Improving New York City's Land Use Decision-Making Process

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CITIZENS BUDGET COMMISSION

FOREWORD

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This report was prepared under the auspices of the Economic Development and Housing Committee, which we chair. The other committee members are Jay Badame, Kamal Bherwani, John Breit, Thomas Brodsky, Lawrence Buttenwieser, Rose Christ, Peter D'Arcy, Helena Durst, Jake Elghanayan, Harold Fetner, Pepe Finn, Winston Fisher, William Floyd, Bud Gibbs, Kenneth Gibbs, H. Dale Hemmerdinger, Maureen Henegan, Kent Hiteshew, William Hubbard, Karim Hutson, Shari Hyman, David Javdan, Louis Jerome, Peter Joseph, Suri Kasirer, Elias Kefalidis, Peter Kiernan, Paula Kirby, James Lipscomb, Anthony Mannarino, Frances Milberg, Jeffrey Nelson, James Normile, Charles O'Byrne, Edward Piccinich, Robin Prunty, Lynn Rasic, Richard Roberts, Carol Rosenthal, Tom Rousakis, Brian Sanvidge, Monica Slater Stokes, Alair Townsend, Jim Tozer, and Walter Harris, *ex-officio*.

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New York City's ongoing prosperity depends on creating more jobs and more housing. Housing production has failed to keep pace with population and job growth over the last decade, resulting in housing shortages that drive up rents and home prices. Structural economic changes from increased remote work and e-commerce are affecting commuting and retail patterns and could reshape the commercial real estate sector. Furthermore, New York will have to undertake significant efforts to make its built environment more resilient and sustainable.

Addressing these challenges will require New York City and State to make smart land use decisions that appropriately guide private development and manage public space. The City's zoning code is ill-equipped to meet these needs; it is outdated, inflexible, and overly complex. Making needed zoning changes, however, has become increasingly difficult. Too often, the land use decision-making process through which the City reviews and approves changes has been an impediment to progress, restricting the City's ability to spur job growth, develop housing, and become more resilient and sustainable. This is one reason why New York produces less housing on a per-capita basis than most other large cities, even those with more onerous planning and public review processes. A dysfunctional review process also makes it more difficult to pass the broad, publicly led rezonings that are needed to increase as-of-right residential capacity at the scale needed to address the City's housing needs.

The city's economic well-being requires having enough flexibility and capacity to allow the public and private sectors to respond quickly to changing needs. Without flexibility and growth, the city risks stagnation. Fixing the land use review process is necessary for the City to modernize the zoning code, to increase as-of-right zoning capacity, to give private landowners guidance and predictability, and to encourage projects that advance City priorities and goals.

This report examines and identifies why New York's land use decision-making process impedes action to address New York's needs and recommends improvements. Specifically, the report presents: 1) an overview of the land use decision-making process; 2) specific shortcomings of the process, including quantitative and qualitative analyses; 3) comparisons of New York's process to cities with comparable processes; and 4) recommendations with specific options and an implementation path to improve the process.

New York City's Land Use Review Process

In New York City, most land is developed as-of-right, requiring only administrative (sometimes referred to as "ministerial") approvals such as building permits, because the proposed development conforms with existing zoning and building codes. If a proposal requires changes to current rules and regulations, it must go through a land use review process in which public officials can approve or disapprove the project at their discretion. These are called discretionary actions. Neighborhood rezonings and other projects initiated by the City as well as applications by private entities for

zoning changes are both considered discretionary actions—not as-of-right—and go through the same land use review process.

For applications brought by private entities, New York City's land use decision-making process involves three steps, one informal and two formal:

- **Step 1: Informal Pre-Review:** Before formally initiating the rezoning process, many applicants discuss their proposal with elected officials, community members, and staff at the Department of City Planning (DCP) to gauge their receptiveness and, potentially, to garner their support. Early discussions and vetting can help determine the likelihood that a project would ultimately secure approvals.
- **Step 2: Pre-Certification and Environmental Review:** After formally initiating a project application with DCP, applicants work with DCP staff to refine their proposals and finalize the scope of their formal land use applications. State law requires all discretionary land use actions to undergo environmental review to study whether the proposed action could have adverse impacts and whether those impacts could be mitigated. New York City implements this requirement through the City Environmental Quality Review (CEQR) process.
- **Step 3: Uniform Land Use Review Procedure:** Once an applicant completes the land use application and satisfies its required environmental review, the application then moves into the Uniform Land Use Review Procedure (ULURP), the official public engagement and binding review process through which applications are approved or denied. ULURP includes advisory votes of Community Boards and Borough Presidents, followed by binding votes of the City Planning Commission (CPC) and City Council. The Mayor also has the right to veto a Council vote, which can be overridden by a two-thirds vote of the City Council. The entire ULURP process is designed to take no more than 7 months. If approved, the zoning changes go into effect and the property owner files for building permits and other approvals as required.

Criteria for a Productive Land Use Decision-Making Process

The City should offer ample opportunity for as-of-right development while also providing the means to approve discretionary actions aligned with citywide goals for jobs, housing, and resiliency. This balance will both help to ensure the smooth functioning of housing and commercial markets as the city evolves and promote actions that help meet the city's various needs and preferences.

Ideally, the process should:

- Enable the city to grow and adapt over time;
- Offer predictability about timing and outcomes to applicants and the public;
- Allow flexibility to respond to economic conditions and market trends;
- Balance citywide needs with neighborhood concerns;
- Provide opportunities for meaningful local input and participation; and
- Identify both the benefits and costs of proposed actions.

Findings

While well-intended, New York City's current land use decision-making process falls short of these criteria in two ways: it is too uncertain with respect to how applications will be received by the public actors in the review process, and it takes too long to secure approvals. The result is that even though the City's zoning code is outdated and fails to allow enough as-of-right development to meet demand, few discretionary applications come forward, reducing opportunities to create housing and jobs. The discretionary applications that get approved typically take 2 to 3 years (excluding informal pre-review) often at significant expense to secure development approvals before the applicant can apply for building permits.

CBC's analysis of private land use applications for discretionary zoning changes filed with DCP between 2014 and 2017 found that:

- Only 171 private rezoning applications citywide were initiated over the four-year period, of which 103, or 60 percent, were approved;
- Of the 68 projects that were not approved, 59, or 87 percent, were withdrawn without completing a land use application and environmental review;
- Excluding any informal pre-review time, the median application took two and a half years from the time that applicants filed a formal land use application with DCP to the end of the ULURP process, at which point a developer can apply for a building permit;
- Completing pre-certification and environmental review took nearly two years for the median project, representing 80 percent of the time spent in public review;
- The length and complexity of the review process increases development costs: a two-year-long discretionary approval process can increase development costs by 11 percent to 16 percent, depending on a project's size and financing, assuming no other changes in a project's scope; and
- The median project going through New York's discretionary review process takes longer to secure approvals than the median discretionary project in cities with comparable review processes, with the sole exception of San Francisco, even on a small volume of applications.

Review of the literature, experience in other jurisdictions, and interviews with public and private individuals experienced with the process identified several reasons that help explain these findings.

Several factors relate to the State's environmental review law:

- Environmental review is biased towards the status quo, requiring study of the potential impacts of all discretionary land use actions, even for projects with known environmental benefits, like transit-oriented development, or for types of projects that almost never are found to have adverse impacts, such as infill residential projects;
- Environmental review does not appropriately balance costs and benefits, focusing primarily on the potential impacts of a "reasonable worst-case scenario." It is a reactive tool for identifying impacts and potential mitigation strategies; it is not designed to help officials weigh the benefits of a project against its potential costs;

- State law grants private individuals and groups a "private right of action" to challenge the adequacy of specific environmental reviews in court. This enforcement by private legal action has a chilling effect on proposals coming forward and, in the event of a legal challenge, can significantly increase the time needed to secure approvals; and
- New York's environmental review requirement is rare: New York is one of just seven states that require this level of environmental review for discretionary land use approvals.

Other challenges are unique to the City's CEQR and ULURP process:

- The CEQR process has grown increasingly time-consuming, complex, and bureaucratic, largely in response to the well-intentioned desire of City officials to protect applicants against potential legal challenges to their environmental reviews;
- Public engagement is a goal of ULURP, but the cost, length, and complexity of revising environmental reviews make it difficult to make changes to the proposal during the public review phases of ULURP;
- The City Charter does not require ULURP participants to identify and privilege projects that align with the goals of the City's Charter-mandated long-range strategic plan;
- Multiple veto points in ULURP, most notably the City Council's custom of member deference, increase uncertainty; and
- In the absence of clear standards for how to evaluate land use proposals, City Council Members are incentivized by term limits to focus on the short-term impacts of policy actions rather than longer-term benefits, and not surprisingly, often prioritize local concerns over citywide interests.

The combined effect of complex environmental reviews, the absence of clear criteria against which applications are reviewed, and the multiple veto points during ULURP make it difficult to predict how long and at what cost it will take to secure approvals, which itself dissuades many applicants from coming forward at all.

Recommendations: Six Areas for Improvement

Improving the City's land use decision-making process will require changes at both the State and local levels.

This report recommends six areas for improvement, each of which has one or more options that policymakers could pursue for progress. These options, which are detailed in the full report, range from simple fixes to more wholesale changes. While some are complementary, more significant changes would preclude other options and would require additional attention to ensure that legitimate public concerns do not get overlooked. Specifically:

1. **New York State should amend environmental review laws to reduce barriers to beneficial growth and development;**

Environmental review is the most time-consuming and costly phase of the New York's land use decision-making process, and one that only six other states require. Since SEQRA is a State law, the most meaningful changes require revisions either to the law itself or to the rules through which SEQRA is implemented; a more far-reaching option would be to eliminate the requirement that land use actions undergo environment review altogether.

2. **New York State should encourage local governments to streamline approvals of projects that help achieve identified regional housing and job-creation goals;**

   CBC has previously called on the State legislature to exercise its powers over land use law judiciously to encourage local governments to increase housing production, particularly in the downstate regions that produce new housing at some of the lowest rates in the country. The State devolves local land use decision-making authority to local governments, but it retains the power to set the terms and standards for local land use review processes. The legislature should create clear and objective standards for how local governments should contribute to regional housing and job creation goals and explore options that would make it easier or faster to approve projects that increase housing or create jobs in line with those standards while still preserving local autonomy and home rule to the greatest extent possible.

3. **New York City should create a process that evaluates proposals based on potential benefits and alignment with goals of its Charter-mandated strategic plan and other plans;**

   The City identifies goals in its Charter-mandated strategic plan and plans for housing, jobs, and other priorities. However, these goals, and the strategies to implement them, are not binding and have no formal influence in the land use approval process. Enhancing the land use review process to evaluate proposals relative to the housing and economic development goals of the Charter-mandated strategic plan could increase the likelihood that aligned projects are approved and offer more certainty to applicants.

4. **New York City should make advisory reviews at the community level more collaborative, participatory, and productive;**

   Options to do this, which would require Charter reforms, are intended to improve ULURP's advisory community planning stages by moving them to the environmental review phase when input can still affect outcomes and inform project scopes and design. Combining the Community Board and Borough President reviews could speed up review times while also giving communities access to additional resources and technical assistance.

5. **New York City should streamline and rationalize environmental review within limitations of State law;**

   The City's ability to reform CEQR is limited because at a minimum, it must meet the basic standards required by State law. Nonetheless, even if the State fails to modernize SEQRA,

the City can still take steps to streamline the process to make it move more quickly, such as creating a shortened review form for types of projects that are rarely found to have adverse impacts, or streamlining methodologies for topics like transportation where the City's requirements are more detailed or time consuming than what is required under State law. The Adams Administration convened the Building and Land Use Approval Streamlining Task Force (BLAST) to recommend improvements to both land use and building permitting processes that can be implemented by the City.

6. **New York City should better balance citywide needs and neighborhood concerns through an appeals process or requirement of a City Council supermajority to reject an application.**

   Few options are available to address the Council's custom of deferring to local members on land use applications while still maintaining the City Council's role in land use review, in part because member deference is a cultural and policy choice of the Council rather than an administrative regulation or law. One option to limit the possible negative consequences of deference would be to allow applicants to appeal City Council rejections back to the CPC or to another body that represents citywide interests; another would be to require a City Council supermajority to overturn a CPC decision, possibly for projects designed as being of citywide importance.

Options and Implementation Roadmap

Substantially improving New York City's land use review process depends in large part on State action, since both land use and environmental review requirements are set in State law, with implementation devolved to local governments. Similarly, significantly changing the structure of New York City's decision-making process would require City Charter amendments that should be deliberately designed with thoughtful consideration of potential unintended political and structural consequences. While State legislative action and City Charter reform could have far-reaching benefits, they will take time. Until then, City administrative changes can meaningfully improve the land use decision-making process.

