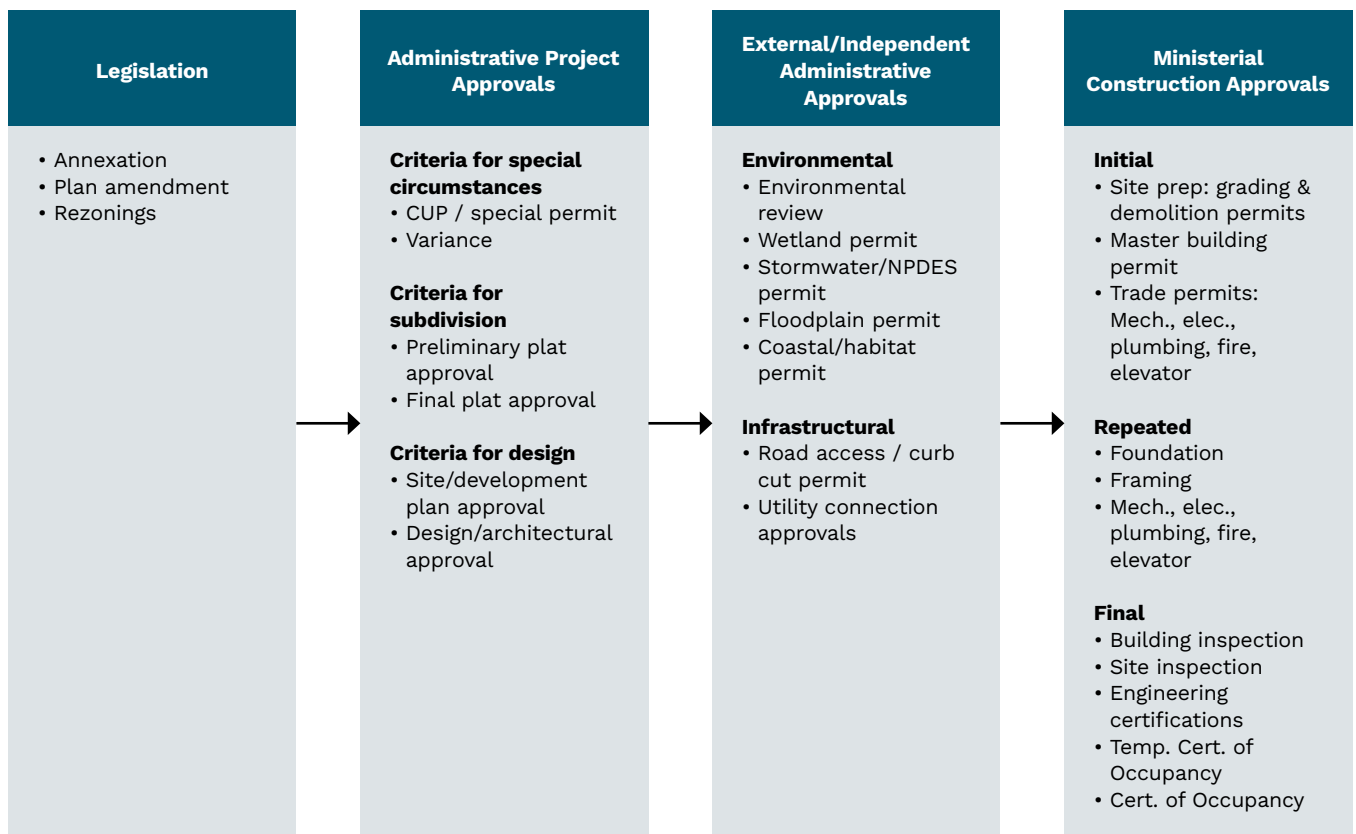
The Development Process and the Case for Its Reform

The development process

Localities vary tremendously in their development processes. While many processes entail significant government discretion, some don't. While some require public input, many don't. While most have no environmental review requirements, some do. Some route judicial review through courts of general subject-matter jurisdiction, others through specialized tribunals.

Despite this variation, development typically involves 1) the exercise of local discretion (which often narrows through subsequent stages of the typical development process) over a range of land use approvals and decisions, and 2) some form of judicial review of those decisions. Figure 1 below illustrates a typical sequencing of different decisions local governments make throughout the course of the development process as a whole.

Figure 1. A typical progression of key land use decisions that local authorities make, from background land use legislation through to final project-level construction approvals.



Reforms to local discretion vary with the stage of the process and approval type. With respect to what general uses or densities localities can prohibit, states may require certain uses or densities be authorized (e.g., duplexes in a given zone). With respect to specific projects, states may require localities to use ministerial and objective processes—rather than discretionary ones—to make a decision about whether to approve or deny the project (e.g., a specific duplex in a zone that authorizes them). With respect to decisions about specific projects, states may limit public input (e.g., hearings). With respect to the criteria localities use to make these decisions, states may limit localities’ ability to change them mid-stream (e.g., after a developer receives a preliminary approval). With respect to these decisions themselves, states may reduce a locality’s ability to delay the decision (e.g. through a shot clock).

After a given decision has been made, the scope of judicial review determines the terms under which it can be challenged in court. States have actively reformed four aspects of the judicial review process. First, some states have reformed who has standing—the right to appeal a local development decision for judicial review. Second, some states have reformed how evidence should be presented and evaluated (who bears the burden of proof in these challenges, what standard of evidence is required to meet this burden, and how robust a record the locality must make of its findings and reasoning for the decision). Third, some states have reformed how the courts should treat local decisions (what standard must a court use to review the locality’s decision, how the court should resolve legal ambiguity, and whether it can stay (pause) the appealed decision). Finally, some states have reformed the cost side (who pays court costs and legal fees).

The case for process reform

Reforms to both local discretionary processes and judicial review in the land development context are broadly motivated by the magnitude of the housing crisis and localities' failure to confront it given countervailing political and economic incentives. Both sets of reforms are supported by theory and a small but growing body of empirical evidence.

The case for reform to local land use discretion

The theoretical case for limiting local discretion over land use is relatively straightforward: local discretion tends to disfavor housing production, and, even where it doesn't, causes delays that can be costly. Opposition to new housing is widely considered to be driven by incumbent homeowners—one of the most politically active interest groups in local politics⁸—seeking to protect the value of their home by opposing changes to the neighborhood that might negatively affect what is typically their primary asset.⁹ Incumbent renters likewise sometimes oppose housing production, for example to prevent increases to their rents or changes to the neighborhood that they don't like, such as the addition of amenities preferred by wealthier households.¹⁰ Meanwhile, many of those who stand to benefit from more production and the lower housing prices and rents (or growth in prices or rents) it may entail either lack a similarly-concentrated interest (i.e., renters) or lack political power (i.e., renters and those priced out of the jurisdiction). As a result, land use regulation often limits new housing production, for example through restrictive zoning codes, decisionmaking criteria that change after an application is filed, and lengthy review periods. Even where land use regulation doesn't limit housing production, the time it takes to actually exercise discretion can itself inhibit production. Because development is a relatively irreversible investment made under uncertainty, delays can deter production by changing the cost of financing a project, extending carrying costs, causing cascading scheduling delays, and increasing the project's risk from other changing political or economic conditions.¹¹

8. See generally Andrew B. Hall & Jesse Yoder, *Does Homeownership Influence Political Behavior? Evidence from Administrative Data*, 84 J. POL. 351 (2022) (finding a strong association between homeownership and local voting); Anika Singh Lemar, *Overparticipation: Designing Effective Land Use Public Processes*, 90 FORDHAM L. REV. 1083 (2021) (identifying and critically examining the failures of participatory local land use processes, partly in light of the dominance of residents near proposed developments); Alexander Sahn, *Public Comment and Public Policy*, 69 AM. J. POL. SCI. 685 (2025), <https://doi.org/10.1111/ajps.12900> (documenting demographic and socioeconomic biases in who commented in San Francisco Planning Commission public meetings between 1998 and 2021).

9. See, e.g., WILLIAM FISCHER, *THE HOMEVOTER HYPOTHESIS* (2001); KATHERINE L. EINHORN, DAVID M. GLICK & MAXWELL PALMER, *NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS* (2019).

10. See, e.g., Vicki Been, *City NIMBYs*, 33 J. LAND USE 217, 218 (2018) (arguing that cities are increasingly “experiencing substantial opposition to proposed new development, driven, in substantial part, by renters who fear that the development will make their homes less affordable and either cause them to have to leave the neighborhood or change the neighborhood to something less familiar and appealing to them.”); MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962).

11. Although not fully irreversible, many upfront housing production costs like regulatory compliance, site design, and construction can only be recovered at a substantial loss. See, e.g., AVINASH DIXIT & ROBERT PINDYCK, *INVESTMENT UNDER UNCERTAINTY* (1994); Laarni Bulan, Christopher Mayer & C. Tsuriel Somerville, *Irreversible Investment, Real Options, and Competition: Evidence from Real Estate Development*, 65 J. URB. ECON. 237 (2009); Christopher Cunningham, *House Price Uncertainty, Timing of Development, and Vacant Land Prices: Evidence for Real Options in Seattle*, 59 J. URB. ECON. 1 (2006).

Despite significant agreement in the theoretical literature about how procedural delays and costs may limit supply, whether limits on local discretion actually will increase supply is complicated by the fact that the exercise of discretion may be only one of possibly many constraints on supply. Input costs like materials and labor, parcel availability, private deed restrictions, and other constraints may independently limit supply. A small but growing literature has nonetheless demonstrated that, under at least some conditions, limiting local discretion does appear to increase production.

In particular, four high-quality studies link local discretion or procedural delays to housing production, either directly, or indirectly through the inference that faster approvals result in more housing.

Direct evidence

Von Bergmann et al. (2025) compare two Canadian municipalities with similar upzonings (to allow three- and four-plexes on lots zoned for single- or two-family houses) but different administrative processes for project approval.¹² As the authors explain, one municipality “allowed as-of-right redevelopment, provided for speedy building permit issuance, and had a relatively lax parking policy.”¹³ The other “burdened development with uncertainty and multi-year approval timelines by forcing all multiplex development through a discretionary development permit process before building permits could be obtained and construction started” and required more parking.¹⁴ The study found that the municipality with a more streamlined and ministerial process saw a 2 percent increase in redevelopment probability compared to a 0.2 percent increase in the other.¹⁵

Gabriel and Kung (2026), in a rigorous study of nearly 2,700 multifamily projects and over 120,000 units permitted in Los Angeles between 2010 and 2022, found that approval times constituted approximately 37 percent of total project time—averaging about 1.8 years out of a total four-year project timeline.¹⁶ Their simulations estimate that a 25 percent reduction in approval times would increase housing production by approximately 12.7 to 23.7 percent; the simulated policy that had the greatest impact—capping the building department’s permitting process at 60 days—produced a projected gain of 33.1 percent in dwelling units.¹⁷

12. Jens von Bergmann et al., *Upzoning and Redevelopment: The Details Matter*, 69 J. HOUS. ECON., no. 102078, 2025, <https://doi.org/10.1016/j.jhe.2025.102078>

13. *Id.* at 12.

