On Friday, the Governor signed a package of housing bills intended to help address the soaring costs of housing in many metro areas in California. Follow-up coverage of that bill package has (rightly) indicated that those bills are a drop in the bucket in terms of addressing California's housing crisis. One theme that emerges in that coverage and also coverage of other CEQA legislation (as well as a recent op-ed by two economists) is an argument that the California Environmental Quality Act (CEQA), is a significant contributor to the housing crisis. The question is, is that really correct? The answer is fairly important if the legislature is (appropriately) going to continue looking at this issue in the next legislative session.

The main argument goes along these lines – there is a lot of regulation of housing development in California. More regulation increases the cost of supplying housing, and therefore the cost of housing. Less regulation would facilitate more housing supply, and lower costs.

It may be that overall, regulation of land-use development in California is a significant contributor to the state's housing crisis. But CEQA is only a part of the overall regulation of California's land-use development, as I've noted in an earlier post. If CEQA is a significant obstacle to housing development, then I would argue that changing CEQA in ways that minimize the loss in environmental protection and maximize the benefits in increased housing production should be our goal. But in order to determine whether changing CEQA is a prudent strategy, we need to understand in a better way how local land-use processes are affecting housing production in California.

Indeed, targeting a state environmental review statute may do little to address the housing supply crisis if local regulation of land-use development through planning and zoning rules is the real issue. In general, in California if you want to develop a major housing project, you need approval from the local government. That approval process can be complicated, and it varies across jurisdictions. One important way it can vary is the extent to which the local government gives itself discretion to approve or disapprove a project that a developer wants to pursue. Some development can occur "as of right" – in that the zoning and other land-use rules mean that a project, if it falls within certain guidelines, does not need any additional scrutiny by the local government to approve it. As long as the project meets those standards, it can get a building permit. Other development requires some form of discretionary approval by the local government – and what types of issues require discretionary approval by the local government can vary across jurisdictions. And here is the key thing: CEQA only applies to a project if the local government's land-use approval process is discretionary. If the project is "as of right," as a general matter, no CEQA compliance is required.

So that leaves some important questions: How much development is actually occurring as of right versus through a discretionary form? If CEQA review is occurring, in what form (there are multiple levels, with differences in how burdensome they can be)? And why is a local government choosing to make certain kinds of development as of right or discretionary?

That last question is key – local governments in many circumstances have control over whether to make land-use development discretionary or not, and that is the trigger for CEQA. If the regulatory burden that purportedly slows down the development process is primarily coming from local government decisions to make land-use permits discretionary, and different jurisdictions are treating similar projects differently—and they are doing so in response to strong political or fiscal pressures—then changing CEQA may do very little to address our housing supply crisis. Some local governments may choose to maintain discretionary review over many projects – including the associated public participation requirements and the possibility for lawsuits afterwards – if the political and fiscal pressures to retain discretionary control over land-use decisions persist. Indeed, some cities may even create their own versions of CEQA to put that kind of analysis back in.

The stakes here are high. Misguided CEQA reform could undermine environmental protection throughout the state, without meaningful improvements to our housing crisis.

None of the articles about CEQA playing a role in housing costs do a granular, project-level analysis of how CEQA is contributing to the problem of housing costs. (That's only fair – journalists have limited time and resources to do those kind of long-term research projects. For an excellent example of data collection about housing production by each city by Liam Dillon, a journalist at the LA Times, see this article.) But none of the existing academic studies of housing costs and regulation, whether national or California-specific, do that kind of analysis either.

I'm part of a team of researchers here at Berkeley that is doing that work now. We hope to have initial results in the summer of 2018, results that can better inform the debate and make sure that we properly diagnose, and therefore properly address, the connections between our important land-use and environmental laws and the housing crisis in California.