The framework below lays out a three-stage implementation roadmap. Stage 1 includes City policy and rulemaking changes that can speed up the land use review process within the limits of what is allowed under State law. Stage 2 includes incremental State-level policy changes that would fix many of the shortcomings of the environmental review process and modernize local land use review more generally. Many of these changes could be made through Executive branch rulemaking powers, but they would carry greater weight if the Legislature were to enshrine them in State law, as the courts give greater deference to legislative intent than executive actions. These State-level changes would also allow the City to make more comprehensive changes at the local level. Stage 3 includes more transformative options that should be considered. These actions would require either City Charter amendments to revamp ULURP or State legislation to eliminate environmental review for land use actions entirely. These changes should be considered carefully and preferably

be based on the impact of previous incremental changes. Furthermore, lawmakers should exercise caution and due diligence before opening discussions that dramatically remake the process to ensure the changes don't have the unintended consequence of making the process longer and more uncertain.

Three Stages of Change

STAGE 1. INITIAL CITY ADMINISTRATIVE CHANGES

Option	Option Number	Required Action	Potential Impact
DCP should clearly endorse whether an application aligns with planning, housing, or economic development goals.	**3a.**	Administrative Action	Modest
Set goals for how long it should take to complete environmental reviews and publicly track and report on progress.	**5a.**	Administrative Action	Modest
Create a short form environmental review that streamlines or expedites reviews for projects with known benefits.	**5b.**	Administrative Action	Moderate
Update the CEQR Technical Manual's methodologies to reduce time and burden of review.	**5c.**	Administrative Action	Moderate

STAGE 2. INCREMENTAL STATE POLICY AND LEGISLATIVE FIXES

Option	Option Number	Required Action	Potential Impact
Reduce the number of topics required to be studied in environmental review to those with environmental impacts.	**1a.**	State rulemaking Legislation	Moderate Substantial
Increase thresholds for project size that trigger environmental review.	**1b.**	State rulemaking	Moderate
Exempt types of development or public actions with known environmental benefits or least likely to have adverse impacts.	**1c.**	State rulemaking Legislation	Moderate Substantial

STAGE 3. WHOLESALE AND TRANSFORMATIVE CHANGES

City Actions

Option	Option Number	Required Action	Potential Impact
Consolidate advisory reviews into a single process led by Borough Presidents.	**4a.**	Charter Reform	Moderate
Move advisory Community Board/Borough President reviews to the start of environmental review process and out of ULURP.	**4b.**	Charter Reform	Moderate
Allow applicants to wait until closer to the end of the ULURP process to finalize their environmental review.	**5d.**	Charter Reform	Modest
Create an appeals process for zoning changes rejected by City Council.	**6a.**	Charter Reform	Substantial
Increase the number of votes required for the City Council to overturn CPC decisions from a simple majority to a super majority.	**6b.**	Charter Reform	Moderate

State Actions

Option	Option Number	Required Action	Potential Impact
Exempt all land use actions from environmental review.	**1e.**	Legislation	Substantial
Eliminate enforcement by private litigation/replace with administrative review.	**1d.**	Legislation	Moderate
Set clear and objective planning standards and offer streamlined approvals for projects that meet those benchmarks.	**2a.**	Legislation	Moderate

State and City leaders should take significant action to improve New York's land use decision-making processes. Absent improvement, New York risks its economic and environmental future by increasing housing unaffordability, limiting job growth, and impeding its ability to respond flexibly to growing environmental needs.

Improving the land use decision-making process will entail a heavy lift by government, but it would have many benefits: making it easier to plan and zone for growth and change, reducing the cost of new development, encouraging private developers to build projects that advance public goals for housing and job creation, providing a greater opportunity to plan for neighborhood-wide needs, and coordinating better with capital planning agencies.

Improving the review process also would offer a clear and timely method that evaluates proposals while allowing for constructive input from the public. The current process takes too long, is too contentious, is too expensive to navigate, and discourages applicants from coming forward with new ideas. Even more concerning, many recent reform proposals would subject an even larger share of new development to this discretionary process, while many other states and cities are moving in the opposite direction. Too often, seemingly well-intended efforts to preserve the status quo risk stagnation instead.

Reforms to improve the City's land use review process are possible but will require coordinated efforts from both lawmakers and appointed officials and a shared vision of how we identify and operationalize our strategic planning goals. Without these changes, the city runs the risk of further deteriorating its competitive edge and diminishing its attractiveness for current and future New Yorkers.

INTRODUCTION

New York City's ongoing prosperity depends on creating more jobs and more housing. Housing production has failed to keep pace with population and job growth over the last decade, resulting in housing shortages that drive up rents and home prices. Structural economic changes from increased remote work and e-commerce are affecting commuting and retail patterns and could reshape the commercial real estate sector and much more. Furthermore, New York will have to undertake significant efforts to make its built environment more resilient and sustainable.

Addressing these challenges will require New York City and State to make smart land use decisions that appropriately guide private development and manage public space. The City's zoning code is ill-equipped to meet these needs; it is outdated, inflexible, and overly complex. Implementing needed zoning changes, however, has become increasingly difficult. Too often, the land use decision-making process through which the City reviews and approves changes has been an impediment to progress, restricting the City's ability to spur job growth, develop housing, and become more resilient and sustainable. This is one reason why New York produces less housing on a per-capita basis than most other large cities, even those with more onerous planning and public review processes. A dysfunctional review process also makes it more difficult to pass the broad, publicly led rezonings that are needed to increase as-of-right residential capacity at the scale needed to address the City's housing needs.

The city's economic well-being requires having enough flexibility and capacity to allow the public and private sectors to respond well and quickly to changing needs. Without flexibility and growth, the city risks stagnation. Improving the land use decision-making process is necessary for the City to modernize the zoning code, encourage projects that advance citywide needs and goals while addressing neighborhood priorities, increase as-of-right zoning capacity, and provide sufficient guidance and predictability to encourage development.

This report examines and identifies why New York's land use decision-making process impedes action to address New York's needs and recommends improvements. Specifically, the report provides: 1) an overview of the land use decision-making process; 2) specific shortcomings of the process, including quantitative and qualitative analyses; 3) comparisons of New York's process to cities with comparable processes; and 4) recommendations with specific options and an implementation path to improve the process.

CURRENT LAND USE REVIEW PROCESS

Property ownership is subject to a set of laws and regulations about how properties can be used and the design, bulk, and density of buildings. Before starting almost all development projects, property owners must secure approvals from various public entities to certify that their project meets certain standards.

In New York City, there are two primary types of development approvals: administrative (also called "ministerial") approvals, which public officials must grant if applicants meet specific guidelines established in law; and discretionary actions, which public officials can approve or disapprove based on their judgment. While there are many different types of discretionary actions, this report focuses on the land use decision-making process through which the City evaluates and approves projects that currently require discretionary zoning changes. As such, this report does not address, for example, variances granted through the Board of Standards of Appeals or landmarks approvals granted by the Landmarks Preservation Commission.

In New York City, most land is developed as-of-right, requiring only administrative approvals, such as building permits, because the proposed development conforms with existing zoning and building codes. A 2019 analysis by the Department of City Planning (DCP) found that at least 80 percent of residential units approved between 2010 and 2018 had been built as-of-right, with an increasing share in neighborhoods rezoned since 2000.[1] Though that policy brief did not include data on commercial development, most new commercial and industrial projects are also built under an as-of-right framework.

If a proposal requires changes to current rules and regulations, it must go through a land use review process in which public officials can approve or disapprove the project at their discretion.

Rezonings initiated by private landowners are most often intended to change the zoning for small areas and to establish new regulations needed to enable specific development projects. Rezonings initiated by the City create new development capacity or modernize zoning regulations across a larger area and are not tied to specific projects. Instead, they create a new as-of-right framework under which individual property owners can build in the future. All discretionary actions, including projects initiated both by the City and by private entities, go through the same land use review process.

New York City's Increasingly Lengthy Zoning Resolution

While most development in New York is built as-of-right, New York's zoning resolution has steadily increased in length and complexity over time, in large part due to the proliferation of special purpose districts, customized zoning certifications, authorizations, and use rules that are unique to specific neighborhoods. In 1992, then-City Planning Chair Richard Schaeffer called for simplifying the zoning resolution, characterizing

the 835-page document as cumbersome, outdated, and in need of pruning to remove 30 years of patchwork amendments.[2] Thirty years later, the opposite has occurred. Despite periodic efforts to streamline or modernize zoning rules, the zoning resolution has quadrupled in length to 3,475 pages, including the appendices needed to interpret the zoning rules.[3] The result is that the time and cost of building even as-of-right development projects has increased, offsetting many of the benefits of New York's as-of-right system. Similarly, the expectation that each rezoning create new, customized special purpose districts increases the length and complexity of the review process.

New York City's Land Use Review Process

New York City's review process was intended to strike a balance among the goals of protecting the environment, identifying the impact of land use actions on neighborhoods and communities, facilitating public engagement and participation, and offering applicants a timely and predictable framework.

For applications brought by private entities, New York City's land use decision-making process involves three steps, one informal and two formal:

(See Figure 1, page 15.)

Step 1. Informal Pre-Review

Before formally initiating the rezoning process, many applicants discuss their proposal with elected officials, community members, and DCP staff to gauge their receptiveness and, potentially, to garner their support. Early discussions and vetting can help determine the likelihood that a project would ultimately secure approvals.

Some projects never advance beyond this vetting stage. If a Council Member says that they would not support a rezoning in their district, or if DCP makes it known that the City would not support the project, many owners would not proceed with the application. These discussions can dissuade applicants from proposing projects that lack merit or that do not reflect the City's planning goals. However, elected officials' past resistance to new development can also have a chilling effect on future proposals by dissuading applicants from considering discretionary projects in the first place.

If the applicant has an indication of support or is willing to take on the risk of a discretionary zoning action, they file a formal application with DCP to initiate the land use review process. This process formally kicks off with the filing of Pre-Application Statement (PAS).

Step 2. Pre-Certification and Environmental Review

After filing a PAS, an applicant works with DCP staff to refine the scope of their formal land use application and complete an environmental review, which is mandated under New York's State Environmental Quality Review Act (SEQRA for the act or SEQR for the process). SEQRA requires local governments to study whether proposed land use and zoning changes could have adverse

impacts on, among other topics, air quality, animal life, traffic and infrastructure, and neighborhood character, and whether and how those impacts could be mitigated. (The text box below includes a full list of land use and development actions that trigger environmental review. Note that in New York City, some actions, such as variances, require environmental review but do not go through the Universal Land Use Review Procedure (ULURP), while other actions, such as zoning authorizations or dispositions of City-owned land, are required under the City Charter to go through ULURP but are exempt from environmental review. This report's analysis focuses on projects that are required go through both environmental review and ULURP.)

New York City implements this requirement through the City Environmental Quality Review (CEQR) process. Most discretionary projects are required to complete CEQR before moving on to the public review.[4] The CEQR Technical Manual details rules and procedures for what reviews should include and how to identify impacts in 19 specific areas, including socioeconomic conditions, shadows, air quality, transportation, and water and sewer infrastructure. The manual also includes procedures for establishing a lead agency for the review, methodologies for identifying the potential for adverse impacts, and instructions for proposing alternatives.[5]

Under State law, land use actions are grouped into three categories based on the likelihood that they will have adverse impacts on the environment or surrounding community.

- **Type I actions** are those likely to have adverse impacts that require additional scrutiny and require study to determine whether the application will require a full Environmental Impact Statement (EIS). State rulemaking establishes criteria for Type I actions based on the nature of the proposal or if a proposal exceeds certain size thresholds. For example, the threshold for whether a discretionary residential project is considered Type I varies from 50 units for areas without sewer connections to 1,000 or more units in New York City. Commercial thresholds range from facilities of 100,000 square feet in small towns to 240,000 square feet in towns with over 150,000 residents.
- **Type II actions** include all actions that are explicitly exempt from environmental review based on State law or rulemaking. These include items listed under exempt activities in the text box below.
- **"Unlisted" actions** include all other discretionary land use actions, which have no initial presumption about their impacts. These projects must undergo an assessment to determine whether they may have adverse impacts that would warrant more detailed study, thus triggering the need for a full EIS, or if potential impacts could be addressed through specific mitigation measures.