14. *Id.*

15. *Id.* at 9.

16. Stuart Gabriel & Edward Kung, *Development Approval Times and New Housing Supply: Evidence from Los Angeles*, 154 J. URB. ECON. 1, 1–3 (2026), <https://www.anderson.ucla.edu/sites/default/files/document/2026-05/2026-03wp-rev.pdf>.

17. *Id.* at 11, 13, tbl. 4. These estimates are simulated using model-based counterfactuals, so some caution is warranted. They are also primarily measuring what the authors call “pull-forward” effects, pulling developments forward in time (the 12.7% estimate). As the authors note, there may also be an “incentive effect” whereby “reduced approval time risk and holding costs incentivize new development,” accounting for which they suggest could increase the estimated 12.7% effect to 23.7%. *Id.* at 11, 15.

Indirect evidence

Two additional studies indirectly link discretion and delay to housing production through the inference that faster approvals should increase production (for example, through reduced approval risk and holding costs).

O'Neill and Wang (2023) found that California's SB 35, which placed a deadline on local government decisionmaking and made most of that decisionmaking adhere to a ministerial process by implementing checklists and objective standards, materially accelerated approvals.¹⁸

Manville et al. (2022) provide complementary evidence from Los Angeles's Transit-Oriented Communities program. The authors found that by-right projects—where the proposed use conforms with what zoning allows by right, eliminating some discretionary approvals—experienced reductions in procedural complexity and the opportunity for delay. As a result, by-right projects were permitted 28 percent faster than discretionary projects.¹⁹

The case for reform to judicial review of local land use decisions

The rationale for reforming judicial review of local land use decisions to increase housing production is likewise relatively straightforward. In principle, judicial review of land development decisions can provide a source of redress for developers to contest unlawful decisions. In practice, judges have historically deferred significantly to local decisionmaking. Further, judicial review is also available to entities that oppose a project and can impose costly delays, even when opponents may not have a strong legal case.²⁰

18. From a median of seven to 2.7 months in Los Angeles for qualifying projects, 34 months to fewer than six in Berkeley, and twelve to 4.5 in San Francisco. See Moira O'Neill & Ivy Wang, *How Can Procedural Reform Support Fair Share Housing Production? Assessing the Effects of California's Senate Bill 35*, 25 CITYSCAPE 143, 153, 156–57, 161–62 (2023). The authors describe their work as “provid[ing] preliminary empirical support” for the theory that “making affordable housing development faster and more predictable would facilitate building more housing at a lower cost.” *Id.* at 143.

19. Michael Manville et al., *Does Discretion Delay Development?*, 89 J. AM. PLAN. ASS'N 336, 336 (2022). The authors conclude by noting that “[f]aster and more certain approvals can reduce carrying costs, help developers secure financing, and allow developers to bid more for land or budget for lower returns, all of which can help projects pencil and increase the supply of new housing overall.” *Id.* at 345.

20. There are of course typically some constraints on frivolous litigation in the form of sanctions, bond requirements, and standing rules, but these constraints can be weak against what litigation buys challengers in the land use context. See, e.g., Annelise Bertrand, *Proxy War: The Role of Recent CEQA Exemptions in Fixing California's Housing Crisis*, 53 COLUM. J. OF LAW AND SOC. PROBLEMS 413, 425–26 (describing weak barriers to frivolous suits in the context of environmental approvals as facilitating “a war of financial attrition”); Lucian A. Bebchuk, *Suing Solely to Extract a Settlement Offer*, 17 J. LEGAL STUD. 437 (1988) (exploring the conditions under which suing—even when a case is weak—is rational). For discussion of some of the theoretical reasons to reform property doctrines that allow owners to thwart the agendas of other owners, see generally, e.g., Lee Anne Fennell, *Thwartings*, 68 B.C. L. REV. (forthcoming, 2027).

There are several sources of deference that negatively affect housing production, each of which can vary by jurisdiction. Judicial review may i) place the burden of proving that a local decision was wrong on the challenger,²¹ ii) impose a high standard of proof to meet that burden,²² iii) allow local governments to make a decision without providing a reason to the developer,²³ and iv) resolve legal ambiguity against production rather than in favor of it.²⁴

There are several reasons why judicial review may be useful to opponents of housing production, which vary by jurisdiction. Courts may presume that neighbors can challenge a local approval (i.e., have “standing” to contest the decision).²⁵ Judges may pause (i.e., ‘stay’) a local approval during the pendency of judicial proceedings. Localities may count time during which litigation is proceeding against the time

21. Broadly, scholars of evidence law have identified several factors that justify placing the burden of proof on one party versus another. All else equal, it’s better placed on the party with better access to the evidence, whose loss policymakers prefer as a matter of policy or fairness, whose claim is less likely to prevail as a matter of statistical probability, or who is seeking to change the status quo. Some of these factors weigh in favor of keeping the burden on developers: courts have historically viewed their claims as less likely to prevail, and developers are the ones seeking to change the status quo. ROBERT P. MOSTELLER ET AL., 2 MCCORMICK ON EVIDENCE § 337 (8th ed. 2020). Other factors, though, weigh in favor of shifting the burden to the locality: localities have privileged access to their own deliberative records, and state legislators increasingly view housing denials as a problem of statewide policy concern.

22. Law-and-economics analysis of optimal standards suggests that where the harm from the prohibited activity (here, a non-conforming development) is relatively low, the share of activities that are benign (here, a conforming development) is high, and the sanction for discovering non-conformity is relatively high, the standard of proof should be relatively high because failing to deny the relatively rare and harmless non-conforming development only imposes small costs on society, whereas accidentally denying conforming developments imposes higher costs. Louis Kaplow, *On the Optimal Burden of Proof*, 119 J. POL. ECON. 1104, 1115 n.2 (2011). Because the harm from mistakenly denying conforming developments is indeed increasingly understood in the ongoing housing crisis to outweigh the harm from mistakenly approving non-conforming developments, that reasoning generally favors a higher standard of proof for showing that a development should be denied.

23. The consensus in administrative law literature generally favors written findings requirements as a form of reasoned administration. Reason-giving requirements legitimate administrative governance by constraining post-hoc rationalization, enabling meaningful judicial review, and providing assurance that decisions reflect legal standards rather than political pressures. See generally JERRY L. MASHAW, REASONED ADMINISTRATION AND DEMOCRATIC LEGITIMACY: HOW ADMINISTRATIVE LAW SUPPORTS DEMOCRATIC GOVERNMENT (2018). In the development context, where written findings requirements have generally been favored since an influential California supreme court case, they’re thought to perform precisely these functions. *Topanga Ass’n for a Scenic Cmty. v. Cnty. of L.A.*, 522 P.2d 12, 22 (Cal. 1974) (“[W]e emphasize the need for orderly legal process and the desirability of forcing administrative agencies to express their grounds for decision so that reviewing courts can intelligently examine the validity of administrative action.”).

24. The theoretical appeal of such guidance—in particular, guidance that encourages the judiciary to resolve ambiguity in favor of production—is motivated by a concern that local decisionmakers have historically resolved doubt against housing. A pro-housing default rule corrects for that tendency without dictating outcomes in cases where the law isn’t ambiguous.

25. See, e.g., Zachary D. Clopton & Nadav Shoked, *Suing Cities*, 133 YALE L.J. 2540, 2555 (2024) (discussing the development of ‘neighbor standing’ to sue local governments for decisions made about neighboring properties and offering reforms to combat the inequalities that can result). More generally, in studying land use participation, scholars have consistently found that the parties most willing to invest in contesting development are disproportionately incumbent neighbors mobilized against new development, whose objections regard property values, their proximity to the new housing, and fears about the overuse of amenities. See *supra* note 8. These concerns more closely resemble the distributional concerns of government action broadly, and less the kind of particularized legal injury that standing doctrine ordinarily requires. See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 573–74 (1992) (“We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.”).

a developer has to complete a project before the approval expires (i.e., refusing to “toll” that time).²⁶ And there is a general presumption in American law that each party to a lawsuit pays its own fees, which can shield a project’s opponents from the other side’s legal costs.²⁷

The empirical evidence assessing the relationship between judicial review of land use decisions and housing production is thin. The closest work on the topic studies aspects of the so-called “builder’s remedy,” which allows developers to bypass some local land use procedures and regulations for certain projects where jurisdictions have failed to meet supply targets, typically through an appeals process that is more favorable to production (e.g., with the burden of proof shifted onto a locality to justify denying a project).²⁸ Although several studies have evaluated the effects of these bypasses on various outcomes,²⁹ two comparative studies in the Northeast, by Cowan and Marantz & Zheng, are especially instructive about supply effects. Both studies find positive effects on the supply of affordable housing.³⁰ The latter additionally finds that the Massachusetts system—which combines a shifted burden of proof, an expedited process, and a meaningful builder’s remedy—is especially effective.

The evidence base has important limits, however. First, and most importantly, it does not cleanly isolate the effect of different aspects of the review of land use decisions because the studied policies typically bundle burden-shifting with a zoning override for eligible projects, mandatory affordability set-asides, and a shift of the appellate forum from local boards to a state body. Second, it focuses on supply-inelastic Northeastern housing markets and on affordable housing. Third, it predates the recent wave of reforms to judicial review detailed in this brief, whose effects remain unstudied.

26. The theoretical support for limiting stays and for tolling approval deadlines rests on the basic economics of delay canvassed earlier: delay costlessly preserves the status quo for the opponents but costs the developer and might be troublesome enough to make the developer move on. Prohibiting stays allows a project to proceed during review, and tolling preserves the value of an approval until the challenge is resolved; both shift the risk of delay from the applicant toward the challenger.

27. Where a suit is frivolous, courts typically have a discretionary power to make the party bringing the frivolous claim bear the other side’s legal costs. As an example in the federal context, see, e.g., Fed. R. Civ. P. 11; 28 U.S.C. § 1927. Fee-shifting reforms are supported by a well-developed law-and-economics literature on litigation incentives, which generally predicts that shifting fees to the loser deters suits whose expected merit is low while encouraging those whose merit is high because it raises the net cost of bringing a weak claim and lowers the net cost of bringing a strong one. See Steven M. Shavell, *Suit, Settlement, and Trial: A Theoretical Analysis under Alternative Methods for the Allocation of Legal Costs*, 11 J. LEGAL STUD. 55 (1982). Of course if too much of the cost is shifted, this can also result in over-deterrence, chilling challenges a party should be free to bring. Concern with under-deterrence of challenges to approvals and over-deterrence of challenges to disapprovals—motivated by the previously discussed political economy of development—may justify reforms that shift fees favorably only to those in the pro-production position (the challenger of a disapproval, or defender of an approval).

