

Beyond the Double Veto: Land Use Plans as Preemptive Intergovernmental Compacts

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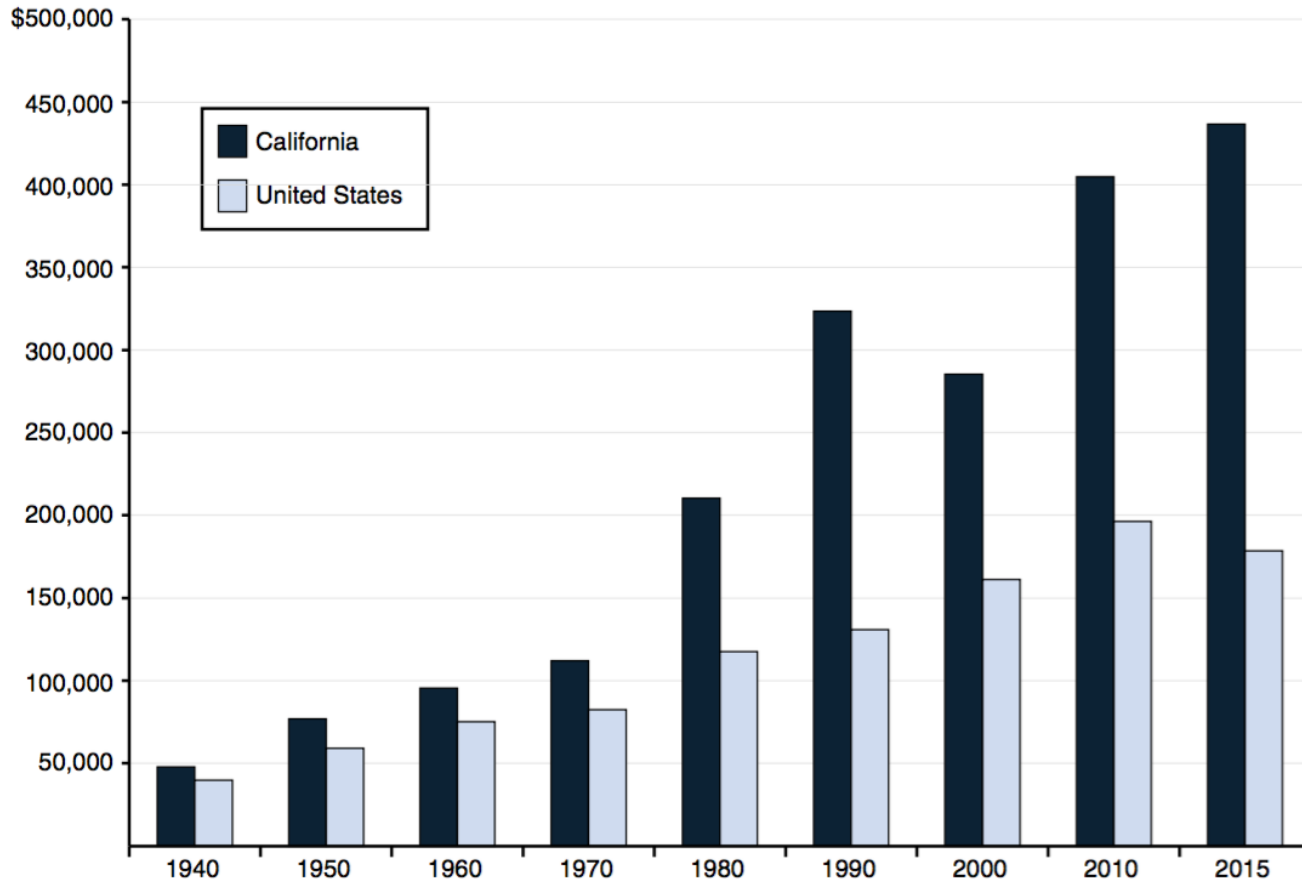
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Motivation

Figure 3

California Home Prices Have Grown Much Faster Than U.S. Prices

Inflation-Adjusted Median Home Prices in 2015 Dollars



Source: LAO Report, Mar. 17, 2015

Motivation

Transportation-sector emissions are main roadblock to achieving the state's GHG-emissions targets.

