

One of the most important state laws to advance housing production in California is the state density bonus law. At heart, that law extends an offer to developers seeking to build a housing project. If you add some affordable housing to your project, the state will let you build higher than local zoning might otherwise allow you to do, and the state will also preempt local regulations that block your project (and also preempt a limited number of local regulations that raise your costs). While that summary elides over a lot of important details, that is the basic concept behind the law. And it has been strikingly successful in encouraging development in California. Many large-scale residential projects in the state now include an affordable element so that they can become larger.

But there has been some controversy over state density bonus law. One issue is that (unlike many other California laws seeking to advance housing production) it is not limited to infill sites. As [Chris Elmendorf has noted](#), that means that the law can require local governments to approve large development projects even in greenfield areas that might not be zoned for residential uses. And the law has been the basis for some of the more controversial recent proposals, including a [recent major proposal in San Francisco's Marina district](#) – the law allowed that project to become quite large, because of the large increase in maximum density that the density bonus provides. Density bonus law is now [an important consideration as local governments upzone to provide more housing](#) – those governments want to consider what the actual increase in maximum zoning would be if a density bonus project was proposed based on the new zoning.

There is another issue that I want to particularly highlight here. Many of the housing reforms that the state legislature has enacted over the past few years have a sedimentary nature to them – they are changes to law layered upon past law, and also layered upon the landscape of what local land-use regulations are in practice. For example, for a law like the state density bonus law, which provides a percentage increase over whatever the maximum density is under local zoning law or in the local general plan (if the plan provides a higher limit than the zoning), understanding the implications of the density bonus law requires understanding how local zoning law operates on the ground across hundreds of local jurisdictions across the state.

The result has been state law that – to put it nicely – is not very easy to read, and is full of potential complications and contradictions. If you want a nice example, look at the Housing Accountability Act (HAA) at [Government Code Section 65589.5](#), which is byzantine in its complexity. It is complex in part because it is the accretion

of many amendments to the HAA over the years to make it more effective – and that is a good thing, in general, as the HAA really does now provide a lever to force local governments to approve housing. But that also means the HAA is full of cross-references and has a structure that is awkward at best.

Byzantine statutory language is not new, of course. But it can have consequences, including unintended ones that might lead to extreme outcomes. And I want to flag one possible example in state density bonus law. This will require getting into the weeds of state density bonus law, Government Code Section 65915, so I'll start in my next blog post.