

Is the Answer to Emerging Housing Crisis an Environmental FastPass?

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The U.S. housing market is 3.8 million units short of demand as of the end of 2020, according to a recent estimate by mortgage company Freddie Mac. Some of the causes of the current housing crisis are obvious – the COVID-19 pandemic’s economic impacts have driven interest rates to record lows, at the same time people have been forced to spend more time at home growing more dissatisfied with what were once minor annoyances with their current accommodations. For those lucky enough to maintain employment throughout the pandemic, the forced quarantines and limitations on business operations have decreased expenses, at the same time stimulus payments have generated a windfall for some workers. The resulting cash glut for a fortunate class of would-be homebuyers has spurred demand and pushed prices ever higher. Anecdotal evidence illustrates purchasers resorting to extreme and unusual tactics to land a contract in markets with especially limited inventory, including waiving appraisals and home inspections, escalation clauses in offers well above asking price, and in some cases allowing the seller to stay in the home rent-free for a period while they try to purchase a new home of their own.

Some of the causes of the shortage are less obvious. Boomers are living longer and staying healthier on average, decreasing the inventory of homes re-entering the housing market. Millennials now make up the largest share of the U.S. demographic and have reached “peak first-time homebuying age” according to Freddie Mac. And even before the pandemic, in 2018, demand for new housing outstripped supply by approximately 2.5 million units.

New home construction (particularly entry-level home construction, where demand is highest) fell significantly after the Great Recession and never rebounded. Today, such construction faces a number of significant headwinds. Lack of available construction labor and increasing materials costs have become more prevalent in recent years,

but land-use restrictions and public opposition to housing projects because of traffic and infrastructure strain, environmental impacts, and general community character concerns have all been increasing obstacles for years. Opponents of residential projects frequently utilize litigation challenging environmental permit decisions as a method to prevent or stall residential development, creating additional pressure on both the supply of new homes and the costs (and thus, price) associated with the homes that are constructed.

In California, where the median home price broke \$800,000 earlier this year, Governor Newsome recently signed legislation that would fast-track environmental review under the California Environmental Quality Act (CEQA) for qualifying housing developments and expedite any judicial review that stemmed from such a project. Qualifying projects must represent substantial investment - \$15 to \$100 million - and must include at least 15% "affordable housing" as that is defined by state law. The benefits of the bill come with significant caveats (among others, the builder/applicant agrees to pay the court costs associated with the expedited review process, if necessary), but is intended to directly address the mounting crisis of Californians unable to find affordable housing. Opponents have challenged the new law as either eroding environmental protections or as doing too little, at the 15% threshold, to combat California's extreme shortage of attainable housing options for the working class.

While the issue of housing availability is problematic for all prospective homebuyers, the issue of affordable housing is becoming critical. In South Carolina, median single home values increased nearly 90% from 2000 to 2019, while median household income increased just over 50%. And the issue extends beyond home sales. Rental prices increased over 80% in the same period, and 24% of renters in the state spend more than half of their gross income on housing. In 2019, South Carolina saw almost one eviction filing for every four renters (over 151,000 evictions). That was before pandemic-related layoffs and eviction moratoriums complicated the housing picture for renters in the Palmetto State (and, well, everywhere).

South Carolina has no equivalent to CEQA, but large residential developments still require state, and sometimes federal environmental permits, which subject developers to the potential for indeterminate and expensive delays. Legislators in Columbia in recent years have extended protections against certain kinds of environmental litigation risks for agricultural and industrial businesses seeking or operating under environmental permits. The policy justifications for such measures are clear - protecting food suppliers and major employers from what is viewed by some as undue litigation. The need for affordable housing, including for those same employees that work in agricultural and industrial facilities, would seem to be equally worthy of legislative protection. As South Carolina's population continues to grow, examination of California and other states' approaches to the housing shortage is advisable, before we find ourselves in the same situation.