In New York City, projects first complete an Environmental Assessment Statement (EAS), which determines whether projects will have significant adverse impacts. If the EAS analysis shows that the project would not have significant adverse impacts, applications receive a "negative declaration," which satisfies their review requirements, and allows them to move to the public land use review phase. For Unlisted projects, the negative declaration can be conditional on an applicant's pledge to undertake specific mitigation measures to address specific impacts. If the EAS determines that

the project will have significant adverse impacts, DCP will issue a "positive declaration" and require the project to complete a more thorough EIS. The applicant must then publish a draft scope of work, outline the proposed project and potential impacts, and hold a public meeting to present the project and receive feedback. At this stage, DCP also solicits comments from other City agencies on specific draft chapters. For example, the Department of Transportation is required to review the applicant's traffic analysis. After DCP collects comments and finalizes the scope, the applicant publishes a draft EIS, holds another public meeting, and responds to comments. If DCP is satisfied with the draft version of the EIS, it issues a statement of findings in which it formally accepts the review and allows the applicant to complete the pre-certification process and move into ULURP.

What Types of Projects Are Subject to Environmental Review?

When State lawmakers approved SEQRA in 1975, they hoped that SEQRA's provisions would correct what they perceived as an unaccountable, top-down planning regime that frequently lacked public participation and failed to protect the environment. The goals of the law were two-fold: first, to improve decision-making by forcing public officials to solicit public input, consider the impact of public actions on the environment, and identify and deny projects whose negative impacts could not be adequately mitigated; and second, to allow the public to challenge State decisions by establishing a "private right of action"—the ability to challenge the adequacy of reviews in State court.[6]

SEQRA lays out which types of public actions are subject to review and provides exemptions for certain actions. (Local governments and State agencies can require reviews for other types of public actions, so long as they are not explicitly exempt under State law.) Examples relevant to land use include:

Subject to SEQRA

- Adoption of a municipal land use plan or comprehensive zoning regulations.
- Adoption of zoning changes.
- Actions that require discretionary approvals, including zoning changes, site plan approval, variances, special permits, unless otherwise exempt.
- Projects that receive public funding.
- Construction of new public facilities.
- NYS Department of Environmental Conservation environmental permits.

Exempt from SEQRA

- Ministerial decisions, including building permits .
- Adoption of moratoria on land development or construction.
- Setback and lot line variances.
- Variances to allow for the construction of one to three family residences.
- Designation of local landmarks.
- Maintenance, repair, rehabilitation or replacement of public buildings that involve no substantial changes, including fire code or energy retrofits.
- A variety of farm buildings and structures.
- Installation of solar arrays of 25 acres or less in certain areas.
- Data collection, research, planning studies, and surveys.
- Article 11 sales and conveyances.
- Dedication of parkland of 25 acres or less.

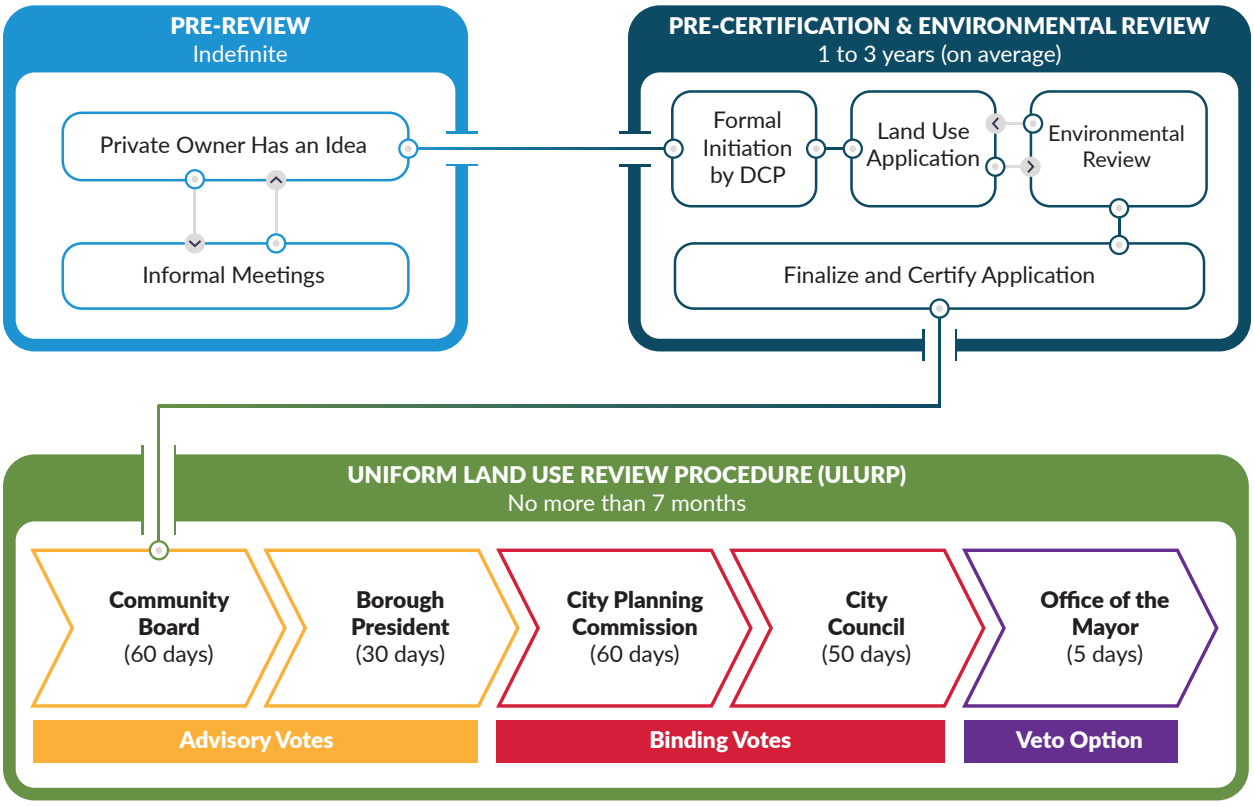
Step 3. Uniform Land Use Review Procedure

Once an applicant completes the land use application and receives a negative declaration or completes a Draft EIS, the application then moves into the Uniform Land Use Review Procedure (ULURP). The City Charter established ULURP as the official public engagement and binding review process through which applications are approved, modified, or denied.

ULURP begins with advisory hearings and votes from the local Community Board and Borough President, followed by binding votes of the City Planning Commission (CPC) and the City Council. The Mayor has the right to veto a Council vote, which can be overridden by a two-thirds vote of the City Council. The CPC also can approve a project with modifications, and the Council then can modify CPC approvals, which sends it back to the CPC. For projects requiring an EIS, the applicant must finalize the EIS report prior to the CPC vote.

The entire ULURP process is designed to take no more than 7 months, with each step abiding by strict time limits delimited in the City Charter. These time limits were instituted to provide for both adequate public review and speedy completion. If approved, the zoning changes go into effect and property owners can file for building permits and other ministerial approvals as required.

Figure 1: Simplified Land Use Review Process



Shortcomings of New York City's Decision-Making Process

The City should offer ample opportunity for as-of-right development while also providing the means to approve discretionary actions aligned with citywide goals for jobs, housing, and resiliency. This balance will both help to ensure the smooth functioning of housing and commercial markets as the city evolves and promote actions that help meet the city's various needs and preferences.

Ideally, the process should:

- Enable the city to grow and adapt over time;
- Offer predictability about timing and outcomes to applicants and the public;
- Allow flexibility to respond to economic conditions and market trends;
- Balance citywide needs with neighborhood concerns;
- Provide opportunities for meaningful local input and participation; and
- Identify both the benefits and costs of proposed actions.

While well intentioned, New York City's current land use decision-making process falls short of these criteria in two ways: it is too uncertain with respect to how applications will be received by the public actors in the review process, and it takes too long to secure approvals. The result is that even though the City's zoning code is outdated and fails to allow enough as-of-right development to meet the city's needs, few discretionary applications come forward, reducing opportunities to create housing and jobs. The discretionary applications that get approved typically take 2 to 3 years (excluding informal pre-review) often at significant expense to secure development approvals before the applicant can apply for building permits.

To examine the impact of this process, CBC interviewed stakeholders, reviewed the existing literature on the land use review process, and evaluated data on projects moving through the system. The research identified several reasons that help explain the decision-making process's shortcomings.

Some factors relate to the State's environmental review law:

- **Environmental review is biased towards the status quo.** SEQRA is a product of the 1960s and 1970s environmental movement and the backlash against the urban renewal era's planning processes. Like the National Environmental Policy Act (NEPA), the federal environmental review law that inspired SEQRA, SEQRA maintains that era's skepticism of the impacts of growth and the motivations of public actions.[7] For example, SEQRA is automatically triggered for discretionary land use applications and for most special permits or variance applications, regardless of the nature of the proposed project, but explicitly exempts temporary development or construction moratoria or variances for 1- to 3-family homes. Review is required even for projects with known environmental benefits, like transit-oriented development, or for types of projects that almost never are found to have adverse impacts, such as infill residential projects. SEQRA's review thresholds also are based on potential population increases, and it requires scrutiny of

projects' "growth inducing" effects. Reviews often require mitigation to maintain current levels of service, most notably for vehicular traffic, even when that would be environmentally harmful. And most notably environmental review is only required for proposed actions; inaction does not trigger any evaluation or study, even if a failure to act would have negative consequences for the environment.

- **Environmental review does not balance the benefits and adverse impacts of proposals in the evaluation process, instead focusing primarily on the latter.** By design environmental review is a reactive tool to collect data that can be used by decision-makers and the public to evaluate proposals. Its purpose is to identify impacts and potential mitigation strategies for a "reasonable worst-case scenario," independent of other policy goals or strategic planning principles. While proposals are required to describe the public need and purpose, the review's primary goal is not to determine whether a project conforms with planning or policy goals, let alone to evaluate its costs in relation to its potential benefits. While many projects proceed despite findings of potential adverse impacts, and some environmental reviews do consider the broader benefits of projects, the reports required by SEQRA rarely yield data or information that is used to evaluate proposals on their benefits or aggregate merits.
- **Enforcement by private legal action has a chilling effect on proposals, even if few lawsuits win in court.** SEQRA empowers State agencies and local governments to certify that environmental reviews are consistent with State law but grants private individuals and groups a "private right of action" to challenge the adequacy of specific environmental reviews in court.[8]

  While intended as a check on state power, this instead has empowered project opponents to delay or dissuade applications from coming forward by threat of litigation. Nationally, environmental review's private right of action is one of the most powerful tools of opponents of new development. In states with environmental review laws, this amplifies the ability of small groups of individuals, often of high economic status and possessing negative opinions of growth, to block projects with broad benefits for other current and future residents.[9]

  Over the decades, State courts have established clear guidelines for what constitutes an adequate environmental review, most notably a test under which lead agencies and public officials can prove that they have taken a "hard look" at potential impacts by identifying areas of concern, analyzing the potential for adverse impacts, and providing a reasonable explanation for their determinations.[10] Courts also have found that applicants do not have to review every possible environmental impact or alternative.[11]

  These guidelines establish a high bar for overturning an environmental review, but the threat of legal challenge is still significant for several reasons. First, even though most SEQRA suits in New York are ultimately dismissed, unsuccessful lawsuits can significantly delay final approvals, often doubling the amount of time needed to secure approvals.[12] The threat of delay-by-lawsuit leads applicants to create bulletproof environmental reviews that will withstand potential legal challenges, which over time has increased the length and complexity of reviews.[13] Second, the definition of who has standing to challenge decisions is relatively broad. Any individual or

group who can prove they would be affected by an action undergoing environmental review can challenge the adequacy of the review in court. Third, other than the cost of filing a lawsuit, there is little downside for plaintiffs to bring legal challenges, as there are no consequences for lawsuits that are dismissed as being baseless or without merit.

- **New York's environmental review requirement is rare:** New York is one of only seven states that require environmental review for discretionary land use actions.[14]

Other challenges are unique to the City's CEQR and ULURP processes:

- **CEQR is time consuming, complex, and bureaucratic, and growing more so over time.** The original intent of the CEQR technical manual was to standardize the environmental review process and establish clear, specific standards for how to assess impacts. The methodologies outlined in the technical manual are more specific than what is required in State rulemaking, which tends to be open-ended. The original supporters of the CEQR manual hoped that this would speed up reviews and protect applicants against potential legal challenges to their environmental reviews. Over time, however, CEQR has grown in scope and complexity, and some of the initial reduction in approval times has dissipated.

  The expansion of CEQR resulted from City and State rulemaking adding topics and from court rulings that required specific analyses. In response, City agencies developed more rigorous methodologies for evaluating potential adverse impacts, such as schedules for impacts on school enrollment, library capacity, and traffic, among others.

  The City's clear requirements make it easier to prove that the lead agency has taken a hard look at specific issues, which has the benefit of better protecting the City and private applicants against potential legal challenges. The desire to be comprehensive, specific, and quantitatively rigorous, however, comes with the tradeoff of additional time and money spent in the review phase. The complexity of CEQR also makes it difficult to modify projects during the time-limited ULURP public review.