28. See Vicki Been, John Overstreet, and Helen Ketema, *The Builder’s Remedy: Key Considerations for Enforcing Pro-Housing Policies*, NYU Furman Center (2026). See also Spencer Cowan, *Anti-snob Land Use Laws, Suburban Exclusion, and Housing Opportunity*, 28 J. URB. AFF. 295, 297 (2006).

29. See Noémie Sportiche et al., *Can Fair Share Policies Expand Neighborhood Choice? Evidence From Bypassing Exclusionary Zoning Under Massachusetts Chapter 40B*, 35 HOUS. POL’Y DEBATE 210, 211 (2025) (surveying studies of state affordable housing appeals systems and other policies designed to bypass exclusionary zoning).

30. *Id.*; Nicholas J. Marantz & Huixin Zheng, *State Affordable Housing Appeals Systems and Access to Opportunity: Evidence from the Northeastern United States*, 30 HOUS. POL’Y DEBATE 370 (2020).

Surveying State Reforms of Land Use Procedures

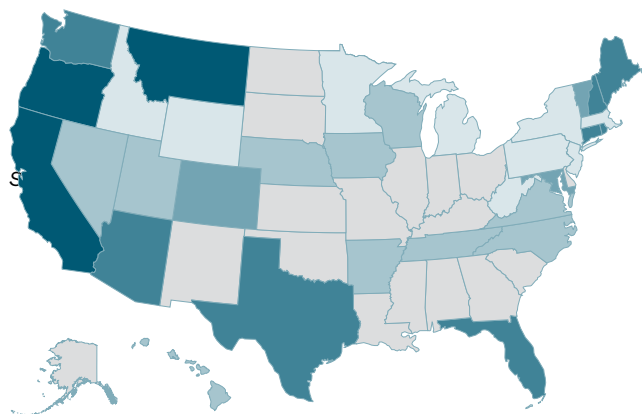
State reforms to local discretion over, and judicial review of, land development decisions are not new. However, as Figures 2a and 2b illustrate, there has been significant state legislative interest in these reforms over the past several years. This Part both surveys areas of reform and discusses the policy considerations these reforms raise. In identifying and describing these reforms, our survey is well-informed but not exhaustive. The NYU Furman Center’s Land Use Reform Tracker identifies over one hundred bills enacted between 2017 and 2025 that make reforms to local land use procedures across many states.³¹ This brief does not attempt to characterize all or even most of these reforms or their state contexts. Instead, the discussed reforms offer examples that cover important kinds of variation, which we identified by using the Tracker and following broader discourse about state land use reforms.

Figure 2. At left, count of state statutes enacted between 2017 and 2025 that make reforms to local discretion through streamlining, by-right reforms, and deadlines. At right, count of state statutes enacted between 2017 and 2025 that make reforms to judicial review through changes in standing, evidentiary requirements, appeals procedures, or legal fees.

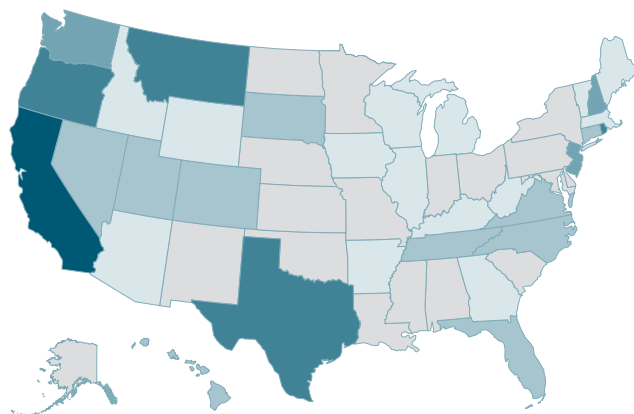
Counts of Bills Enacted

1–4 5–9 10–14 15–50 50+ No Bill Enacted

A. Enacted State Bills Reforming Local Land Use Discretion, 2017–2025



B. Enacted State Bills Reforming Judicial Review of Local Land Use Decisions, 2017–2025



31. This survey does not aim to identify all reforms that fit into these categories, instead merely to illustrate the variation in approaches different states are taking.

Reforms to local land use discretion

State reforms to local discretion can roughly be organized according to the stage of the development process in which they intervene: authorization of use, project-level review, public input into that review, decision criteria to be applied to that review, and the deadline for a locality's decision(s).³²

Authorizing higher density by right

There are two primary ways different uses and densities are authorized: by-right and discretionarily. Where a locality's zoning ordinance does not permit a use or density level by-right and instead requires a discretionary entitlement like a rezoning, conditional use permit, or variance, a local authority must decide whether to approve or deny the project before it may proceed. By-right (or as-of-right) authorization removes that threshold discretion: it designates a use as permitted so that a development of that use type may proceed to permitting without a discretionary approval.³³ Many of the recent state reforms surveyed dictate what uses or density levels localities must permit by right. Most of these reforms fall into two categories, distinguished by where the newly authorized housing is located and what density is authorized.

Infill ADU and “missing middle” housing in single-family areas

A first category of by-right reforms authorizes modest multi-unit and accessory housing in areas previously reserved for detached single-family residences. Oregon's HB 2001 (2019) was an early comprehensive example in this category, requiring larger cities to permit “middle housing”—duplexes through fourplexes and townhouses—in single-family zones.³⁴ Washington's HB 1110 (2023) adopted a similar tiered approach, requiring cities to permit two to six units per lot depending on population and proximity to transit, and HB 1337 (2023) required that accessory dwelling units (ADUs) be permitted in single-family and duplex zones.³⁵ California's SB 9 (2021) authorized duplexes on single-family parcels; Connecticut's HB 6107 (2021) and Vermont's HOME Act (Act 47, S. 100) (2023) authorized ADUs and, in Vermont's case, duplexes in residential zones.³⁶

32. These categories are analytically distinct, though a single statute frequently combines several categories. California's S.B. 330, 2019–2020 Leg., Reg. Sess. (2019) (enacted), for example, addresses more than one category of reform.

33. By-right authorization concerns *whether* a given use or density is permitted; the reforms discussed in the next section concern *how* an authorized project is reviewed (ministerially or discretionarily). Reforms to authorization and review are frequently made together, but they can be analytically distinct: a use may be permitted as of right yet still subject to discretionary reviews (e.g., Washington requires discretionary environmental review for by-right projects exceeding a certain size), and a use may be reviewed ministerially yet require a discretionary entitlement to be authorized in the first place.

34. H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. (Or. 2019) codified at OR. REV. STAT. § 197.758 (2026). A related reform addresses subdivision: Oregon's S.B. 458, 81st Legis. Assemb., Reg. Sess. (2021), permits the subdivision of single-family lots to accommodate the middle housing that H.B. 2001 authorized.

35. H.B. 1110, 68th Leg., Reg. Sess. (Wash. 2023) (enacted); H.B. 1337, 68th Leg., Reg. Sess. (Wash. 2023) (enacted).

36. S.B. 9, 2021–2022 Leg., Reg. Sess. (Cal. 2021), codified at CAL. GOV'T CODE §§ 65852.21, 66411.7; H.B. 6107, 2021–2022 Gen. Assemb., Jan. Sess. (Conn. 2021) (enacted); S.B. 100, 2023–2024 Gen. Assemb., Reg. Sess. (Vt. 2023) (enacted).

Higher density housing in commercial and transit areas

A second group of by-right reforms has authorized higher density housing (typically multifamily) in commercial, office, and transit-adjacent areas where it was previously prohibited or had required a rezoning. California's AB 2011 (2022) made qualifying high-density, affordable housing a use by right in zones where office, retail, or parking are principally permitted uses.³⁷ Massachusetts's MBTA Communities Act (2021) requires municipalities served by transit to provide at least one zoning district in which multifamily housing is permitted as of right.³⁸ Florida's SB 102 (2023), the "Live Local Act," requires localities to permit qualifying multifamily and mixed-use development administratively in commercial, industrial, and mixed-use zones, and Arizona's HB 2721 (2024) authorized middle housing in populous cities near central business districts and large residential subdivisions.³⁹

Constraining review of by-right housing projects

Authorizing a use or density level by right addresses whether a given type of housing may generally be built without a threshold discretionary decision. However, as-of-right projects may still be subject to other discretionary reviews like design or site reviews, the standards for which may be facially objective but so vague that they can frustrate a use that's authorized by right.

The five subcategories of reforms discussed below are aimed at constraining these different levers of additional local control. The first two reforms are more procedural, exempting some uses from processes that inform local decisionmaking or requiring that local review be ministerial (conducted against objective, pre-disclosed standards rather than subjective or discretionary criteria).⁴⁰ The latter three reforms are more substantive, prohibiting standards that inhibit a favored housing type, benchmarking the standards the locality imposes to those it already applies to another housing type, or prohibiting particular review criteria.

37. Affordable Housing and High Road Jobs Act of 2022, Assemb. B. 2011, 2021-2022 Leg., Reg. Sess. (Cal. 2022), codified at CAL. GOV'T CODE §§ 65912.100 et seq.

38. H.B. 5250, 191st Gen. Ct., 2020 Reg. Sess. (Mass. 2021), codified at MASS. GEN. LAWS ch. 40A, § 3A.

39. Live Local Act, S.B. 102, 2023 Leg., Reg. Sess. (Fla. 2023); H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024).

40. Development approvals are commonly described as occupying a spectrum from ministerial (or by-right) to discretionary. A ministerial approval applies objective, predisclosed standards, such that a project satisfying them must be approved; a discretionary approval requires the exercise of judgment by a public body. See Michael Manville et. al., *Does Discretion Delay Development?* 89 J. AM. PLAN. ASS'N 336 (2022).

Exempting affordable housing from processes that inform local decisions

Relatively more aggressive reforms entirely exempt certain developments from processes—state environmental review, specifically—that inform local decisionmaking. California,⁴¹ Washington,⁴² and New York⁴³ have all recently expanded the categories of development that are exempt from state environmental review to include more affordable housing.

Requiring objective criteria

Many reforms confine certain local reviews to a set of objective standards. California’s SB 35 (2017) provides one example: in jurisdictions that have not met their regional housing targets, localities must use a streamlined ministerial process to review qualifying affordable multifamily projects against objective design standards.⁴⁴ California’s AB 2011 (2022) applies a comparable ministerial standard to the qualifying multifamily and mixed-use housing it authorizes in commercial zones.⁴⁵ Washington’s HB 1293 (2023) is similar but narrower, requiring that design review specifically—rather than local review broadly—be limited to clear and objective standards.⁴⁶

Prohibiting inhibitory criteria

When a locality makes the criteria too restrictive, even objective criteria can effectively frustrate housing production. One way for states to address this issue is to prohibit, in general terms, standards for authorization or project review that inhibit a favored housing type. In the surveyed cases, this favored housing type is what might be called “middle housing,” which different jurisdictions define differently but typically refers to low-density multifamily buildings like -plexes and townhouses.⁴⁷ Oregon’s HB 2001 (2019) directs that local standards and approval criteria not be applied in a manner that individually or cumulatively discourages all types of middle housing through unreasonable cost or delay.⁴⁸ Arizona’s HB 2721 (2024) is more specific, providing that a municipality “may not ... [d]iscourage the development of

41. Assemb. B. 130, 2025-2026 Leg., Reg. Sess. (Cal. 2025) (enacted) (exempting qualifying urban infill housing developments up to 20 acres that are consistent with local plans); S.B. 131, 2025-2026 Leg., Reg. Sess. (Cal. 2025) (enacted) (exempting certain infill and other developments from certain parts of environmental review if they would have qualified for exemption but for a single “near miss” condition).