2018 PROGRESS REPORT

California's Sustainable Communities
and Climate Protection Act



NOVEMBER 2018



What California Has Tried / Is Trying to Do About It

RHNA / PLANNING FRAMEWORK (VARIATION ON “WEST COAST MODEL”)

- The state (HCD) makes “regional housing need assessments” (RHNA) every 4-8 years, which regional “Councils of Government” then allocate
- Local governments must revise “housing element” of general plan to accommodate their share of the RHNA, which HCD reviews / approves
- Housing element must identify “constraints” to meeting RHNA share, and articulate a “schedule of actions to remove constraints”
- Housing element, as component of the general plan, supersedes contrary local ordinances

DENSITY MANDATES

- ADU legislation
- State “density bonus” law
- Coming (?): SB 827 / SB50 (preemption of parking minimums and upzoning of property near transit and job centers for 4-5 story buildings)

What Has the Planning Framework Achieved?

APPARENTLY, NOT MUCH

- Lewis (2005) found that jurisdictions with an approved housing element produced no more housing than jurisdictions without one (controlling for other observable characteristics of the jurisdictions)
- Ramsey-Musolf (2016) found that jurisdictions with an approved housing element produced more subsidized housing--but less market-rate housing—than jurisdictions without one

These studies should be taken with several grains of salt (they rest on very strong assumptions), but California's housing-supply problem has clearly gotten worse, not better, since 1980.

Weaknesses of the Framework

TWO FUNDAMENTAL PROBLEMS

1) **Population-forecast definition of housing need**

- State determines housing quotas by forecasting population growth and rates of household formation
- But population growth is endogenous to land use policy
- In effect, exclusionary regions can “choose their own quotas”

The same problem is found in planning frameworks of other West Coast states.

Weaknesses of the Framework

TWO FUNDAMENTAL PROBLEMS

2) **Misplaced presumption of local-government good faith**

- Legal standard for housing element validity
- Legal standard for whether local ordinances are “consistent” with the housing element / general plan
- Remedies for legally inadequate housing element or inconsistent ordinance
- No reward / penalty for housing *outcomes*

How California Is Trying to Improve the Framework

1. CHOOSING A BETTER TARGET (RHNA / “NEEDED HOUSING”)

- SB 828 (2018) begins to articulate a healthy housing market standard, with emphasis on share of “cost-burdened households” in target region relative to “comparable regions of the nation”
- SB 375 (2008) added jobs-housing imbalance as a factor which HCD may consider (but with no direction about *how* to use it, it’s so far gone unused)
- Gov. Newsom just announced a big revamp of the RHNA process

How California Is Trying to Improve the Framework

2. HOUSING ELEMENT AS A PREEMPTIVE COMPACT FOR DEVELOPMENT PERMITTING (NOT JUST AN ASPIRATIONAL PLAN)

- 2017 reforms require housing element to assign RHNA quotas to specific, imminently developable sites, and to specify density for each site
- Developers now can apply for permits on basis of housing element itself, notwithstanding contrary local zoning
- Legislature has drastically curtailed judicial deference to local governments with respect to project permitting

Local gov't may not deny a project or reduce its density if there is evidence in the record that would allow (not require) a reasonable person to conclude that the project complies with applicable objective standards

How California Is Trying to Improve the Framework

3. CONSEQUENCES FOR HOUSING OUTCOMES

- SB 35 (2017) requires expedited, by-right permitting of certain projects if local government failed to meet its RHNA target during previous cycle
- SB 330 (2019, pending) would create special rules for local governments where market rents are high (abolition of parking minimums, 12-month / 3-hearing limit on project review, downzoning ban, and more)
- Gov. Newsom recently announced his intention to tie transportation funding to achievement of RHNA targets

But California Still Has a Ways to Go

- Future of RHNA determinations is up in the air
- Legal standard for a “substantially compliant” housing element does not allow state agency to reject housing element b/c it’s unlikely to work (Oregon law is better)
- Preemptive effect of housing element can and should be strengthened (local governments still get deference on whether local ordinances are consistent with housing element)

But California Still Has a Ways to Go

TOP DOWN, BOTTOM UP, OR BOTH?

Reformers should conceive of state-planning frameworks as a means of reallocating political power and policymaking discretion at the local level, to support bottom-up attacks on barriers to dense housing.

Voters → City Council (elective preemption of voter-enacted “constraints”)

City Council → Mayor (interim housing elements)