- **Public engagement is a goal of ULURP, but the complexity of environmental review does not encourage collaboration or participation.** The time, cost, and uncertainty of the environmental review process means that proposed scopes are largely fixed by the time projects complete environmental review and start the ULURP process. This is problematic because it makes it difficult to change proposals during the public review phases of ULURP. Applicants can remove elements or reduce the scope without reopening the review process, but they would need to redo the analysis if they changed uses or added density, potentially at considerable expense and delay. This makes ULURP more adversarial and less collaborative than intended.

- **The City Charter does not require ULURP participants to identify and privilege projects that align with the goals of the City's Charter-mandated long-range strategic plan.** New York City already undertakes strategic planning with some frequency but fails to connect these plans to the land use decision-making process. For example, during Mayor Bill de Blasio's eight-year administration, the City released an overall strategic plan (*OneNYC*), an affordable housing plan

(*Housing New York)*, a fair housing plan (*Where We Live)*, a jobs plan (*New York Works)*, two public housing plans, multiple Ten-Year Capital Strategies, and task forces on specific issues. These documents all included both broad goals and actionable initiatives to operationalize them; some included quantified targets. While many neighborhood rezonings and citywide changes proposed by the Administration—most notably Mandatory Inclusionary Housing—had roots in these plans, the plans often fell short on implementation for reasons that intersected with the land use process. For example, the *Housing New York* plan called for rezoning 15 neighborhoods to promote housing growth, but the de Blasio Administration wound up rezoning only eight, only two of which (Gowanus and Soho/Noho) were in line with the administration's fair housing goals that sought to allow more mixed-income housing in affluent neighborhoods.

One reason for this is that there is no formal connection between these plans and how the City evaluates land use proposals. Environmental review considers only the potential adverse impacts of new development and has no requirement to look at its potential benefits. ULURP has no formal review criteria at all.

- **Multiple veto points in ULURP increase uncertainty.** While New York City is among the few cities that allows as-of-right development, its discretionary review process has multiple veto points. The most consequential of these veto points is at the City Council. New York is one of the few cities that requires zoning changes to secure approvals from a district-level City Council that nearly always defers to the wishes of the members who represent the areas proposed for rezonings, a practice often referred to as member deference. This practice makes it difficult to balance neighborhood concerns with citywide needs and plans. Other cities with ward-based local legislatures and cultures of member deference include Chicago, Los Angeles, and Philadelphia, all of which also have sluggish per-capita housing permitting rates similar to New York's.[15] Research has found that cities with district- or ward-level councils have lower rates of housing production, and particularly lower rates of multifamily housing, compared to cities with at-large councils.[16]

  Addressing member deference is difficult because the practice is by custom, rather than by law, and because the practice arguably runs counter to how ULURP was originally designed. When first implemented, ULURP gave the final vote to the Board of Estimate, whose citywide representatives held decision-making power over applications. Even in the years following the 1989 charter revisions, which replaced the Board of Estimate with the current system of government, the Council Speaker regularly brought applications to a vote over the objection of local members if the applications were supported by the Speaker and a majority of the Council.[17] However, over time, that custom has withered as Speakers have increasingly deferred to the wishes of individual members. Until the approval of the New York Blood Center project in late 2021, which passed over the objection of the local Council Member, the Council had not broken member deference since 2009.[18] Many observers also note that term limits incentivize legislators to focus on the short-term impacts of policy actions rather than longer-term benefits, and to prioritize local concerns over citywide interests. This focus on the short term acutely affects land use actions. Neighborhood

rezonings to increase as-of-right capacity, for example, guide development for decades into the future, with benefits accruing both to the city as a whole and to future neighborhood residents, but the immediate inconveniences will be felt most acutely by current residents.

The combined effect of complex environmental reviews; the absence of clear criteria, such as identified City or State goals, against which applications are reviewed; and multiple veto points during ULURP make it difficult to predict how long it will take to secure approvals, and at what cost, which itself dissuades many applicants from coming forward at all.

Quantifying the Time, Cost, and Uncertainty of the Land Use Decision-Making Process

CBC analyzed discretionary applications that entered the land use review process between 2014 and 2017 to quantify two aspects of the process: uncertainty (how many applicants are willing to start the process and how many make it through to approvals) and time (how long applications take to move through different phases of the process). CBC then quantified the increase in costs to projects that result from the lengthy review process. CBC's analysis found that, of the 171 applications brought by private landowners that formally started the review process, 60 percent were ultimately approved in ULURP, and that the median application took two years and six months to secure the full approval. A two-year-long review process ultimately increases costs by 11 to 16 percent, depending on a project's size and location, assuming no other changes in scope.

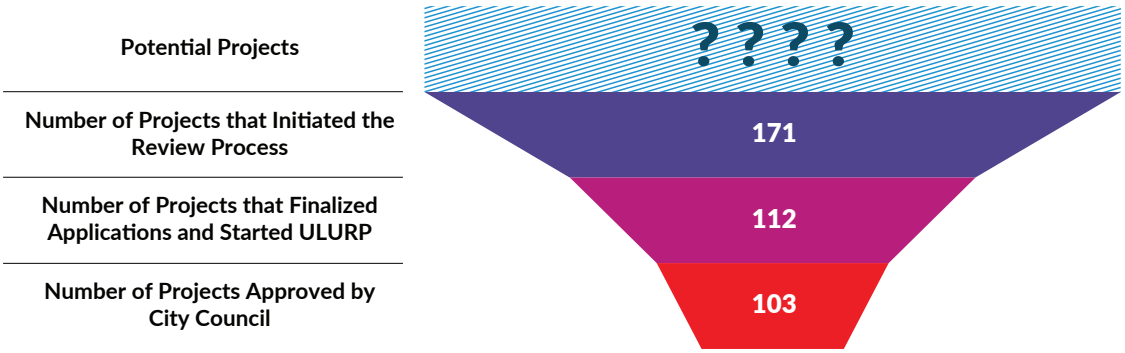
This analysis focuses on private applications for discretionary land use approvals initiated with DCP between January 1, 2014, and December 31, 2017.[19] This time frame is long enough to capture a substantial number of projects, while also allowing enough time that nearly all had reached a resolution before the onset of the COVID-19 pandemic in March 2020.

The analysis includes only private applicants for three reasons. First, private applications are more common than public rezonings and yield enough data to draw meaningful conclusions. Second, private applicants are incentivized to move through the process as quickly as possible; by contrast, DCP spends additional time on research, outreach, and engagement for public rezoning projects. Third, this focus provides a better understanding of the potential implications if the City were to shift more private development away from the current as-of-right framework into the discretionary process.

Uncertainty

It is impossible to estimate how many projects never got proposed or failed to advance beyond informal conversations because of the cost, length, and uncertainty of the land use decision-making process. This may be a significant suppressor of potential rezonings. However, of the applicants that were confident enough to file initial applications with DCP, the majority ultimately were approved. Of those that were not successful, most were withdrawn prior to entering ULURP.

Figure 2: Status of Discretionary Applications Initiated 2014-2017



Note: Only includes discretionary actions initiated by private entities.

Source: CBC staff analysis of data provided by the City of New York, Department of City Planning, email to Citizens Budget Commission December 18, 2020.

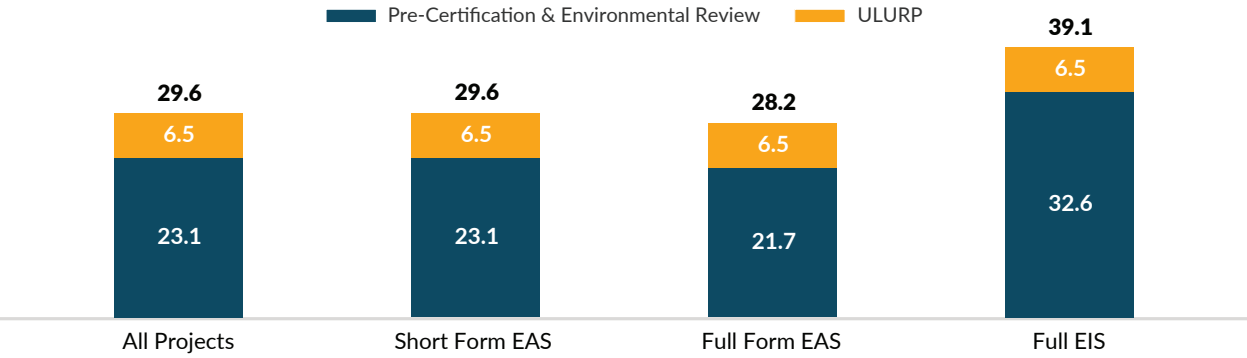
Figure 2 shows that only 60 percent of the 171 projects that filed an initial application with DCP were ultimately approved by the City Council. Of the 171 total applicants, 112 (65 percent) completed their land use application and environmental assessment and entered ULURP. Of those 103 (92 percent) were approved in ULURP. The dataset does not include information on why some projects were withdrawn or rejected. Possible reasons include that the projects may not have been aligned with the City's goals and would have been rejected by the CPC; may have been withdrawn after it was clear they would not be approved by the City Council; or may have been withdrawn for reasons internal to the applicant, such as ownership changes, land sales, inability to secure financing, or changing market conditions. Often, these applicants chose to build a different, as-of-right project instead.

Length of Time

Of the 103 projects that were approved, the median length of time to secure approval was approximately 30 months, with most of that time (23 months) spent in pre-certification and environmental review. The time required to secure approval varied by the level of environmental review required, though nearly all projects required years of review. Of projects that required only an EAS, the median project took 23 months to complete the land use application and environmental review and another 6 months to complete ULURP. The seven projects that required a full EIS took a full 10 months longer; the duration for the median project totaled 39 months, including 33 months in pre-certification/environmental review. (See Figure 3.)

However, medians can obscure wide variations in outcomes. Few EAS projects took less than 1 year; many took longer than 2 years. Some EIS projects were completed in the same two-year time frame as EAS projects, while other EIS projects took 4 or more years to complete environmental reviews. (See Figure 4.) Most, but not all, of this time likely can be attributed to environmental review. Some private applicants also spend this period developing or refining their scope in response to feedback from DCP or elected officials, or reducing potential adverse impacts that would require costly mitigation measures. Some of the variation in time, particularly for smaller projects requiring only the EAS, could be explained by these factors.

Figure 3: Median Number of Months to Secure Approval by Level of Environmental Review Required

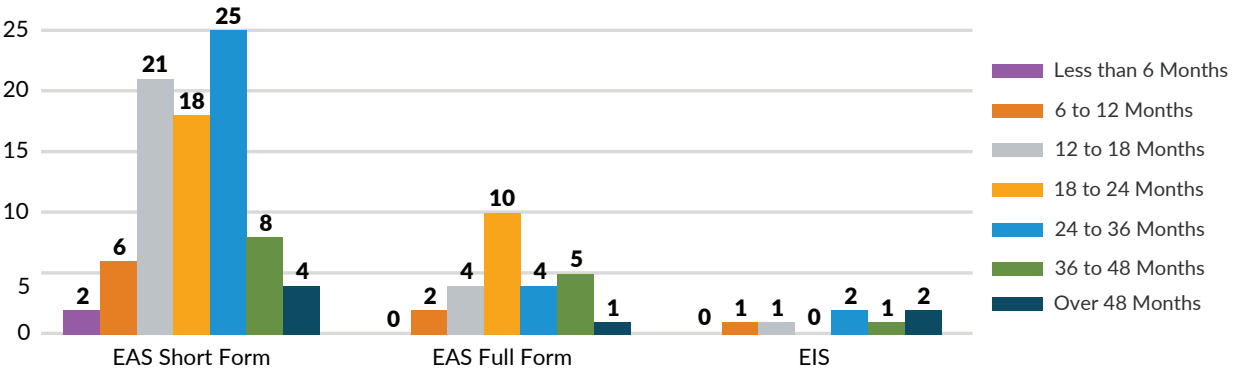


Source: CBC staff analysis of data provided by the City of New York, Department of City Planning, email to Citizens Budget Commission December 18, 2020.

However, while EAS projects were approved more quickly than EIS projects, there was no time savings from using the EAS short form instead of the full EAS long form. The median short form EAS project took slightly longer to certify than projects that completed a full form EAS and received a negative or conditional negative declaration; the distribution of review times for short forms and full form are similar. Most completed applications took between 16 months and 35 months. These findings suggest that the complexity and specificity of reviews make CEQR difficult to streamline, even for projects that do not require a full EIS.