42. H.B. 1491, 69th Leg., 2025 Reg. Sess. (Wash. 2025) (enacted) (adding categorical environmental review exemptions for qualifying transit-oriented residential and mixed-use development). See also the introduced but not yet enacted S.B. 5612, 69th Leg., 2025 Reg. Sess. (Wash. 2025) (expanding categorical environmental review exemptions for multiunit housing in urban growth areas).

43. S.B. 9008/Assemb. B. 10008, 2025-2026 Leg., Reg. Sess. (N.Y. 2026) (enacted) (exempting housing projects of 20 to 500 units from environmental review, with the cap varying by municipal population, zoning status, and Census urbanized-area designation, generally on previously disturbed sites connected to existing water and sewer systems).

44. S.B. 35, 2017-2018 Leg., Reg. Sess. (Cal. 2017), codified at CAL. GOV’T CODE § 65913.4. (providing that the design review must be “objective and ... strictly focused on assessing compliance” with objective standards).

45. Assemb. B. 2011, 2021-2022 Leg., Reg. Sess. (Cal. 2022), codified at CAL. GOV’T CODE § 65912.110.

46. H.B. 1293, 68th Leg., 2023 Reg. Sess. (Wash. 2023), codified at WASH. REV. CODE § 36.70A.630.

47. See, e.g., H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024), codified at ARIZ. REV. STAT. § 9-462.10 (defining middle housing as “buildings that are compatible in scale, form and character with single-family houses and that contain two or more attached, detached, stacked or clustered homes,” including duplexes through fourplexes and townhomes).

48. H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. (Or. 2019), codified at OR. REV. STAT. § 197.758 (approval standards must not, individually or cumulatively, discourage middle housing through unreasonable cost or delay).

middle housing through requirements or actions that individually or cumulatively make impracticable the permitting, siting, or construction” of it.⁴⁹ Because the test is effects-based, this language applies to even objective local requirements, though its generality may also result in uncertainty about which requirements are permissible.

Benchmarking criteria to other development types

As an alternative to an effects-based test, other states simply benchmark the criteria that localities may apply to certain kinds of housing—typically middle housing or ADUs—to those that apply to another housing type—typically single-family residences.⁵⁰ Benchmarking reaches the substantive content of local development standards as well as the procedures for project-level review. On the substantive side, Washington’s HB 1110 (2023) bars standards for middle housing that are more restrictive than those required for single-family residences. On the procedural side, HB 1110 requires that the procedures that apply to middle housing developments for development permits and environmental review be the same as those that apply to single-family residences. Washington’s HB 1337 (2023) provides comparable benchmarking to ADUs, as do Connecticut’s HB 6107 (2021), Vermont’s HOME Act (Act 47, S. 100) (2023), and Arizona’s HB 2721 (2024) for certain ADUs, duplexes, and middle housing respectively.⁵¹ The single-family benchmark supplies a ready, locally established standard and forecloses the imposition of more onerous requirements on other types of housing.

Prohibiting particular review criteria

Finally, some states enumerate prohibited criteria outright rather than identifying them by reference to effects or to another housing type. The most frequent target is owner-occupancy: Oregon’s HB 2001 (2019) and Washington’s HB 1337 (2023) prohibit localities from conditioning approval of an ADU on the owner residing on the property.⁵² Arizona’s HB 2721 (2024) bars owner occupancy requirements on middle housing lots.⁵³ Other enumerated prohibitions address family relationship conditions for ADUs (e.g., Connecticut’s HB 6107 (2021)), parking minimums (e.g., Vermont’s HOME Act (2023)), and fire sprinkler requirements for middle housing (e.g., Arizona’s HB 2721 (2024)).⁵⁴ Although narrow and less adaptive, such enumerated prohibitions can be consequential: a single owner-occupancy condition may render an ADU unviable.

49. H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024), codified at ARIZ. REV. STAT. § 9-462.10.

50. As a variant, Florida’s SB 102 (2023) benchmarks not to a housing type but to the locality’s own most permissive zoning. S.B. 102, 2023 Leg., Reg. Sess. (Fla. 2023).

51. H.B. 1337, 68th Leg., Reg. Sess. (Wash. 2023); H.B. 6107, 2021-2022 Gen. Assemb., Jan. Sess. (Conn. 2021); VT HOME Act, S.B. 100, 2023-2024 Gen. Assemb., Reg. Sess. (Vt. 2023) (also exempting certain projects from Act 250 environmental review); H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024).

52. H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. (Or. 2019); H.B. 1337, 68th Leg., Reg. Sess. (Wash. 2023).

53. H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024).

54. H.B. 6107, 2021-2022 Gen. Assemb., Jan. Sess. (Conn. 2021) (2021); S.B. 100, 2023-2024 Gen. Assemb., Reg. Sess. (Vt. 2023); H.B. 2721, 56th Leg., 2d Reg. Sess. (Ariz. 2024).

Limiting project-level public input

Where local discretionary review of proposed developments continues to take place, states are implementing a third category of reform to local procedures by increasingly limiting the role of public input into that review process. This approach appeals to states in part because project-level hearings are a principal stage of the development process at which individual projects are delayed or reduced in scale.

These reforms constrain public input primarily by limiting hearings, substituting written comments for hearings, or standardizing the hearing timeline. As examples of the first, California's SB 330 (2019) prohibits more than five hearings across all of a project's required approvals if it complies with certain objective general plan and zoning standards, and AB 881 (2019) prohibits hearings entirely for ADU permitting.⁵⁵ Oregon's SB 975 (2025) eliminates the initial public hearing for certain urban housing applications—residential upzonings, planned unit developments, and variances within urban growth boundaries—and substitutes a fourteen-day written comment period with notice limited to property owners within approximately 100 feet.⁵⁶ Finally, to standardize the public input window, West Virginia's HB 3215 (2023) requires that hearings on major subdivision applications occur within forty-five days of a complete application, with a vote following within fourteen days of the hearing.⁵⁷

Because public input and discretion are closely associated in practice, several statutes constrain both simultaneously. California's SB 9 (2021) requires ministerial approval of qualifying duplexes without a hearing and subject only to objective standards.⁵⁸ Florida's SB 102 (2023) requires ministerial approval of qualifying multifamily development in commercial and industrial zones without a commission hearing.⁵⁹ These statutes illustrate the overlap among the categories surveyed here: a single reform may authorize a use by right, require objective review, and remove the associated public hearing.

Limiting discretion to change decision criteria

Some states are limiting how much discretion a locality has to change decision criteria as the project proceeds. Specifically, this fourth category of reforms entitles a developer to have its application considered under the criteria applicable at the time the application is filed. This entitlement can be especially important where significant time passes between when a complete application is filed and when a decision is actually rendered. Under the traditional rule in many states, a developer doesn't have any legal entitlement to the decision criteria in place at a given point in time (i.e., the developer's rights do

55. S.B. 330, 2019–2020 Leg., Reg. Sess. (Cal. 2019) (temporarily providing for a five-hearing limit for compliant housing development projects); Assemb. B. 130, 2023–2024 Leg., Reg. Sess. (Cal. 2023) (making SB 330's limit permanent); Assemb. B. 881, 2019–2020 Leg., Reg. Sess. (Cal. 2019).

56. S.B. 975, 83d Legis. Assemb., 2025 Reg. Sess. (Or. 2025).

57. H.B. 3215, 86th Leg., 2023 Reg. Sess. (W. Va. 2023).

58. S.B. 9, 2021–2022 Leg., Reg. Sess. (Cal. 2021), codified at CAL. GOV'T CODE §§ 65852.21, 66411.7.

59. S.B. 102, 2023 Leg., Reg. Sess. (Fla. 2023).

not ‘vest’) until late in the process.⁶⁰ In some jurisdictions, this point in time can be well after the owner has made “substantial expenditures in good faith reliance on the issuance of building permit or other approval.”⁶¹ As a result of later-stage vesting, a locality can effectively disapprove a project that satisfied the locality’s criteria at the time of application by simply amending its decision criteria during the pendency of review. In recognition of this possibility, recent reforms have generally aimed to advance the point at which rights vest, either by stipulating an earlier vesting point or by giving the developer more choice over the vesting point.

California’s SB 330 (2019) furnishes an example of advancing the point at which an owner’s rights vest, providing that a housing development project “shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application . . . was submitted.”⁶² North Carolina’s SB 355 (2019) is similar but differs from the California law in two important ways.⁶³ First, it allows the locality to change criteria at a later stage, but shifts the burden to the locality to demonstrate that the project would pose a “serious threat” to public welfare if allowed to proceed under the original criteria.⁶⁴ Second, if the criteria change between application and decision, it generally allows the applicant to select which version of the criteria to apply.⁶⁵ These statutes have the same goal of fixing the applicable rules at an early and determinate point, thereby reducing the regulatory uncertainty attending a pending application.

Imposing shot-clocks on local decisionmaking

As a fifth category of reform, states are increasingly imposing deadlines on how long localities can take to render their decisions—i.e., putting localities on a “shot-clock.”

California enacted shot-clocks in SB 35 in 2017, AB 2234 in 2022, and AB 253 and 1007 in 2025. SB 35 requires local governments that haven’t met certain housing goals to streamline review for qualified affordable multifamily projects within 60 or 90 days and to conduct design review within 90 to 180 days; if these deadlines are missed, approval is automatic.⁶⁶ AB 2234 imposes different post-entitlement permitting review deadlines for mostly-residential projects based on project size, with violations triggering

60. See ROBERT C. ELLICKSON ET AL., *LAND USE CONTROLS* 241 (4th ed. 2013) (observing that “Washington’s very early vesting rule runs counter to the rule in most states,” which recognizes vested rights “only if the owner has made substantial expenditures in good faith reliance on the issuance of a building permit or other approval.”).

61. *Id.*

62. S.B. 330, 2019–2020 Leg., Reg. Sess. (Cal. 2019), codified at CAL. GOV’T CODE § 65589.5(o). The statute also provides that no affirmative determination of completeness is required for the preliminary application to vest the applicable standards. *Id.*, codified at CAL. GOV’T CODE § 65941.1

63. Note that this was carried forward in the Chapter 160D recodification.

64. S.B. 355, 2019–2020 Gen. Assemb., Reg. Sess. (N.C. 2019).

65. *Id.*

66. S.B. 35, 2017–2018 Leg., Reg. Sess. (Cal. 2017), codified at CAL. GOV’T CODE § 65913.4(b–c).

the Housing Accountability Act’s enforcement machinery.⁶⁷ AB 253 allows developers to substitute third-party review by qualified professionals like licensed engineers or architects for certain local reviews if the locality estimates that the local review will exceed 30 days.⁶⁸ And AB 1007 applies shot clocks of 45 to 90 days from specified starting points to reviews conducted by secondary agencies like coastal and conservation commissions.⁶⁹

Oregon has long had a 120-day rule for rendering decisions on city permits, certain land use decisions like site and design review, and zone changes but in 2017 imposed a tighter, non-waivable 100-day deadline for certain affordable multifamily developments. Consequences for missing the shorter deadline are unclear.⁷⁰

Texas’s 2019 HB 3167 imposed a 30-day deadline for localities to act on subdivision plats and development plans, with automatic approval for missed deadlines and a prohibition on requesting extensions. More recent legislation (HB 3699 and HB 14, both in 2023) repealed the deadline as applied to plans but extended approval power to licensed third parties for certain review and inspection functions.⁷¹

Florida significantly tightened its permitting deadlines between 2021 and 2024, creating tiers of 10- to 60-day deadlines for building permits depending on the project type, with fee reductions and third-party alternatives for missed deadlines.⁷²

Washington enacted comprehensive project permit deadlines in 2023, effective 2025, covering a wide range of land development decisions with deadlines of 65, 100, or 170 days depending on complexity, a fee refund for missed deadlines, and accompanying investments in local permitting capacity.⁷³

These reforms vary on a number of dimensions. Some cover all localities (California, Texas, and Florida), others only urban or not-small localities (Oregon and Washington). Some apply only to affordable multifamily projects (California and Oregon), others to a much wider range of projects (Texas, Florida, and Washington). Texas’s reforms cover only a narrow slice of process (plat approvals), while other states’ reforms cover a much wider array of processes, from development and building permits in Florida to

67. Assemb. B. 2234, 2021-2022 Leg., Reg. Sess. (Cal. 2022). The HAA allows the developer to petition a court for enforcement, in this case of AB 2234’s deadlines. The locality bears the burden of proving its compliance. If the court finds a violation, it must order compliance, award attorney’s fees and costs, and impose fines for further non-compliance. Cal. Gov’t Code §§ 65913.3, 65589.5.

68. Assemb. B. 253, 2025-2026 Leg., Reg. Sess. (Cal. 2025), codified at CAL. GOV’T CODE § 17960.3.

69. Assemb. B. 1007, 2025-2026 Leg., Reg. Sess. (Cal. 2025), codified at CAL. GOV’T CODE § 65952. Secondary agencies (which CA more specifically terms “responsible” agencies) include all public agencies other than the entity leading the review of a project (like a city or county) that have discretionary approval power over the project.

70. OR. REV. STAT. § 197A.470(2) (100-day affordable multifamily deadline); OR. REV. STAT. § 227.178 (120-day default, with mandamus/fee refund). There do not appear to be statutory consequences for a missed 100-day deadline.

71. H.B. 3167, 86th Leg., Reg. Sess. (Tex. 2019), codified at TEX. LOC. GOV’T CODE ANN. §§ 212.009(a), 212.0095 (2025) ; H.B. 3699, 88th Leg., Reg. Sess. (Tex. 2023) (repealing plans coverage); H.B. 14, 88th Leg., Reg. Sess. (Tex. 2023) (third-party review), codified at TEX. LOC. GOV’T CODE ANN. §§ 247.001-.006 (2025), <https://statutes.capitol.texas.gov/docviewer?docName=LG.247.htm>.

72. H.B. 1059, 2021 Leg., Reg. Sess. (Fla. 2021); H.B. 267, 2024 Leg., Reg. Sess. (Fla. 2024).

73. S.B. 5290, 68th Leg., 2023 Reg. Sess. (Wash. 2023), codified at WASH. REV. CODE § 36.70B.080(1)(d).

subdivision and site or design reviews in Oregon to a mix of pre- and post-entitlement processes in California to all project permits except building permits in Washington. Most of these reforms apply to a locality's final decision (including appeals in Oregon), but some additionally apply to completeness determinations and revisions (California, Texas, and Florida). Some impose shorter deadlines for certain situations (Texas for subdivision plats, California for post-entitlement reviews, Florida and Washington for simpler developments) while allowing longer deadlines in other contexts (Oregon for limited land use decisions like site plan review, California for pre-entitlement, Florida and Washington for more complex developments).

Two additional reform design choices merit particular emphasis. On enforcement: California and Texas provide for deemed approval—a self-executing remedy that requires no litigation and gives developers a clear fallback. Florida and Washington instead impose fee refunds. California's AB 2234 makes missed deadlines a statutory violation subject to court-imposed fines and attorney's fees. Oregon authorizes judicial mandamus—a court order requiring a locality to comply with its statutory obligations.⁷⁴ Texas's HB 14 and California's AB 253 authorize licensed third-party reviewers in place of the local authority.⁷⁵ On waivability: California, Florida, Oregon, and Texas specifically prohibit localities from asking for a waiver of deadlines as a condition precedent to review, with Texas going so far as to prohibit the locality from requesting even deadline extensions. Washington, by contrast, appears to have no prohibition on waivers or extension requests.

Synthesis of primary reform differences

Table 1 organizes the surveyed reforms by the procedural features that they target. For each procedural feature, the table summarizes the differences we've identified in how the reform intervenes and provides illustrative examples. Though we don't claim that the synthesis we provide is comprehensive, we believe it covers many of the most important differences between recent state reforms to local discretion over development decisions.

74. At least for its 120-day deadline. The statutory text is somewhat ambiguous as to whether it applies to the 100-day deadline as well. It's also difficult to evaluate the efficacy of this provision. Some commentators have suggested that it was rarely used until the 1990s but has been more common after an Oregon supreme court decision eliminated a procedural tactic some local governments had been using to evade the provision. See generally Mark J. Fucile, *Mandamus in Land Use Cases*, 25 OR. STATE BAR LITIG. J. 4 (2006) (discussing the provision's historical efficacy).

75. Texas's third-party review applies to development documents and inspections, broadly defined as respectively including any document required by law to be approved before commencing development and any required inspection during construction. H.B. 14, 88th Leg., Reg. Sess. (Tex. 2023), codified at TEX. LOC. GOV'T CODE § 247.001-.006.

Table 1. Reforms to local discretion over development decisions by procedural feature, with primary differences and examples.

Procedural Feature	Identified Reform Differences
By-right authorization	By-right infill / ADU / middle housing in single-family zones • OR HB 2001 (2019); CA SB 9 (2021)
	By-right multifamily in commercial / industrial / transit areas • CA AB 2011 (2022); MA MBTA Communities Act (2021)
Review and the processes that inform it	Exempt from processes that inform review • CA AB 130 (2025); WA HB 1491 (2025)
	Require objective criteria • CA SB 35 (2017); WA HB 1293 (2023)
	Prohibit inhibitory criteria • OR HB 2001 (2019); AZ HB 2721 (2024)
	Benchmark criteria • To single-family: WA HB 1110 (2023); CT HB 6107 (2021) • To most permissive: FL SB 102 (2023)
	Prohibit discrete criteria • OR HB 2001 (2019); WA HB 1337 (2023); CT HB 6107 (2021); VT HOME Act (2023); AZ HB 2721 (2024)
Limiting public input	Cap number of hearings • CA SB 330 (2019); CA AB 881 (2019)
	Substitute written comments for hearing • OR SB 975 (2025)
	Standardize / compress input window • WA SB 5290 (2023); WV HB 3215 (2023)
Limiting criteria changes	Entitling the developer to the criteria in effect at the time of application • CA SB 330 (2019)
	Applicant choice among changed criteria, with burden on locality • NC SB 355 (2019)
Imposing shot-clocks	Weaker deadlines • Exceptions for smaller localities (OR, WA) • Only applicable to affordable multifamily (CA, OR) • Applies to few processes (TX) • Applies only to final decisions (OR, WA) • Longer deadlines (CA pre-entitlement; OR; FL and WA for larger projects) • Mandamus or fee-based enforcement (OR, FL, WA) • No waiver prohibition (WA)
	Stronger deadlines • Applies to all localities (CA, TX, FL) • Applies to a broad array of developments (TX, FL, WA) • Applies to a broad array of processes (CA, OR, FL, WA) • Applies to final decisions, completeness determinations, and revisions (CA, TX, FL) • Enforces through deemed approval (CA, TX), third-party review alternatives (TX), or as a statutory violation (CA) • Prohibits waiver as a condition precedent (CA, OR, TX, FL) or local requests for extensions (TX)

Considerations for policymakers

The above summary suggests a relatively straightforward set of reforms that policymakers seeking to increase housing supply can choose among: allowing higher density development by right, making reviews ministerial with objective criteria, limiting public hearings, restricting mid-stream changes to decision criteria, and imposing shot-clocks. These options raise a variety of considerations for policymakers.

Securing effective reform while maintaining political feasibility

Policymakers will have to reckon with the likelihood that the more intensive the reform, the lower the probability that a coalition will form to secure its passage. The fact that by-right reforms appear to cluster into two broad types—ADU, infill, and missing middle housing in single-family areas and higher density housing in commercial, industrial, and transit areas—is suggestive of this dynamic.⁷⁶ Higher density may be palatable to voters only in areas already home to more intensive uses, whereas lower density infill may be an easier sell in areas with lower density land use. For policymakers who are unsure of their constituents' appetite for reform, this gradient suggests a workable compromise that can be fine-tuned according to the policymaker's knowledge about residents' tolerance (e.g., requiring ADUs instead of middle housing in single-family areas or requiring that localities permit middle housing rather than higher density multifamily in commercial/transit areas).

The array of ministerial reforms different states have pursued likewise presents a gradient that policymakers can choose from depending on their need and willingness to override local control. Prohibiting enumerated criteria generally preserves more of localities' control over land use and requires placing greater trust in their alignment with the state's policy goals. Prohibiting all subjective criteria sharply limits localities' control. Benchmarking to the criteria used for single-family homes or prohibiting criteria that inhibit housing production fall in between, imposing some constraints but also preserving some measure of local discretion. Benchmarking provides a clearer rule that's harder for localities to manipulate, so it may be easier to enforce, but it may not cover all of the criteria that could be used to discourage housing. General prohibitions theoretically cover more ground, but they may require significant expenditure of enforcement resources and reliance on the state judiciary to interpret the prohibition since it may not always be clear whether a given criterion inhibits housing production or not.