Notably, these statistics do not reflect whether applicants faced court challenges after getting approved at the end of the review process. A lawsuit challenging the validity of an environmental review can double the amount of time required to gain necessary approvals and secure a building permit.[20]

Figure 4: Variation in the Number of Months to Complete Environmental Review by Level of Review



Level of Review	Number of Applications	Mean	25th Percentile	Median	75th Percentile
EAS Short Form	84	24.5	16.2	23.1	30
EAS Full Form	26	25.1	18.6	21.7	31
EIS	7	34.2	16.7	32.6	55.4

Source: CBC staff analysis of data provided by the City of New York, Department of City Planning, email to Citizens Budget Commission December 18, 2020.

Lengthy Reviews Cost Money

In addition to dissuading applicants from coming forward, the length and uncertainty of the review process increases the cost and affects the types of projects and applicants that succeed. A lengthy approval process increases total development costs in three ways: higher construction costs due to inflation and cost escalations; additional soft costs to pay for the lawyers, architects, and other consultants needed to shepherd the project through the review process; and financing costs for the land itself if the project involves debt. These costs are before considering whether the review process would result in a smaller project than originally proposed or one with different terms, or the cost of negotiated additions or community benefits needed to secure political support. Delays can also result in a project missing a market cycle, losing financing or tenants, or running into other challenges that delay the start of construction. Also, with term limits in effect for both the City Council and Mayor, land use applications can span multiple council or mayoral terms if introduced near the end of an electoral cycle, introducing political uncertainty for projects that can take years to move from initial conversations to approval.

The hypothetical examples in Table 1 estimate how the delay costs may affect three different residential projects: a high-rise of 600 units, a mid-rise of 170 units and a low-rise with 40 units. The analysis shows that larger projects are better able to absorb the costs of delays, in large part because the costs of the review process are not proportional to the size of project.

Table 1: Cost Increases for a Two-Year Approval Process

	High-Rise	Mid-Rise	Low-Rise
Base Hard Costs	$360,000,000	$63,750,000	$13,000,000
+ inflation (2 years)	$36,900,000	$6,534,375	$1,332,500
Base Soft Costs	$72,000,000	$12,750,000	$2,600,000
+ CEQR/ULURP	$3,500,000	$2,000,000	$1,000,000
TOTAL	**$472,400,000**	**$85,034,375**	**$17,932,500**
% Cost increase	*9%*	*11%*	*15%*
Total Increase	*$40,400,000*	*$8,534,375*	*$2,332,500*
Increase per Unit	*$67,333*	*$50,202*	*$58,313*
If Land Was Financed…			
Add'l Interest Payments	$5,287,104	$1,247,918	$185,717
% Increase w/ Interest	*11%*	*13%*	*16%*

Note: The analysis assumes hard costs of $600 per square foot for high rises, $375 per square foot for mid rises, and $325 per square foot for low rises. The inflation rate for hard costs is assumed to be 5 percent annually. Base soft costs are assumed to be 20 percent of hard costs for as-of-right projects; additional soft costs attributable to discretionary projects are based on conversations with industry professionals. Loans for land acquisition are assumed to be interest-only at an annual rate of 8 percent for 60 percent of the land price ($200 per buildable square foot for high rises, $150 for mid-rise, and $100 for low-rise.)

Source: CBC staff analysis.

Assuming a two-year-long review process and no changes in scope or size, the review process is estimated to increase total costs by 9 percent, or approximately $67,000 per unit, for the high-rise building. This compares to an 11 percent increase (about $50,000 per unit) for mid-rise projects and a 15 percent increase (nearly $58,000 per unit) for low-rise projects. On a percentage basis, the costs associated with reviews are more manageable when spread out over a higher cost base.

These increases come before factoring in financing and land costs. If a project's land acquisition is financed, the additional interest payments for a two-year carry have the opposite impact with regard to project size: since high-rise projects are more feasible in areas where land costs are high, two years of interest payments add another $5 million, or $8,800 per unit, to the high-rise project, but only $185,000 total, or $4,600 per unit, to the low-rise project.

Overall, the longer the review process takes, the higher the costs will be, and the more likely that only large projects brought by highly capitalized developers will be feasible. The costs of review will dissuade smaller projects, and particularly those from smaller or more risk-averse developers who are less well capitalized and lack relationships that increase a project's chances of success.

Review Process Also Increases the Cost of Public Projects and Policy Priorities

The City's review process also adds time and complexity to a range of other types of projects, such as zoning certifications or dispositions of City-owned land, that are required to go through ULURP but are not required to undergo environmental review. While many of these additional reviews are well-intended, the extra layers of review are effectively a tax on projects that do not require zoning changes and otherwise would be as-of-right. The requirement to review these applications also creates a significant administrative burden on DCP, potentially out of proportion to the benefits that the additional review provides. These approvals must be in place before an applicant can secure a building permit.

One example are dispositions of city land for affordable housing projects. During the 2014-2017 period, there were 32 dispositions of city-owned land through the Department of Housing Preservation and Development's Urban Development Action Area Program (UDAAP). Nearly all these projects (28 of 32) completed their review process, and UDAAP applications were approved faster than discretionary rezonings: the median time to certification was 7.8 months, less than half the median private application. However, it still adds months of delay to projects that are otherwise as-of-right.

Another example are Zoning Certifications and Zoning Authorizations, which add a step to actions, such as zoning bonuses, air rights transfers, development in special districts, and renovations of privately-owned public spaces that otherwise would be as-of-right actions. These requirements also add considerable time to routine projects: The median zoning certification took 8.6 months, while the median zoning authorization took 10.2 months.

Comparison to Cities with Similar Discretionary Decision-Making Processes

Every city's review process is unique, and none is perfect. However, New York can learn from what peer cities get right and wrong. Even with a predominantly as-of-right development system that is the rare among American cities, New York produces less housing on a per-capita basis than most other large cities, even those with more onerous review processes.[21] New York's dysfunctional decision-making process impedes efforts to increasing zoning capacity and housing production, in part because the time required to approve discretionary rezonings in New York is longer than most cities, including those with similar environmental review requirements as New York's. Of comparable cities, only San Francisco takes longer to approve discretionary applications.

Comparing Review Times in Other Cities to New York

Studies of the review processes in other cities that subject land use decisions to environmental review have found that nearly every city approves discretionary projects more quickly than New York does, even on a higher volume of discretionary applications.

Researchers have studied the review process for a range of types of development in these cities over different time periods. In general, cities with highly regulated land use systems tend to take longer to approve projects, but the specifics vary greatly by city.[22] The cities listed in Table 2 also require environmental review as part of their discretionary land use review processes, but unlike New York, they require discretionary approvals for nearly all development.

While they are not necessarily directly comparable to one another, or to the analysis of New York City in this report, their findings nonetheless suggest New York's discretionary approval process takes two to three times as long as the approval processes in most of its peer cities and compares in length only to San Francisco's.[23] (See Table 2.)

Table 2: Comparison of the Median Approval Time for Discretionary New Development Projects by City

City	Universe of Projects	Median Approval Time *(Days)*
Boston	All projects >50,000 Sf	223
Oakland	Residential w/ 100+ Units	248
Los Angeles	Residential w/ 150+ Units	390
San Francisco	Residential w/ 150+ Units	990
New York City	All private discretionary	887

Sources: Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Examining the Local Land Use Entitlement Process in California to Inform Policy and Process"; Minjee Kim, "Negotiation or Schedule-Based?: Examining the Strengths and Weaknesses of the Public Benefit Exaction Strategies of Boston and Seattle"; Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process"; and CBC staff analysis of data provided by City of New York, Department of City Planning, email to Citizens Budget Commission December 18, 2020.

Notably, these cities all approved more housing than New York on a per-capita basis over the last decade despite having predominantly discretionary processes. This suggests that New York's review process has a chilling effect on changes that address its limited capacity for as-of-right development.

(See Appendix A for more information on the approval process in these cities.)

What Other Cities Do Differently

New York's peer cities' land use approval processes are largely rooted in their respective state legal frameworks and land use legal regimes.[24] Despite differences, two key aspects of the peer cities' planning processes are different and better than New York:

- **Speedier reviews without sacrificing engagement or public participation:** Nearly every city, even those that require multiple levels of review, consolidates approvals and public meeting requirements under the auspices of a single agency while maintaining rigorous standards for both reviews and public input. Boston, for example, requires on average 4 public meetings and multiple filings per project, but still approves the median project within 7.5 months in part because a single agency coordinates the required reviews. In New York, applicants also go through four public review sessions as part of ULURP (Community Board, Borough President, City Planning Commission, and City Council) but, unlike in Boston, each is conducted by a different organization, each of which votes on the application, often taking contradictory positions.
- **Proposals evaluated on conformity with strategic planning goals:** Laws in many states require local governments to evaluate rezonings and variance requests based on whether the applications conform with (or for more minor changes, do not conflict with) the goals established in the city's comprehensive plan. In New Jersey, for example, under state law, local review boards must consider whether the benefits of a project (generally defined as its alignment with planning goals or policy objectives and whether it promotes general welfare) outweigh its adverse impacts, which are not strictly defined but include many of the impacts typically studied in New York's environmental review, like parking, shadows, etc. Most applicants satisfy this requirement with technical studies and brief written narratives. New York City's review processes do not require any evaluation of a projects' alignment with other goals, though some rezoning applications, especially publicly initiated projects, appeal to broader policy aims.

Conversely, other cities and states do some things worse, and that New York should avoid emulating:

- **Subject a greater share of development to discretionary review:** Nearly all development in California cities and Boston goes through a discretionary review process, with limited opportunities to build as-of-right, even for projects that conform with the zoning code. While this does not preclude development from occurring–the discretionary cities cited above all build more housing than New York on a per-capita basis—it does means that development is more expensive and uncertain. Conversely, Seattle and Jersey City, both of which have prioritized

increasing zoning capacity for infill development through public rezonings or streamlined variance processes, produce housing at some of the highest rates in the country, and at significantly higher rates than predominantly discretionary cities like Boston or San Francisco. New York City suffers from not producing enough housing through its as-of-right process and having a discretionary process that makes it difficult to add capacity.

- **Require quasi-discretionary approvals like design review:** Among New York's peers, Seattle requires many otherwise as-of-right projects to undergo design review led by a neighborhood-level design review board. These boards must sign off on a project for it to proceed but can only weigh in on design elements; they cannot require changes in use or density allowed as-of-right. However, in practice, the subjectivity inherent in approving design choices make the decisions quasi-discretionary in nature. Design review is the primary driver of delays in Seattle, not only relative to the set of peer cities, but also to other cities in Washington. One study, for example, found that Tacoma, which does not have Seattle's design review process approved as-of-right projects almost three times faster than similar projects in Seattle.[25] This suggests that introducing more quasi-discretionary approvals to the as-of-right process can significantly slow down the approvals process.
- **Lack of time limits:** Open-ended approval processes contribute to a lack of predictability in the length of the review process. However, the speed with which reviews take place is heavily affected by a combination of administrative requirements, agency culture, and public policy priorities. Oakland and San Francisco, for example, both require environmental review and discretionary approvals for all new development, but unlike San Francisco, Oakland's planning staff made it a priority to review and approve applications in a timely fashion, most notably by using the streamlined review options allowed under California's environmental review laws.[26] The result is Oakland takes one-third of the time to review projects and approves twice as many housing units per capita as San Francisco. Boston's culture of one-off, heavily negotiated discretionary approvals has contributed to one of the widest ranges of approval times of any of the cities surveyed. The lack of predictability limits the universe of applicants to those with the political savvy and financial resources necessary to brave the process and encourages larger projects that are better able to absorb the additional costs of delays.
- **More extensive environmental review:** California's environmental review law applies to more types of public actions than New York's, and many cities add further requirements. San Francisco's review requirements are frequently singled out as being both the most broadly applied and the most time-consuming to navigate, even among California cities. San Francisco residents have been able to use the City's environmental review laws to oppose new development even if it conforms with zoning regulations. Massachusetts' environmental review law, by contrast, allows for a much more streamlined review process, which is one reason why Boston is able to approve projects more quickly than the other cities. Public meeting requirements and negotiated approvals are the primary source of delays for discretionary projects in Massachusetts.

Another key distinction is that other cities and states are implementing reforms to streamline the planning process and allow more as-of-right development, albeit with varying degrees of success.