76. This patterning may also reflect the availability of housing subsidies, e.g., from the Department of Transportation near transit corridors. See, e.g., *FY 2026 Notice of Funding Opportunity: Pilot Program for Transit-Oriented Development Planning*, U.S. DEPT OF TRANSP. (May 11, 2026), <https://www.transit.dot.gov/notices-funding/fy-2026-notice-funding-opportunity-pilot-program-transit-oriented-development> [<http://bit.ly/44GQA34>] (making grant determinations based, in part, on implementing “[p]olicies that deliver attainable transit-adjacent housing options for families and individuals with disabilities.”).

Preserving legitimate input while preventing delay

The evidence on public input suggests that it is least defensible where a decision is, or should be, objective.⁷⁷ Eliminating public input from the application of objective standards sacrifices little and removes a documented source of delay.⁷⁸ Where a decision is objective but turns on genuinely contested facts, like the adequacy of infrastructure or the presence of environmental hazards, public input that is circumscribed through caps on the number of hearings allowed or written comment substitutes may strike a more appropriate balance between promoting supply and surfacing overlooked problems that are worth correcting.⁷⁹ Where a decision is legislative in character, like a decision about zoning, public input may be more likely to surface relevant issues that were overlooked in general legislative consideration. The concentrated interests that can unduly influence project-level contestation are also typically more diffuse and matched with competing interests. Robust public input may therefore be more appropriate in these legislative situations.

Providing certainty while allowing flexibility to respond to new information

Because of the costs that regulatory uncertainty imposes on developers, reforms that limit changes in decision criteria must strike a balance between preserving the locality's ability to respond to genuine regulatory concerns that become clearer later in the process and stifling housing production. The right balance will depend on how likely new and critical regulatory concerns are to arise and how sharply regulatory uncertainty raises the costs of development. California's reform may be more sensible on the assumption that critical concerns are relatively unlikely to arise and that regulatory uncertainty significantly raises the costs of development. North Carolina's is more sensible on the assumption that critical concerns are reasonably likely to arise and that regulatory uncertainty less crucially raises the costs of development.

Constraining delays while ensuring meaningful review

Deadlines for local decisionmakers can increase production where delay or the uncertainty of review timing is the binding constraint on production, but deadlines can also compromise meaningful review. Deadlines help developers plan around a predictable decision timeline and reduce the need to price the risk of potential delay into project costs. How approvers themselves respond to a deadline is less certain,

77. See, e.g., the discussion in note 8 and accompanying text.

78. While extensive and formal public input like a hearing is rare for some processes (e.g., issuance of a building permit), it is not rare for others (e.g., site plan, design, environmental, or compliance review).

79. Having an opportunity to be heard can also help to legitimate a decision in the eyes of those affected by it.

as it may keep review moving on schedule or might instead force a rejection that a longer time horizon might avoid. Where the locality's delay isn't due to capacity constraints, policymakers might consider pairing deadlines with the foregoing procedural reforms and with capacity supports where appropriate.

To minimize the degree to which deadlines compromise meaningful review, policymakers can calibrate the deadline to the need for review based on project complexity (as in Florida and Washington) and the phase of the project (e.g., providing different amounts of time for pre- and post-entitlement decisions). Policymakers can similarly calibrate enforcement. Automatic deemed approval is the most powerful compliance incentive but could raise legitimate building safety concerns for structural permits.⁸⁰ Fee reductions are more proportionate but may be absorbed by well-resourced localities and may not offset cascading developer costs from delay. Litigation like that enabled by California's Housing Accountability Act is a strong deterrent but primarily benefits applicants with legal resources and may be no faster than waiting out the delay.⁸¹ And prohibiting waiver of decision deadlines can prevent localities from skirting deadlines by unduly pressuring developers, but it can also introduce frictions where both the locality and developer would prefer a delay.

Regardless of the approach to constraining delays, the source and severity of delay will tend to vary across jurisdictions and the intensity of their review procedures. For this reason, it may be important for policymakers to learn about the source and severity of delay. Encouraging or mandating local reporting of this information can help policymakers both prioritize their interventions and measure the effectiveness of those interventions.

Reforms to judicial review of local land use decisions

As with state reforms to local discretion over land use decisions, state reforms to judicial review of these decisions can roughly be organized according to the stage of review. First, there is the question of who has "standing" in judicial proceedings, meaning who can challenge the local development decision through the courts. Second, once a review is underway, there are questions around evidentiary thresholds: who bears the burden of proof in these challenges, what standard of evidence is needed to meet this burden, and how closely must that evidence relate to the written reasons the locality gave for its decision? Third, there are questions about how much courts defer to local decisions, including what standard the court must use to review the locality's decision, how it should resolve legal ambiguity, and whether proceedings

80. Automatic deemed approval, while the most powerful incentive for compliance, could in theory result in approvals a locality would have granted with minor modifications; whether delays to make those modifications are worth their cost is an open question. See generally Vicki Been, *Impact Fees and Housing Affordability*, 8 CITYSCAPE 139 (2005).

81. See note 67's brief description of HAA enforcement.

stay the appealed decision and/or toll the approval. Finally, state reforms also deal with the expense of the litigation, including who pays court costs and legal fees.⁸² Some states are also making reforms to the structure of appeals processes themselves, which we discuss in a parallel report.⁸³

Reforms to statutory standing to initiate judicial review

In recent years, several states have modified who has sufficient legal interest (“standing”) to challenge certain land development decisions in court and the grounds on which a decision can be challenged. These reforms fall into three categories. First are reforms that expand who can challenge a locality’s *denial* of a development application. Often only the developer has statutory standing to challenge these denials.⁸⁴ However, in 2016, California explicitly granted to any “housing organization” (i.e., certain nonprofits and trade groups connected with housing) the right to bring an action to enforce the state’s Housing Accountability Act, including denials and conditional approvals of certain housing projects.⁸⁵ In 2025, Texas similarly gave housing organizations standing to challenge a locality’s failure to administratively approve certain projects—specifically, multifamily housing in commercial zones—and mandated fee-shifting for prevailing claimants.⁸⁶ By giving other interested parties the ability to challenge unlawful denials, these reforms help address the concern that such denials won’t be challenged where developers avoid doing so to preserve their relationship with a locality.⁸⁷

82. Though not detailed here, some reforms also make changes to the institutional structure of the appeals system itself. See, e.g., H.B. 4, 2019–2020 Gen. Ct., Reg. Sess. § 346:260 (N.H. 2019) (enacted) (establishing a housing appeals board); S.B. 458, Reg. Sess. (O.R. 2021) (routing a new category of land use appeals through a specialized referee); H.B. 406, 65th Leg., Gen. Sess. (U.T. 2023) (enacted) (directing appeals of road width requirements in new residential developments to an expert panel); S.B. 355, 2019–2020 Gen. Assemb., Reg. Sess. (N.C. 2019) (enacted) (making a wide variety of changes to, and providing clarifications of, the appeals process for certain land use decisions).

83. See our separate policy brief entitled “The Builder’s Remedy: Key Considerations for Enforcing Pro-Housing Policies” NYU Furman Center (2026).

84. *But* see CAL. GOV’T CODE § 65589.5(k)(1)(A)(i) (2026); 310 ILL. COMP. STAT. 67/30(b) (2026). Older codification of standing rights in California and Illinois both expanded standing to persons who would be eligible to apply for residency in the denied housing.

85. Assemb. B. 2584, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

86. S.B. 840, 89th Leg., Reg. Sess. (Tex. 2025).

87. Indeed this concern arose in legislative discussions of California’s bill. See, e.g., Cal. S. Comm. on Transp. & Hous., Analysis of AB 2584 (Daly), 2015–2016 Reg. Sess., at 2 (June 21, 2016), https://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_2551-2600/ab_2584_cfa_20160616_162405_sen_comm.html (discussing the purpose of granting standing to housing organizations as responding to the concern that “developers may be reluctant to challenge local noncompliance of the HAA because they often build multiple projects within the same city or county over a number of years” so “may find it is in their long-term best interest to maintain a good relationship with the city or county by not challenging it on any particular project.”)

Second are reforms that limit who can challenge a locality's *approval* of a development application.⁸⁸ The MA Affordable Homes Act of 2024, for example, requires challengers to demonstrate “measurable injury, which is special and different.”⁸⁹ This category of reform is significant because it helps limit delays from challenges by parties with no injury beyond those generalized harms implicit in the regulatory scheme.⁹⁰ However, striking the right balance is difficult because standing rules that are too strict can render legitimate challenges to a decision (e.g., on the basis of documented environmental harms) impossible.

Third are reforms that limit the *basis* for challenge to a locality's development decision. A recent example comes from Vermont, which prohibits challenges based on the effects that affordable housing might have on the “character” of the area.⁹¹ This category of reform is significant because claims that a project does not fit the “character” of a neighborhood are a recurring basis for third-party challenges to development approvals.⁹²

Reforms to judicial review of evidence

Many of the reforms states are making to the judicial review of land use decisions relate to the locality's evidence for its decision. These reforms involve changes to the burden of proof, the standard of proof, and to the requirements for local governments to make a record of their reasoning.

88. Some reforms—more likely to inhibit development than further it—have expanded who can challenge approvals. Vermont's HOME Act of 2023, S.B. 100, 2023-2024 Gen. Assemb., Reg. Sess. (Vt. 2023) (enacted), for example, added “residents” to the list of entities (alongside “voters” and “real property owners”) who could, in a combination of 10 or more across the different types of entities, appeal certain of a locality's development decisions.

89. Massachusetts Affordable Homes Act, H.B. 4977, 193d Gen. Ct., Reg. Sess. (Mass. 2024), codified at MASS. GEN. LAWS ch. 40A § 17 (requiring challengers to “sufficiently allege and ... plausibly demonstrate ... measurable injury, which is special and different to such plaintiff, to a private legal interest ... through credible evidence.”). An appraised reduction in property value as a result of the locality granting a variance to the neighboring property would more likely satisfy this test than, for example, a speculative claim that more supply in the neighborhood will generally reduce property values.

90. This variety of standing limitation bears some resemblance to limits on the standing of commercial competitors, though the latter is a prudential and equitable, judicially-imposed limit operationalized as an affirmative defense (typically contested after the initial, motion-to-dismiss stage of a case, with the burden of proof on the defendant) rather than a statutory limit (typically contested at the outset of a case, with the burden on the plaintiff).

91. Vermont HOME Act of 2023, S.B. 100, 2023-2024 Gen. Assemb., Reg. Sess. (Vt. 2023), codified at 24 VT. STAT. ANN. § 4465 (“an appeal [of a locality's development decision] shall not include the character of the area affected if the project has a residential component that includes affordable housing”)

92. See, e.g., *Project Preserve Poway v. City of Poway*, 245 Cal. App. 4th 560, 576 (2016 Cal. App.) (discussing lower court analyses of “community character” claims under California's Environmental Quality Act); *Protect Niles v. City of Fremont*, 25 Cal. App. 5th 1129, 1141 (2018 Cal. App.) (“Several courts have recognized that a project's impact on the aesthetic character of a surrounding community is a proper subject of CEQA environmental review.”).