The California Legislature has passed a series of laws in recent years to boost housing production. SB 35 streamlined approvals and created a near as-of-right process for cities that fail to meet regional housing need assessment goals.[27] SB 9 and SB 10 will make it easier to subdivide lots for development and to build duplexes, accessory dwelling units, and small multifamily projects as-of-right throughout the state and to build up to 10 units near transit.[28] Revisions to California's Housing Accountability Act also made it more difficult for cities to reject proposals that conform with local zoning rules.[29] To supplement its long-standing builders' remedy law (often referred to as "Chapter 40B"), the Massachusetts Legislature passed a Housing Choice Initiative package that mandated as-of-right multifamily zoning near Massachusetts Bay Transportation Authority rail stations, reduced the number of votes needed for towns to approve rezonings that create as-of-right development capacity, and required neighbors to post a bond when challenging new development.[30] Seattle's Housing Affordability and Livability Agenda (HALA) master plan included provisions to subject fewer buildings to environmental and design reviews, and streamline review for those required to go through the process.[31]

In contrast, not only have New York City and New York State failed to advance proposals to increase housing production, many recently enacted proposals by City and State officials would move in the opposite direction by subjecting more development to the discretionary process, often by requiring development projects to secure additional approvals like special permits or certifications that trigger environmental review, ULURP, or both. State legislators also have rejected even modest proposals to encourage New York State suburban communities to allow transit-oriented development to be built as-of-right and have shown little interest in addressing the downstate region's housing crisis.

RECOMMENDATIONS

The City's land use review process should be based on a simpler zoning code that offers ample opportunity for as-of-right development while also providing enough flexibility to approve changes that are aligned with citywide goals for jobs, housing, and resiliency and that address neighborhood concerns. This balance is needed to ensure the smooth functioning of housing and commercial markets as the needs of the city evolve over time.

While improving the City's land use decision-making process will require changes at both the State and City levels, the foundation of these changes resides with the State. In New York, both land use and environmental review laws are based in State law, with implementation delegated to municipalities. A city's ability to fix its land use processes depends in large part on what is required under State law. In addition, while the State could change the number of topics required to be reviewed through rulemaking, such changes would have a more significant impact if they were written into State law. State legislation to limit the number of topics would provide a sound legal basis for local governments to streamline their review procedures, particularly for topics like transportation impacts that were added because of prior court rulings.

This report recommends six areas for improvement, each of which has one or more options that policymakers could pursue for progress, as well as a three-stage implementation roadmap. These options range from simple fixes to more wholesale changes. While some are complementary, more significant changes would preclude other options and would require additional attention to ensure that legitimate public concerns do not get overlooked.

1. New York State should amend environmental review laws to reduce barriers to beneficial growth and development.

Environmental review is the most time-consuming and costly phase of New York's land use review process, in part due to efforts to minimize the threat of legal challenges. But because SEQRA is a product of State law, the most meaningful changes require revisions either to State statute or to the rules through which SEQRA is implemented.

Modernizing the environmental review process could be accomplished through a range of options.

- **Option 1a:** *Reduce the number of topics required to be studied in environmental review to those with environmental impacts*. The number of topics required to be studied under environmental review have grown over time. Adding topics not only lengthens the amount of time it takes to complete reviews but also increases the likelihood of potential legal challenges. Returning the focus to core environmental concerns, such as impacts on air quality or the natural environment, or removing topics that are rarely found to produce significant impacts, could speed up reviews and limit the number of policy matters subject to a private right of action. Many of the topics covered in environmental review have also been addressed through other public policies in the years since SEQRA was adopted. Federal, State, and local governments have adopted

extensive environmental regulations since the initial passage of SEQRA in 1975, many covering the same topics studied in environmental review. Local governments can still address issues like socioeconomics, neighborhood character, and impacts on infrastructure and public services proactively through the planning and policy making process instead of in environmental review.

- **Option 1b:** *Increase thresholds for project size that trigger environmental review.* The level and intensity of review required often varies by project size. These tiers vary by location (rural and unsewered areas have lower thresholds than larger cities) and by use (residential and commercial projects have different thresholds). Increasing these thresholds would exempt smaller projects, for whom review costs are most onerous and which are least likely to have significant impacts, from reviews. Similarly, the State could revise the criteria it uses to determine whether projects have significant impacts. Both changes would match efforts in other states to streamline reviews. For example, the State could increase the threshold for all multifamily projects based on size (for example, up to 150 units) or geography (for example, if they are within a certain distance of a commuter rail station) or both. This option could be implemented by administrative action through rulemaking.
- **Option 1c:** *Exempt types of development or public actions with known environmental benefits or least likely to have adverse impacts.* The State could exempt broad categories of development or public actions from environmental review by designating them as Type II exempt activities, either by amending SEQRA or through the rulemaking process. This would make it easier to secure zoning changes that facilitate development projects that will help the state achieve its climate goals, such as urban infill projects or transit-oriented development. In recent years, for example, the New York State Department of Environmental Conservation expanded the list of exempt activities through rulemaking to encourage solar energy projects. Examples of potential exemptions could include comprehensive plans; projects with certain levels or shares of affordable housing units; zoning changes to allow small lot subdivisions, accessory dwelling units, or multifamily projects of a certain size; or transit-oriented development.

  The State could also exempt public actions that are least likely to be found to have adverse environmental impacts. One example would be projects that receive public financing, such as affordable housing developments, if they do not require any additional discretionary approvals. Another could be infill multifamily development of a certain size within already urbanized areas.

  Similarly, State law could be changed to limit reviews only to projects located in environmentally sensitive areas like wetlands or greenfield sites while having a different standard for urban and suburban infill projects.

  In some smaller cities without processes like ULURP, exempting applications from environmental review could result in less public engagement or information sharing about rezoning applications, both of which are currently required under SEQRA. These concerns should be addressed as part of a broader legislative reform of planning and zoning.
- **Option 1d:** *Eliminate enforcement by private legal action and/or replace with administrative review.* There are several potential strategies for addressing the costs imposed by SEQRA's private right of action provision, including removing the private right of action provision entirely, requiring

plaintiffs to post bonds, or replacing it with an equivalent administrative review. These options would not end all development-related lawsuits. Even as-of-right projects have attracted lawsuits in recent years. However, legislation to address these challenges could be included as part of a broader reform about how the public participates in the review process.

- **Option 1e:** *Exempt all land use actions from environmental review.* New York is one of just seven states that require environmental review for land use actions. Simply removing the requirement that local land use changes go through environmental review would bring New York's land use review process in line with the processes used in nearly every other state. Other, more contemporary environmental laws at local, state, and federal levels would still regulate the environmental impacts of development on issues like building emissions, stormwater management, coastal resiliency, or brownfield remediation. Exempting land use projects from environmental review would not bar local governments from reviewing land use proposals; unless otherwise prohibited, cities could retain some elements of the SEQR process if they so desired. Ideally, exempting land use action from environmental review would empower cities to develop review processes that are more streamlined, less litigious, and better tailored to their needs and concerns. However, if State elected officials exempt land use actions from SEQRA, some local governments could impose new review requirements intended to slow or dissuade planning applications. Legislation repealing the environmental review requirement should have clear standards about how local governments should review land use applications to ensure that the reforms yield benefits for current and future New Yorkers.

2. New York State should encourage local governments to streamline approvals of projects that help achieve identified regional housing and job creation goals.

CBC has previously called on the State legislature to exercise its powers over land use law judiciously to encourage local governments to increase housing production, particularly in the downstate regions that produce new housing at some of the lowest rates in the country. The State devolves local land use decision-making authority to local governments, but it retains the power to set the terms and standards for local land use review processes. The legislature should create clear and objective standards for how local governments should contribute to regional housing and job creation goals and explore options that would make it easier or faster to approve projects that increase housing or create jobs in line with those standards while still preserving local autonomy and home rule to the greatest extent possible.

- **Option 2a:** *Set clear and objective planning standards and offer streamlined approvals for projects that meet those benchmarks.* The ability to create streamlined review paths for certain projects that meet specific, clear, and objective planning standards—often accompanied by the ability to designate certain types of development as-of-right—is one of the most common strategies that other state legislatures have used to boost housing production. These laws often mix incentives and mandates. Out of respect to home rule issues, most state legislatures encourage local governments to comply on their own terms, with the threat of direct state intervention or overrides only in the event of a failure to comply. Other states have used similar approaches to incentivize housing production, such as limitations on local zoning authority, requirements to allow certain types of development,

allowing for privately initiated builder's remedies, and state overrides of local land use issues.

The Fiscal Year 2021 NYS Executive Budget included a proposal called Rail Advantaged Housing that advanced a modest version of this concept; unfortunately, neither the State Senate or Assembly included the proposal in their one house bills, and it was dropped from the enacted budget. The Fiscal Year 2023 NYS Executive Budget included more ambitious proposals that would lift the arbitrary cap on floor area ratio for residential uses in New York City and allow accessory dwelling units and multi-family development near transit as-of-right, though these were withdrawn by the Governor after they faced opposition.

Either on its own or in collaboration with the State, New York City also should implement changes to implement the following recommendations.

3. New York City should create a process that evaluates proposals based on potential benefits and alignment with the goals of its Charter-mandated strategic plan and other plans.

Absent State action to reform environmental review, DCP's ability to fast track applications is limited. Still DCP should identify the benefits of potential projects as part of the review process. The City identifies goals in its Charter-mandated strategic plan and plans for housing, jobs, and other priorities. However, these goals, and the strategies to implement them, are not binding and have no formal influence in the land use approval process.

Enhancing the land use review process to evaluate proposals relative to the housing and economic development goals of the Charter-mandated strategic plan could increase the likelihood that aligned projects are approved and offer more certainty to applicants.

- **Option 3a:** *DCP should clearly endorse whether an application aligns with planning, housing, or economic development goals.* Even without Charter reforms or changes in State law, the Department of City Planning or the City Planning Commission could move towards this model through administrative actions. For example, staff could develop a list of the City's strategic planning goals for topics like housing, economic development, or resiliency, and endorse whether applications meet some or all of these goals. This non-binding approach would avoid many of the downsides of previous comprehensive planning proposals, which would have introduced new discretionary steps, delayed the entitlement process, or introduced opportunities for additional legal challenges. The impact of this non-binding approach may be modest; but having a DCP statement saying that a proposal advances or fails to advance specific goals in which policy makers and the public have interest may have an impact on the public perception of the benefits of rezoning applications and improve the public dialogue.

The City would need to develop a new review process if the State modernizes or eliminates SEQRA as recommended. The approach used in the recently created racial equity report process provides a potential alternative review framework: it requires a quantitative analysis of existing conditions drawn from publicly available data and a brief narrative on whether a project advances the City's fair

housing goals; it is legally separate from CEQR and specifically precludes the right to challenge the analysis in court.

4. New York City should make advisory reviews at community level more collaborative, participatory, and productive.

- **Option 4a:** *Consolidate advisory reviews into a single process led by Borough Presidents.* Community Boards are already appointed by Borough Presidents; consolidation of their reviews would allow communities to benefit from the Borough Presidents' centralized planning staff and resources. While Community Boards and Borough Presidents may not always agree, local reviews could benefit from the Borough Presidents' broader perspective. Consolidation would also reduce the time and expense of holding multiple meetings, though its benefits would mostly accrue from improving engagement. A more incremental version of consolidation would be allowing the advisory reviews to occur concurrently instead of sequentially in order to encourage collaboration between Community Boards and Borough Presidents. This would require changes to the City Charter.
- **Option 4b:** *Move advisory Community Board/Borough President reviews to the start of environmental review process and out of ULURP.* ULURP starts with advisory hearings and opinions from local Community Boards and Borough Presidents, but these bodies have no formal say on whether the proposals get approved, and their hearings happen too late in the process to change the scope of applications in a meaningful way. Changing uses or adding density would require applicants to restart the environmental review process. As a result, the Community Board and Borough President reviews tend to focus on either reducing density, eliminating uses, or extracting concessions–none of which require reopening environmental review–or stopping a project altogether.

  The Community Board and Borough President reviews would be more collaborative if they took place before a project completes environmental review and enters ULURP. It would also formalize consultations and discussions that already happen informally during environmental review. This would benefit both large and small projects. For large projects and neighborhood rezonings that complete full EISs, the review process already requires some public engagement during the environmental review process. Moving the advisory meetings earlier in the process will address local concerns at a time when iterative, participatory planning is still possible. It would also eliminate duplicative advisory reviews and speed up review timelines. (Community groups and elected officials can still submit testimony to the City Planning Commission during the ULURP process.)

  Smaller private rezonings with reviews conducted under an EAS may have their first public hearing in ULURP. For these projects, this shift would improve transparency into these projects at an earlier stage.

  Ideally, local Council Members also would begin their public involvement and engagement at this phase; currently, Council Members do not formally engage until projects reach the City Council, the final step in ULURP.

  However, there could be drawbacks to moving these reviews earlier in the process. First, the community would be reviewing an early version of the proposal, which could change substantially

by the time that City Planning approves the final land use application and the project advances to ULURP, thus opening the potential for criticism that neighborhoods have reduced input into the final proposal. Second, it could increase the uncertainty and duration of the pre-certification and environmental review stage if it results in the requirement that applicants conduct additional public meetings or creates an expectation of extracting additional benefits from applicants. Care should be taken that these changes would streamline rather than lengthen or complicate the review process.

This option would require changes to the City Charter.

5. New York City should streamline and rationalize CEQR within limitations of State law.

The City's ability to reform CEQR is limited, since environmental review is required under State law. If the State Legislature fails to modernize SEQRA, the City can still take some steps to streamline the process to make it move more quickly. The Adams Administration convened the Building and Land Use Approval Streamlining Task Force (BLAST) to recommend improvements in these areas.

Options for speeding up environmental review process through administrative actions by the DCP and the Mayor's Office of Environmental Coordination (MOEC) include:

- **Option 5a:** *Set goals for how long it should take to complete environmental reviews and publicly track and report on progress.* While ULURP is time limited under the City Charter, there is no legal requirement to review and certify environmental reviews in a timely manner. If DCP set a goal for how long it should take to complete environmental reviews and publicly tracked how long the review took, it could help reduce uncertainty about the length of the review process. However, the benefits of time limits depend on how they are implemented. DCP and applicants control when the clock starts on initial applications. Imposing deadlines or goals could result in review times stretching to fill the time allotted or shifting more work to the informal phase before the review clock starts. The lead agency also depends on other agencies to conduct their topic area reviews; delays in other agencies make it difficult to finish reviews in a timely manner. Putting a time limit on reviews could also open applicants to additional legal challenges if the applicants or the City rush approvals to meet the deadline. However, even committing to measuring the time required to complete reviews would help to identify bottlenecks and track progress towards speeding up reviews.
- **Option 5b:** *Create a short form environmental review that streamlines or expedites reviews for projects with known benefits.* One drawback of the CEQR manual is that it is difficult to achieve meaningful time savings even for projects that can use the EAS short form. The desire to have a negative declaration or EIS sufficiently strong to withstand legal challenges often results in a conservative, legalistic approach and longer review times. CEQR also requires DCP to solicit comments from multiple City agencies, each of whom oversee reviews in their subject areas. If DCP and MOEC staff collaborated to develop an environmental review process that centralized control over the process in a single agency, as is the case with the State review process, it could allow applicants

to complete reviews more quickly. DCP can also work with agencies to automate and streamline methodologies using publicly available open data tools. However, applicants may be hesitant to use short forms if it exposes them to a greater threat of legal challenges down the road. Many applicants are willing to spend time and money upfront to ward off unexpected ligation or delays later.

- **Option 5c:** *Update the CEQR Technical Manual's methodologies to reduce time and burden of review*. One source of delay in the City's environmental review process is not only that additional topics have been added over time, but that the methodologies prescribed in the CEQR Technical Manual have added complexity and time to the review process. These requirements are well-intended, and the goal of having a standardized review template with clear standards is admirable. They help ensure that applicants can demonstrate that they have met the standards required for reviews to fend off legal challenges. However, the accumulation of topics increases the time, cost, and complexity of the process, and many analyses require a level of precision or foresight of future conditions that is unreasonable to forecast with any meaningful accuracy. Topics are infrequently evaluated for relevance once they are put in place. Reducing the number of topics or streamlining the methodologies that can be used would benefit all involved. Overall, any changes should focus on ways to shorten reviews, such as through standardization of reviews based on open data tools, rather than adding new topics or reporting requirements. This should be a primary focus of the BLAST task force.
- **Option 5d:** *Allow applicants to wait until closer to the end of the ULURP process to finalize their environmental review.* While this would require amending the City Charter, it could speed up review times and increase public participation. Allowing environmental review to run parallel with ULURP could make it easier to modify applications during the review process and would significantly speed up the time needed to approve an application. This is how the State structures the review process for General Project Plans (GPPs). When Empire State Development (ESD) is considering a discretionary action, it issues a scope of work, draft General Project Plan, and draft Environmental Impact Statement. These plans and reports are then the subject of their public review process. At the end of the public comment and review period, ESD will finalize the plan and environmental review before securing final board approval. This contrasts with the City's process, in which the environmental review and scope are certified as final before the CPC vote, and remain so, potentially with some limited modifications, before entering Council review. Allowing CEQR environmental reviews to remain in draft form for a longer period during the ULURP public review would allow for more flexibility in the final scope of work or rezoning text to reflect public input. However, the legal requirement that the CPC vote on a finalized application and environmental review is a structural problem that could hinder this option. Likewise, the complexity of CEQR means that it is difficult to update reviews in time to meet the ULURP deadlines.

6. New York City should provide greater balance of citywide needs and neighborhood concerns through an appeal process or requiring a City Council supermajority to reject an application.

Few options are available to address the Council's custom of deferring to local members on land use applications while still maintaining the City Council's role in land use review, in part because member deference is a cultural and policy choice of the Council rather than an administrative regulation or law.

However, options are available that could maintain the City Council's important role in the process while creating incentives to better balance citywide needs and neighborhood concerns. Both options presented below would require Charter reform.

- **Option 6a:** *Create an appeal process for zoning changes rejected by City Council:* Currently, if the City Council rejects a land use application, the applicant has no recourse to appeal the decision. One option to counter this would be to allow projects rejected by the Council to return for another vote at the City Planning Commission but with a higher voting threshold, similar to how if the City disapproves of a GPP proposed by ESD, the ESD board must pass the GPP by a supermajority instead of a simple majority. Another option would be to create an appeal panel of individuals representing citywide interests, such as the Mayor, Public Advocate, Borough Presidents, and Council Speaker, that would be able to overturn a Council veto. Either option would encourage the City, the Council, and applicants to bring more projects to a vote, and allow members to vote based on their opinions without guaranteeing a project's demise. On the contrary, it could also make an already adversarial process even more contentious and politicized.
- **Option 6b:** *Increase the number of votes required for the Council to overturn CPC decisions.* Currently, the Council can reject a land use proposal approved by the CPC with a simple majority vote. If the threshold for rejecting an application were increased to a super-majority, it could encourage applicants that have secured approval from the CPC to move forward with a Council vote. This would give greater deference to the CPC's decisions on projects with citywide benefits, while also allowing the Council to give input and bring projects to a vote. One option for implementing this increased veto threshold would be to apply it only to a subset of projects. For example, it could be applied only to projects that were designated by the City Planning Commission as in alignment with the City's strategic planning goals or that are of citywide importance. However, it is likely that a Council that still defers to its members would still vote by supermajority against projects that are opposed by the local member.

Implementation Roadmap

Substantially improving New York City's land use review process depends in large part on State action, since both land use and environmental review requirements are set in State law, with implementation devolved to local governments. Similarly, significantly changing the structure of New York City's decision-making process would require City Charter amendments that should be deliberately designed with thoughtful consideration of potential unintended political and structural consequences. While State legislative action and City Charter reform could have far-reaching benefits, they will take time. Until then, City administrative changes can meaningfully improve the land use decision-making process.

The framework below lays out a three-stage implementation roadmap. Stage 1 includes City policy and rulemaking changes that can speed up the land use review process within the limits of what is allowed under State law. Stage 2 includes State-level policy changes that would fix many of the shortcomings of the environmental review process and modernize local land use review more generally. Many of these changes could be made through Executive branch rulemaking powers, but they would carry greater weight if the Legislature were to enshrine them in State law, as the courts give greater deference to legislative intent than executive actions. These State-level changes would also allow the City to make more comprehensive changes at the local level.

Three Stages of Change

STAGE 1. INITIAL CITY ADMINISTRATIVE CHANGES

Option	Option Number	Required Action	Potential Impact
DCP should clearly endorse whether an application aligns with planning, housing, or economic development goals.	**3a.**	Administrative Action	Modest
Set goals for how long it should take to complete environmental reviews and publicly track and report on progress.	**5a.**	Administrative Action	Modest
Create a short form environmental review that streamlines or expedites reviews for projects with known benefits.	**5b.**	Administrative Action	Moderate
Update the CEQR Technical Manual's methodologies to reduce time and burden of review.	**5c.**	Administrative Action	Moderate

STAGE 2. INCREMENTAL STATE POLICY AND LEGISLATIVE FIXES

Option	Option Number	Required Action	Potential Impact
Reduce the number of topics required to be studied in environmental review to those with environmental impacts.	**1a.**	State rulemaking Legislation	Moderate Substantial
Increase thresholds for project size that trigger environmental review.	**1b.**	State rulemaking	Moderate
Exempt types of development or public actions with known environmental benefits or least likely to have adverse impacts.	**1c.**	State rulemaking Legislation	Moderate Substantial

Stage 3 includes more transformative options that should be considered. These actions would require either City Charter amendments to revamp ULURP or State legislation to eliminate environmental review for land use actions entirely. These changes should be considered carefully and preferably based on the impact of previous incremental changes. Furthermore, lawmakers should exercise caution and due diligence before opening discussions that dramatically remake the process to ensure the changes don't have the unintended consequence of making the process longer and more uncertain.

STAGE 3. WHOLESALE AND TRANSFORMATIVE CHANGES

City Actions

Option	Option Number	Required Action	Potential Impact
Consolidate advisory reviews into a single process led by Borough Presidents.	**4a.**	Charter Reform	Moderate
Move advisory Community Board/Borough President reviews to the start of environmental review process and out of ULURP.	**4b.**	Charter Reform	Moderate
Allow applicants to wait until closer to the end of the ULURP process to finalize their environmental review.	**5d.**	Charter Reform	Modest
Create an appeals process for zoning changes rejected by City Council.	**6a.**	Charter Reform	Substantial
Increase the number of votes required for the City Council to overturn CPC decisions from a simple majority to a super majority.	**6b.**	Charter Reform	Moderate

State Actions

Option	Option Number	Required Action	Potential Impact
Exempt all land use actions from environmental review.	**1e.**	Legislation	Substantial
Eliminate enforcement by private litigation/replace with administrative review.	**1d.**	Legislation	Moderate
Set clear and objective planning standards and offer streamlined approvals for projects that meet those benchmarks.	**2a.**	Legislation	Moderate

CONCLUSION AND CALL TO ACTION

State and City leaders should take significant action to improve New York's land use decision-making processes. Absent improvement, New York risks its economic and environmental future by increasing housing unaffordability, limiting job growth, and impeding its ability to respond flexibly to growing environmental needs.

Improving the land use decision-making process will entail a heavy lift by government, but it would have many benefits: making it easier to plan and zone for growth and change, reducing the cost of new development, encouraging private developers to build projects that advance public goals for housing and job creation, providing a greater opportunity to plan for neighborhood-wide needs, and coordinating better with capital planning agencies.

Improving the review process also would offer a clear and timely method that evaluates proposals while allowing for constructive input from the public. The current process takes too long, is too contentious, is too expensive to navigate, and discourages applicants from coming forward with new ideas. Even more concerning, many recent reform proposals would subject an even larger share of new development to this discretionary process, while many other states and cities are moving in the opposite direction. Too often, seemingly well-intended efforts to preserve the status quo risk stagnation instead.

Reforms to improve the City's land use review process are possible but will require coordinated efforts from both lawmakers and appointed officials and a shared vision of how we identify and operationalize our strategic planning goals. Without these changes, the city runs the risk of further deteriorating its competitive edge and diminishing its attractiveness for current and future New Yorkers.

APPENDIX: LAND USE REVIEW PROCESS IN OTHER CITIES

A 2020 study compared the approval processes in Boston and Seattle, focusing on outcomes for all projects of at least 50,000 square feet, both residential and commercial, that secured land use approvals in 2016.[32]

In Boston, of 32 projects that secured approvals, the median time to secure entitlements for projects was 223 days, or about 7 and a half months. All 32 projects required discretionary approvals. Since Boston's approval process does not include time limits, and development approvals frequently involve negotiated exactions for things ranging from affordable housing to open space, there was wide variation in outcomes. Some projects were approved in as little 8 months, while others took as long as 5.5 years. The value of exactions also varied widely since they were negotiated on a case-by-case basis.

The same study found that for 52 comparable projects in Seattle, the median time to secure entitlements was 482 days, or 1 year and 4 months, which was double the median time in Boston. Notably, the lengthy review times came despite a high rate of by-right development: only two of the 52 projects required zoning changes, a rate of as-of-right development even higher than New York's. Most of the additional time required for Seattle projects was attributable to a requirement that all projects undergo design review.

Notably, Seattle also had less variation in time than Boston: the shortest project took 8 months, with the longest taking 3 years and 4 months. This was attributed in part to both the predominance of as-of-right approvals and the use of predictable, schedule-based exactions and inclusionary housing programs.

Another series of studies surveyed the land use review processes in cities in the Bay Area and in the Los Angeles region.[33] There, researchers found wide variations in how different cities review and approve development projects, even within a common statewide legal and planning regime. The research project looked at residential projects with 5 or more units that secured entitlement approvals between 2014 and 2016. (Their definition of approvals included everything needed to file for a building permit.)