Reforms to burden and standard of proof

Extensive recent reforms in California and Texas focus on shifting the burden and standard of proof.⁹³ California has long placed the burden of justifying outright denials on local governments where the denial would have a substantial adverse impact on the viability or affordability of affordable housing. California expanded this burden-shifting framework under its landmark Housing Accountability Act in 2017 to also require local governments to justify conditional approvals with these impacts.⁹⁴ The same act also made it more difficult for local governments to justify a denial or a conditional approval.⁹⁵ While the previous standard of proof required the locality to merely have “substantial” evidence of the correctness of its decision, the new standard requires the locality to show that its decision is justified by the higher “preponderance of evidence.”⁹⁶

In 2019, Texas for the first time shifted the burden of justifying both conditional approvals and denials of development plats onto local governments.⁹⁷ The state requires “clear and convincing evidence,” an even higher standard of proof than California’s preponderance standard.⁹⁸

93. As the following examples show, some statutes have changed the standard of proof required for more particular decisions. Under a statute passed in 2019, localities in California can base their decision about a development application on standards in place at the time of the decision, even if those standards weren’t in place at the time of application, but only if the locality shows the new standards are necessary to protect health and safety by a preponderance of evidence. See S.B. 330, 2019-2020 Leg., Reg. Sess. (Cal. 2019) (requiring localities to show that decision standards not in place at the time of an application are “necessary to mitigate or avoid a specific, adverse impact upon the public health or safety...” in order to apply them to the application), codified at CAL. GOV’T CODE § 65589.5(o)(2)(B) (2026).

In 2022, CA also enacted a statute permitting localities to bypass deadlines they would otherwise face on certain post-entitlement applications if they can prove by “substantial” evidence that more time is necessary. See Assemb. B. 2234, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (specifying that the locality must show, based on substantial evidence, that “the proposed postentitlement phase permit might have a specific, adverse impact on public health or safety and that additional time is necessary to process the application”), codified at CAL. GOV’T CODE § 65913.3(c)(4) (2026).

In 2023, Rhode Island significantly lowered the standard of proof applicants for a dimensional variance must meet. A dimensional variance grants an applicant an exemption from certain zoning regulations related to building size. Previously, the applicant had to show that “there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property” without the variance, but now it needs only show the relief sought is “minimal to a reasonable enjoyment of the permitted use.” See S.B. 1032, 2023-2024 Gen. Assemb., Jan. Sess. (R.I. 2023), codified at 45 R.I. GEN. LAWS § 45-24-31(68)(ii) (2026).

94. S.B. 167, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (enacted) (amending CAL. GOV’T CODE § 65589.5(i) to include conditional approvals, not merely denials).

95. *Id.* (amending CAL. GOV’T CODE § 65589.5(i) to impose the ‘preponderance of evidence’ standard in place of the ‘substantial evidence’ standard).

96. These are terms of art in law. Substantial evidence has been described as “more than a mere scintilla” of evidence. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). A preponderance of evidence corresponds to being more likely true than not.

97. H.B. 3167, 86th Leg., Reg. Sess. (Tex. 2019), codified at TEX. LOC. GOV’T CODE § 212.0099 (shifting the burden from applicants to municipalities); *id.* § 232.0029 (shifting the burden from applicants to counties). Plans were covered alongside plats in the original enactment, but their coverage has since been rescinded. The bill is not limited to affordable developments, or even residential ones.

98. *Id.*

Reforms to record requirements

To ensure localities are basing their decisions on reasoning that meets the standard of proof required, many states include a requirement that the locality produce a written record of its reasoning. This requirement accomplishes two goals. First, it prevents localities from inventing reasons after the decision if the applicant challenges the decision in court. Second, it gives the court a more robust evidentiary basis for reviewing the locality’s decision and whether it met the burden of proof.⁹⁹

When Texas shifted the burden of proof to localities and imposed a “clear and convincing” standard of proof for denials and conditional approvals, it also required them to provide the applicant “a written statement ... that clearly articulates each specific condition ... or reason for disapproval” in a way that is “directly related to the requirements” for conditional approval/disapproval, “include[s] a citation to the law,” and is not “arbitrary.”¹⁰⁰

New Hampshire enacted particularly stringent written findings requirements in 2022 as part of a larger reform to housing and zoning policies.¹⁰¹ In addition to requiring specific findings of fact that support a decision, the statute explicitly provides that “failure to make specific findings of fact supporting a disapproval shall be grounds for automatic reversal . . . unless the court determines that there are other factors warranting the disapproval.”¹⁰²

99. Many states have long had written findings requirements in the development context. See, e.g., *Topanga Ass’n for a Scenic Cmty. v. Cnty. of L.A.* 522 P.2d 12, 17 (Cal. 1974) (mandating that localities produce written findings supporting their decisions in ‘quasi-adjudicative’ processes— like variance or special permit decisions where the locality is determining whether a specific property/project satisfies particular criteria).

100. H.B. 3167, 86th Leg., Reg. Sess. (Tex. 2019) , codified at TEX. LOC. GOV’T CODE § 212.0091 (for municipalities) and *id.* § 232.0026 (for counties).

101. H.B. 1661, 2021-2022 Gen. Ct., Reg. Sess. (N.H. 2022) (providing that “[t]he local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant” and requiring that the decision “include specific written findings of fact”: “written reasons for the disapproval” or “a detailed description of all conditions necessary to obtain final approval” if the decision is a denial or a conditional approval respectively), codified at N.H. REV. STAT. ANN. § 676:3(l) (2022), <https://gc.nh.gov/rsa/html/LXIV/676/676-3.htm>.

102. *Id.* Localities were already required to provide reasons—the reform added the fact-finding requirement.

California and Oregon also recently imposed written findings requirements,¹⁰³ but their requirements are more general than Texas's requirement and lack New Hampshire's automatic reversal. Oregon imposed the requirement in 2019 for localities denying certain applications to convert single family residences into buildings with four or fewer units.¹⁰⁴

Reforms to how much the courts defer to local land use decisions

In addition to reforming issues of standing and evidentiary burden in judicial review of local development decisions, some states have changed how courts are to treat local decisions. These reforms fall into three categories: changes to the standard of review (whether the court should reassess the facts and/or law independently or with deference to the decisionmaker), to how the courts should interpret the relevant laws (in whose favor the court resolves legal ambiguity), and to stays (whether the court can pause the locality's decision while judicial review proceeds).

Standard of review

Texas and North Carolina both passed statutes in 2019 that reformed the standard of review. In reviewing land use decisions, courts typically defer to the decisionmaker on questions of fact but evaluate questions of law independently. Texas's statute directs that "[t]he court may not use a deferential standard" when reviewing plat disapprovals.¹⁰⁵ North Carolina's statute directs courts hearing challenges to "quasi-judicial" development determinations¹⁰⁶ to treat the question of "[w]hether the record contains competent, material, and substantial evidence" as "a conclusion of law, reviewable de novo" (taking a fresh look at the issue and giving no deference to the earlier decision).¹⁰⁷ This directive polices, rather than erases, the line

103. California has implemented several written findings requirements in recent years. See, e.g., Senate B. 9, 2021-2022 Leg., Reg. Sess. (Cal. 2021) (requiring local agencies that deny certain developments of two or fewer units to make written findings that the development would have certain specific and adverse impacts); Assemb. B. 2234, 2021-2022 Leg., Reg. Sess. (Cal. 2022) (requiring a local agency to make written findings that certain conditions are met in order to bypass a state-imposed deadline for deciding on post-entitlement permits); Senate B. 167, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (requiring a locality that is denying certain residential projects as non-compliant with applicable laws or regulations to make written findings that identify the provision under which the project is non-compliant and explain its non-compliance); Senate B. 166, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (requiring a local agency to make written findings that remaining parcels can accommodate its share of regional housing need when it allows development on a parcel of fewer units by income category than it previously identified that parcel as accommodating in its housing element); Senate B. 35, 2017-2018 Leg., Reg. Sess. (Cal. 2017) (requiring a local agency that denies certain developments—roughly, multifamily developments in urban areas that haven't permitted their share of regional housing need—as conflicting with specified planning standards to make written findings identifying the provision with which the development is in conflict and explaining the conflict).

104. H.B. 2001, 80th Legis. Assemb., 2019 Reg. Sess. (Or. 2019) ("A building official who denies an application for alternate approval under this sub-section shall provide to the applicant ... [a] written explanation of the basis for the denial..."), codified at OR. REV. STAT. § 455.610(9)(b) (2026), https://oregon.public.law/statutes/ors_455.610.

105. H.B. 3167, 86th Leg., Reg. Sess. (Tex. 2019), codified at TEX. LOC. GOV'T CODE § 212.0099 (2023), <https://statutes.capitol.texas.gov/?tab=1&code=LG&chapter=LG.212&artSec=212.0099>. This directive is ambiguous but presumably applies to both questions of fact (in light of the statute's companion provision requiring clear and convincing evidence to support a disapproval) and law.

106. North Carolina defines quasi-judicial decisions in the land use context as: "A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation." Examples are decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. N.C. GEN. STAT. § 160D-102 (28) (2026).

107. S.B. 355, 2019-2020 Gen. Assemb., Reg. Sess. (N.C. 2019), codified at N.C. GEN. STAT. § 160D-1402(j)(2) (2026).

between fact (which courts in the state traditionally reviewed deferentially in the development context) and law by providing that the court independently assess whether the record contains legally sufficient evidence but keeping the court out of the task of weighing conflicting evidence and credibility.¹⁰⁸

Statutory interpretation

Where a land use rule is ambiguous, the court must generally decide how to interpret it and resolve the ambiguity.¹⁰⁹ One option is to defer to the locality's interpretation. At least one state, California, has prescribed by statute how the court should resolve ambiguity in certain cases related to local development decisions.¹¹⁰ Namely, where a local "development policy, standard, or condition" is ambiguous, and one way of reading it would reduce density or have other supply-suppressing effects, but another way of reading it would not, the legislature directed the court to choose the latter reading.¹¹¹

Stays and tolls

Judicial review can take a considerable amount of time. Some states have tried to reduce the impact of this time on the development process, either by preventing judicial review from pausing ("staying") the local decision so the development process can continue or extending ("tolling") the expiration date for a development approval like a permit. Colorado's HB 1107 (2024), for example, prohibits stays of local land use decisions when those decisions are challenged,¹¹² and California's AB 2117 (2024) tolls the expiration of permit and project approvals for the time during which a challenge to them is pending.

108. See, e.g., DAVID OWENS, *LAND USE LAW IN NORTH CAROLINA* 374 (2d ed. 2011) (stating that, in North Carolina judicial review of quasi-judicial land decisions, "[t]he trial court may not make new findings of fact or conduct a de novo review of the evidence as it is the sole province of the decisionmaking board to weigh the evidence and make determinations of credibility").