- **San Francisco:** San Francisco entitled 9,768 units during the study period, all of which were required to secure discretionary approvals. (San Francisco's city charter requires discretionary approvals for all new development projects, regardless of whether the conform to local zoning rules.) The result is that the City's approval process takes the longest of all of the Bay Area's cities. The median approval time took between 20 months for projects with 5 to 25 units to approximately 33 months for projects of 150 or more units. Very few projects were approved in less than one year, while a number of projects took 3 to 4 years or longer.
- **Oakland:** By contrast, Oakland approved 8,958 units during the period, double the amount per-

capita as San Francisco, and in a much faster time frame, with little variation based on project size. The median approval time for projects with fewer than 100 units was approximately 7 months, while those over 100 units took between 8 and 8.5 months.

- **Los Angeles:** Los Angeles approved 50,076 units during the study period. Of those, 94 percent were discretionary, with the remaining 6 percent as-of-right. (Unlike Bay Area cities, Los Angeles allows some residential projects with less than 49 units to be built as-of-right.) The median approval time for discretionary projects over that period was 9.5 months, though with significant variation based on both project size and level of environmental review required. Projects with over 150 units took 13 months to secure approvals, while smaller projects took between 8 and 10 months. Those that required full environmental impact reports took 31 months, compared to 5 to 10 months for projects that were exempt or secured negative declarations.

ENDNOTES

[1] City of New York Department of City Planning, *Info Brief: How Much Housing is Built As-of-Right?* (March 2019), https://www1.nyc.gov/assets/planning/download/pdf/about/dcp-priorities/data-expertise/how-much-housing-is-built%20as-of-right.pdf.

[2] David W. Dunlap, "The Quest for a New Zoning Plan" *New York Times* (April 12, 1992), https://www.nytimes.com/1992/04/12/realestate/the-quest-for-a-new-zoning-plan.html.

[3] City of New York, *Zoning Resolution* (Updated June 22, 2022, Accessed July 11, 2022), https://zr.planning.nyc.gov/sites/default/files/article/Zoning%20Resolution%20Complete.pdf.

[4] Projects requiring a full Environmental Impact Statement are permitted to keep their environmental review in draft form until the City Planning Commission votes on whether to approve the application.

[5] The full list of topics can be found in the CEQR Technical Manual include: current land use, zoning and public policy concerns; socioeconomic conditions; community facilities and services; open space; shadows; historic and cultural resources; urban design and visual resources; natural resources; hazardous materials; water and sewer infrastructure; solid waste and sanitation services; energy; transportation; air quality; greenhouse gas emissions and climate change; noise; public health; neighborhood character; and construction impacts. CEQR also requires an evaluation of reasonable alternatives to the proposed actions and a no-build scenario. NYC Mayor's Office of Environmental Coordination, *CEQR: City Environmental Quality Review Technical Manual* (November 2020), https://www1.nyc.gov/site/oec/environmental-quality-review/technical-manual.page.

[6] Leah Brooks and Zachary Liscow, "Infrastructure Costs," *Hutchins Center on Fiscal & Monetary Policy, Brookings Institution* (August 2019), https://www.brookings.edu/wp-content/uploads/2019/08/WP54_Brooks-Liscow_updated.pdf.

[7] Congress passed the National Environmental Review Act (NEPA) in 1969. NEPA established the country's first environmental review process, which provided the basis for state-level review processes adopted throughout the country throughout the 1970s. Leah Brooks and Zachary Liscow, "Infrastructure Costs," *Hutchins Center on Fiscal & Monetary Policy, Brookings Institution* (August 2019), https://www.brookings.edu/wp-content/uploads/2019/08/WP54_Brooks-Liscow_updated.pdf.

[8] Environmental review and Article 78 proceedings are two most prominent areas of State law that empower private citizens to challenge official decisions in court. Other examples of private rights of actions in State or local law involve disputes between two private parties, such as data privacy breaches, financial fraud, prevailing wage mandates, or tenant harassment.

[9] Katherine Levine Einstein, David M. Glick, Maxwell Palmer, "Neighborhood Defenders: Participatory Politics and America's Housing Crisis" *Political Science Quarterly*, vol. 135, issue 2 (Summer 2020), https://onlinelibrary.wiley.com/doi/full/10.1002/polq.13035.

[10] State of New York, Department of Environmental Conservation, *The SEQR Handbook: Fourth Edition, 2020*, p. 201, https://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf.

[11] Jackson v. New York State Urban Dev. Corp., 67 N.Y.2d 400, 417 (1986)

[12] No data on number of successful challenges.

[13] Katherine Levine Einstein, David M. Glick, Maxwell Palmer, "Neighborhood Defenders: Participatory Politics and America's Housing Crisis" *Political Science Quarterly*, vol. 135, issue 2 (Summer 2020), https://onlinelibrary.wiley.com/doi/full/10.1002/polq.13035.

[14] The others are California, Georgia, Hawaii, Massachusetts, Minnesota, and Washington. Adalene Minelli, "Reforming CEQR: Improving Mitigation Under the CIty Environmental Quality Review," *Guarini Center on Environmental, Energy & Land Use Law New York University School of Law* (February 2021), https://www.dropbox.com/s/64awqoto5enhkgz/Minelli%2C%20A.%202020.%20Reforming%20CEQR-Improving%20Mitigation.pdf?dl=0.

[15] Between 2010 and 2019, Los Angeles permitted 29.5 units per 1,000 residents, New York City 25.3, Chicago 19.8, and Philadelphia 19.4. That compared to 45.8 for Boston, 71.2 for Washington, D.C., and 126.9 for Seattle. See: Sean Campion, "Strategies to Boost Housing Production in the New York City Metropolitan Area" *Citizens Budget Commission* (August 26, 2020), https://www.cbcny.org/research/strategies-boost-housing-production-new-york-city-metropolitan-area.

[16] Evan Mast, "Warding Off Development: Local Control, Housing Supply, and NIMBYs" *W.E. Upjohn Institute for Employment Research* (July 2020), https://research.upjohn.org/up_workingpapers/330/.

[17] David W. Dunlap, "Council's Land Use Patterns Emerging" *New York Times* (January 3, 1993), https://www.nytimes.com/1993/01/03/realestate/council-s-land-use-procedures-emerging.html.

[18] Rebecca C. Lewis, "Industry City and the future of member deference" *City & State* (September 16, 2020), https://www.cityandstateny.com/politics/2020/09/industry-city-and-the-future-of-member-deference/175636/.

[19] The data record the nature of the application and the requested actions (zoning map amendment, change in use, special permit, etc.), the date the applicant filed a PAS with City Planning (the formal initiation of the project with DCP and the start of environmental review phase 2 in Figure 1 above), its most recent status, the date it completed environmental review and entered the ULURP process (if applicable), and its eventual fate in ULURP. It includes both approved projects and those that ultimately were withdrawn or disapproved. It does not include projects that never advanced beyond informal discussions with DCP (phase 1) or that never were proposed at all. In all cases, each project is treated as a single application, even if the application requires multiple individual actions (such as a map change and text amendment). New York City Department of City Planning, email to Citizens Budget Commission staff (December 18, 2020).

[20] In one recent example, a joint development project between a church and a private developer in the Fort Greene neighborhood of Brooklyn sought a rezoning to build a 100-unit, mixed-income building with a new church space and community facilities. The project was approved in ULURP in November 2018 after a 26 month approval process. A community group then sued the City to invalidate the environmental review and halt the rezoning. The legal challenge took another two years before the final appeal was dismissed, more than doubling the total approval time, at which

point the project was further delayed by the onset of COVID-19 pandemic. In recent years, nearly every lawsuits challenging the validity of environmental reviews have been dismissed, even in cases like the Inwood rezoning, where lower courts initially rule in favor of the plaintiffs. See: *Preserve our Brooklyn Neighborhoods vs. City of New York*, NY Slip Op 06464 (2020), https://law.justia.com/cases/new-york/appellate-division-first-department/2020/index-no-159401-18-appeal-no-12341-case-no-2019-5447.html.

[21] Sean Campion, "Strategies to Boost Housing Production in the New York City Metropolitan Area" *Citizens Budget Commission* (August 26, 2020), https://www.cbcny.org/research/strategies-boost-housing-production-new-york-city-metropolitan-area.

[22] Joseph Gyourko, Jonathan Hartley, and Jacob Krimmel, "The Local Residential Land Use Regulatory Environment Across U.S. Housing Markets: Evidence from a New Wharton Index" *National Bureau of Economic Research* (December 2019), https://www.nber.org/system/files/working_papers/w26573/w26573.pdf.

[23] Minjee Kim, "Negotiation or Schedule-Based?: Examining the Strengths and Weaknesses of the Public Benefit Exaction Strategies of Boston and Seattle" *Journal of the American Planning Association* (March 2020), https://www.researchgate.net/publication/339766755_Negotiation_or_Schedule-Based_Examining_the_Strengths_and_Weaknesses_of_the_Public_Benefit_Exaction_Strategies_of_Boston_and_Seattle; Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Examining the Local Land Use Entitlement Process in California to Inform Policy and Process" *Berkeley Law Center for Law, Energy & the Environment*, *Berkeley Institute of Urban and Regional Development*, *Columbia Graduate School of Architecture, Planning, and Preservation* (February 2018), https://iurd.berkeley.edu/uploads/WorkingPaper_2_Final_web.pdf; and Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process" *Berkeley Law Center for Law, Energy & the Environment*, *Berkeley Institute of Urban and Regional Development*, *Columbia Graduate School of Architecture, Planning, and Preservation* (February 2018), https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf.

[24] For example, California and Massachusetts cities have predominantly discretionary development systems that also require environmental review. Other states allow cities to implement predominantly as-of-right development processes, but with unique characteristics. Discretionary approvals in Jersey City, like other cities in New Jersey, are made by citywide appointed entities, with a planning board that considers publicly initiated rezonings and a board of adjustment that considers private applications for zoning changes and variances. New Jersey State law does not require environmental review but instead spells out the criteria that these boards must consider when reviewing discretionary applications. Chicago also does not require environmental reviews for discretionary actions but gives its Board of Alderman the final say on zoning changes. Most development in Seattle is also built as-of-right, but the City requires even as-of-right applicants to complete both environmental and design review.

[25] Doug Trumm, "Tacoma Issue Housing Permits Three Time Faster than Seattle, Builders Report" *The Urbanist* (June 9, 2021), https://www.theurbanist.org/2021/06/09/tacoma-issues-housing-permits-

three-times-faster-than-seattle-builders-report/.

[26] Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process" Berkeley Law Center for Law, Energy & the Environment, Berkeley Institute of Urban and Regional Development, Columbia Graduate School of Architecture, Planning, and Preservation (February 2018), https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf.

[27] California Senate Bill No. 35, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB35.

[28] California Senate Bill 9, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB9; and California Senate Bill 10 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB10.

[29] Jennifer L. Hernandez and Daniel R. Golub, "California Governor Signs into Law Major Reforms to Housing Accountability Act" *Holland & Knight* (September 29, 2017), https://www.hklaw.com/en/insights/publications/2017/09/california-governor-signs-into-law-major-reforms-t.

[30] Massachusetts Office of Housing and Economic Development, *Housing Choice and MBTA Legislation*, https://www.mass.gov/info-details/housing-choice-and-mbta-communities-legislation.

[31] Seattle Department of Construction & Inspection and Office of Planning and Community Development, *DEPARTMENT RECOMMENDED PROGRAM IMPROVEMENTS FOR PUBLIC REVIEW* (May 2016), https://www.seattle.gov/documents/Departments/HALA/Track/Design_Review_Program_Improvements_May2016.pdf.

[32] Minjee Kim, "Negotiation or Schedule-Based?: Examining the Strengths and Weaknesses of the Public Benefit Exaction Strategies of Boston and Seattle" *Journal of the American Planning Association* (March 2020), https://www.researchgate.net/publication/339766755_Negotiation_or_Schedule-Based_Examining_the_Strengths_and_Weaknesses_of_the_Public_Benefit_Exaction_Strategies_of_Boston_and_Seattle.

[33] Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Examining the Local Land Use Entitlement Process in California to Inform Policy and Process" *Berkeley Law Center for Law, Energy & the Environment, Berkeley Institute of Urban and Regional Development, Columbia Graduate School of Architecture, Planning, and Preservation* (February 2018), https://iurd.berkeley.edu/uploads/WorkingPaper_2_Final_web.pdf; and Moira O'Neill, Giulia Gualco-Nelson, and Eric Biber, "Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process" *Berkeley Law Center for Law, Energy & the Environment, Berkeley Institute of Urban and Regional Development, Columbia Graduate School of Architecture, Planning, and Preservation* (February 2018), https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf.

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