109. The court may also defer to the interpretation of the original decisionmaker, but courts typically review issues of law independently.

110. Not all state judiciaries follow these directives, viewing the interpretation of the law as the prerogative of the judiciary rather than the legislature, but many strive to interpret statutes in harmony with the intent of the legislature so find provisions like these to be persuasive. See, e.g., Linda D. Jellum, "Which Is to Be Master, the Judiciary or the Legislature? When Statutory Directives Violate Separation of Powers," 56 *UCLA L. REV.* 837 (2009).

111. More specifically, the legislature has directed by statute that such policies "be broadly construed so as to maximize the development of housing within this state" and that "[a]ny exception to the requirements of this section [of the state's regulation of local development decisions], including an exception for the health and safety of occupants of a housing development project, shall be construed narrowly." S.B. 330, 2019-2020 Leg., Reg. Sess. (Cal. 2019), codified at CAL. GOV'T CODE § 66300.

112. However, some reforms to stays are less friendly to development. See, e.g., H.B. 4, 2019-2020 Gen. Ct., Reg. Sess. § 346:260 (N.H. 2019), codified at N.H. Rev. Stat. Ann. § 679:7(II), which automatically stays a local decision during appeal if the challenger can demonstrate they have standing.

Reforms to legal costs

A final category of reform addresses who bears the legal fees a challenge imposes. Litigation is expensive, and the allocation of its costs shapes both who is willing to initiate judicial review and how much risk the litigation poses to the development decision. There are two main types of legal cost reforms. Both shift who pays the fees, but one aims to deter wrongful challenges to approvals, and the other seeks to facilitate non-frivolous challenges to disapprovals. Colorado’s HB 24-1107 (2024) provides an example of deterrence, directing courts to award reasonable attorney’s fees to a prevailing governmental entity in challenges to local land use approvals involving higher density housing.¹¹³ California’s AB 712 (2025) provides for attorney’s fees to a prevailing applicant for an affordable housing development project, reducing the financial risk a developer assumes in bringing a challenge it is likely to win.

Synthesis of primary reform differences

Table 2 organizes the surveyed reforms to judicial review of local development decisions by the procedural features that they target. For each procedural feature, the table restates the differences we’ve identified in how the reform intervenes and provides illustrative examples. As with the reforms to local discretion over development decisions, we don’t claim that the synthesis we provide is comprehensive, but we believe it covers many of the most important differences between recent state reforms to judicial review of local development decisions.

113. Technically, the fee-shifting applies to local land use decisions, not just approvals, but the legislation specifically does not apply to actions brought by the applicant, so the challenges covered will generally be to denials brought by third parties.

Table 2. Reforms to judicial review of local development decisions by procedural feature, with primary differences and examples.

Procedural Feature	Identified Reform Differences
What types of land use processes are covered?	Broad coverage of land use processes • CA SB 330 (2019) Narrow coverage of land use processes • NC SB 355 (2019) (quasi-judicial), TX HB 3167 (2019) (plats)
What is the scope with respect to the applicant/ housing type?	Any • TX HB 3167 (2019) Developers of affordable housing • CA SB 167 (2017)
Who has standing to challenge a local development decision, and on what basis?	Those with particularized harm • MA Affordable Homes Act of 2024 Additionally enumerated challengers • CA AB 2584 (2016) Excluding challenges based on fit with neighborhood character • VT HOME Act of 2023 (Act 47, S. 100)
Who bears the burden of proof?	Locality • CA SB 167 (2017), TX HB 3167 (2019)
What written findings are required?	Specific (without auto-reversal) • TX HB 3167 (2019) Specific (with auto-reversal) • NH HB 1661 (2022)
What is the standard of proof?	“Substantial” • CA AB 2234 (2022) “Preponderance” • CA SB 167 (2017) “Clear and convincing” • TX HB 3167 (2019)
What is the standard of review on questions of fact?	De Novo/Non-deferential • TX HB 3167 (2019)
How do courts resolve ambiguity?	In favor of development • CA SB 330 (2019)
Does judicial review stay the challenged decision?	No • CO HB 1107 (2024)
Does judicial review toll approval expiration?	No • The default across states Yes • CA AB 2117 (2024)
Who must pay attorney’s fees?	The loser in a non-applicant challenge to a decision • CO HB 24-1107 (2024) The loser in an applicant challenge to a denial • CA AB 712 (2025)

Considerations for policymakers

Among the reforms surveyed above, four are especially good candidates for decreasing the time and money that litigation over new housing proposals takes, and by extension for lowering the cost of housing and increasing its supply. First, ensure that standing rules are as liberal for parties seeking to challenge local denials (e.g., of a permit) as they are for those challenging an approval. Second, shift the burden of proof in litigation over denials onto the locality, raise the standard it must meet, and limit proof to only those reasons the locality specifically detailed in its written findings justifying the denial (with automatic reversal on an unjustified failure to provide written findings). Third, resolve statutory ambiguity in favor of development, and deny stays while tolling approvals. And fourth, encourage fee shifting against parties challenging approvals if they lose and the judge finds the challenge was substantially for the purposes of delay. While withdrawing judicial deference to local decisionmaking is a fifth reform that could also promote housing supply, this change is a sharper reform that we believe would require especially careful weighing of the evidence of the effectiveness of such a reform, especially to the extent that it could have unintended consequences for how deferential courts are to local governments in other areas of law.

Importantly, each of these levers involves a trade-off against a value that the status quo protects—chiefly the locality’s authority over land within its borders and the assurance that an approved project is in fact lawful. States considering reforms of judicial review must calibrate whether and how much trade-off is appropriate given factors such as the frequency of litigation challenging approvals, evidence that the litigation was primarily a means of delay, the cost such litigation imposed on the development, and the evidence that reforms in other states are affecting the rate, nature, and effect of litigation. At this time, there is little rigorous, direct empirical evidence about how these reforms are affecting the land use process. It is especially important, therefore, to understand the trade-offs, and the subsections below highlight some of the choices each judicial review reform presents so that policymakers can calibrate intervention carefully. Where the scope or magnitude of these trade-offs is too speculative, policymakers can consider legislative investigations or reporting requirements that build the necessary base of evidence about how often litigation against housing projects is abusive, the outlay of expense it requires, and the benefits it actually secures.

Standing reforms involve a trade-off between access to independent judicial review and exposure to obstruction

Because standing determines who may invoke judicial review at all, it is a relatively blunt instrument. Widening standing to challenge denials enlists private enforcers on behalf of housing the developer might decline to defend, but a class drawn too broadly invites litigation untethered from any concrete stake. Narrowing standing to challenge approvals removes a vehicle for obstruction, but a particularized-injury requirement set too high can foreclose suits by people or organizations with legitimate interests in possible harms the development could impose.

Because standing rules that allow neighbors to challenge local approvals of a housing development are quite liberal, an appropriate balance may consist of liberalizing standing rules for who can challenge local denials of a housing development. Broadening standing to housing organizations like housing affordability nonprofits and housing construction or management trade associations—as in California and Texas—is one way to accomplish this outcome.

Where states have less confidence that local processes are being used to systematically obstruct lawful housing, weaker intervention may be justified. For example, states could limit standing to those who participated in the decisionmaking process that produced the decision being challenged. Where they have more confidence, stronger intervention may be justified. For example, states could require challengers to local approvals to post a bond proportional to the developer's carrying costs.

Evidentiary reforms illustrate a trade-off between disciplining local decisions and preserving local judgment

Evidentiary reforms can also be calibrated based on the state's skepticism of local denials. A written-findings requirement (especially one with remand rather than reversal) does not displace local judgment, requiring only that a locality decide based on stated, contemporaneous reasons but leaving the substance of those reasons to the locality. Shifting the burden of proof goes further by forcing localities to defend their reasons, but doing so still lets a well-justified denial stand. Raising the standard of proof goes furthest: choosing among “substantial,” “preponderance,” and “clear and convincing” evidentiary standards shapes both the approval process itself and the litigation, tilting marginal cases toward approval of the development.¹¹⁴

114. Another way of viewing this trade-off is as a decision about how many erroneous approvals the state will tolerate to avoid an erroneous denial. This choice in turn depends on the social cost of suppressing lawful developments relative to that of permitting non-conforming developments.

Reforms to courts' deference to local decisions illustrate a trade-off between appropriate review and ignoring genuine legal injury

Reforms to the laws that govern the court's review of land use decisions can discourage litigation with little chance of success that is undertaken primarily to delay a project, but these reforms risk ignoring genuine legal injury. Directing the courts to construe statutes in favor of housing production and to deny stays may make review more even-handed between pro- and anti-housing local decisions, less costly to the developer, and less prone to abuse. But the former approach can risk going too far where a pro-housing interpretation has sharp unintended consequences, and the latter can make it more difficult for courts to manage irreparable injuries from development (like, for example, harm to the environment).

Cost reforms illustrate a trade-off between deterring abuse and chilling legitimate challenges

Fee-shifting reforms should balance deterring abuse of the legal system against the possibility of chilling legitimate challenges. As the surveyed reforms illustrate, a ready way to find this balance is to calibrate the fee shift based on the parties (challengers of denials or non-applicant challengers of approval) and development types (denser multifamily).

Conclusion

The reforms surveyed in this brief reflect a developing understanding that the housing shortage is a function not only of the substantive limits on what localities permit but also of the discretion they exercise in applying those substantive rules in individual land use development decisions and of how courts review those decisions. Authorizing housing by right, requiring ministerial and objective review, limiting project-level public input, limiting mid-application changes to decision criteria, and imposing decisionmaking deadlines each constrain that discretion at successive stages of the application process. Likewise, calibrating standing, evidentiary thresholds, courts' deference to local decisions, and who bears litigation costs can help ensure that the court system is employed to remedy genuine, and only genuine, legal injuries caused by local decisions that violate local land use rules.

The available evidence remains thin and incomplete as to both how much local land use processes and judicial review are constraining housing production and how much the reforms discussed here relieve those constraints. These reforms also entail real trade-offs, in particular with respect to political feasibility, local control, legitimate public concern or legal injury, and regulatory flexibility. The appropriate balance for a state to strike will thus depend on the state's context, as the gradations of reforms surveyed here suggest. Even absent clear evidence though, reforms remain an important way for states to experiment and find a balance that works for them. In a crisis where every layer of procedure, every month of added timeline, and every court challenge to a project approval translates to higher financing costs, deferred housing starts, and families priced out of neighborhoods, finding that balance matters.

Acknowledgements

Special thanks to Brad Greenburg and Helen Ketema for their review.

Research, technical, and copyediting assistance from:

Rohun Iyer

Isabel Kirsch

Sharon Li

Suad Mumin

Chanaporn (New) Tohsuwanwanich

Maximilian Ungert