



Streamlined Processing of Ministerial Projects under SB 35

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**STREAMLINED PROCESSING OF MINISTERIAL
PROJECTS UNDER SB 35**

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STREAMLINED PROCESSING OF MINISTERIAL PROJECTS UNDER SB 35

I. BACKGROUND INFORMATION ON SB 35

California Senate Bill 35 (“SB 35”), codified at Government Code Section 65913.4¹, was signed by then-Governor Jerry Brown on September 29, 2017 and became effective January 1, 2018 (amendments were made in 2018 that became January 1, 2019). SB 35 will automatically sunset on January 1, 2026 (Section 65913.4(m)). The intent of SB 35 is to expedite and facilitate construction of affordable housing. In adopting SB 35, the Legislature found that providing affordable housing opportunities is a matter of statewide concern and declared that SB 35 would apply to all cities and counties, including a charter city, a charter county, or a charter city and county (Section 65913.4(i)(6)).

SB 35 applies to cities and counties that have not made sufficient progress toward meeting their affordable housing goals for above-moderate and lower income levels as mandated by the State. In an effort to meet the affordable housing goals, SB 35 requires cities and counties to streamline the review and approval of certain qualifying affordable housing projects through a ministerial process.

The California Department of Housing and Community Development (“HCD”) is responsible for determining whether a local agency has made sufficient progress toward its above-moderate and lower income housing goals. HCD’s determination is based on whether the locality has issued fewer building permits than its pro-rata share of the regional housing need, by income level, for that reporting period. The “reporting period” is defined as either the first half or the second half of the regional housing needs assessment cycle (Section 65913.4(i)(10)) and is based upon the locality’s annual progress report (“APR”). This determination remains in effect until HCD’s determination for the next reporting period.

Refer to HCD’s website, [SB 35 Statewide Determination Summary](#), for list of the local agencies subject to SB 35 streamlining provisions. As of the date of this paper, the current Determination Summary represents Housing Element Annual Progress Report data received as of January 31, 2018. According to this data, 13 jurisdictions have met their prorated Lower (Very-Low and Low) and Above-Moderate Income Regional Housing Needs Assessment (RHNA) for the reporting period and are not currently subject to the streamlined ministerial approval process. All other cities and counties are subject to at least some form of SB 35 streamlining.

¹ Unless otherwise noted, all references in this paper are to Government Code Section 65913.4.

There are 378 jurisdictions that have made insufficient progress toward their Above Moderate income RHNA numbers and/or have not submitted their latest Housing Element Annual Progress Report (2016) and there are 148 jurisdictions that have made insufficient progress toward their Lower income RHNA numbers (Very-Low and Low income).

II. HCD GUIDELINES

In adopting SB 35, the Legislature provided HCD with the authority to prepare and adopt guidelines to implement SB 35 (Section 65913.4(j)). Draft Guidelines were issued on September 28, 2018 and final Guidelines were adopted on November 29, 2018. These Guidelines apply to SB 35 applications submitted on or after January 1, 2019 and can be found on HCD's website.

III. WHAT IS A STREAMLINED, MINISTERIAL APPROVAL PROCESS UNDER SB 35?

SB 35 requires cities and counties to streamline review and approval of eligible affordable housing projects through a ministerial approval process, exempting such projects from environmental review under the California Environmental Quality Act ("CEQA"). This process does not allow public hearings to consider the merits of the project; rather, only design review or public oversight of the development is allowed, which must be objective and strictly focused on assessing compliance with criteria required for streamlined projects as well as objective design review of the project (Section 65913.4(c)(1)).

Depending on the number of housing units proposed in the project, the jurisdiction has only a short timeframe within which to review the application to determine if it is eligible for processing under SB 35 (between 60-90 days). If it is determined that the project is eligible, SB 35 specifies the timeframes within which the jurisdiction has to make a final decision on the application (between 90-180 days). These timeframes are discussed in more detail in Section V, below.

An applicant may propose a project under this streamlined, ministerial approval process but must meet the eligibility criteria identified in SB 35 as discussed in Section IV, below.

IV. WHAT ARE THE ELIGIBILITY CRITERIA FOR THE SB 35 STREAMLINED, MINISTERIAL APPROVAL PROCESS?

State housing law requires cities and counties to report their housing production annually according to the number of building permits issued within the jurisdiction by income level. SB 35 applies to localities that are unable to issue a sufficient number of building permits to meet its RHNA goals for both above income and lower income units.

Projects providing affordable housing for low income levels are eligible for the streamlined, ministerial approval process if they meet all of the following criteria:

- (a) **Urban Infill.** Are located in an urban area, with 75% of the site's perimeter already developed (Section 65913.4(a)(2)(A) and (B)).
- (b) **Number of Units.** Propose at least two residential units (Section 65913.4(a)(1)).
- (c) **Designated for Residential Uses.** Have a general plan and/or zoning designation that allows residential or mixed-use with at least 2/3 of the square footage as residential use (Section 65913.4(a)(2)(C)).
- (d) **Location.** Cannot be located on property within any of the following areas: a coastal zone, prime farmland, wetlands, very high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, flood plain, floodway, community conservation plan area, habitat for protected species, under a conservation easement, or located on a qualifying mobile home site (Section 65913.4(a)(6)).
- (e) **Demolition of Residential Units.** The development would not demolish any housing units that have been occupied by tenants in the last 10 years; are subject to any form of rent or price control, or are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes (Section 65913.4(a)(7)).
- (f) **Historic Buildings.** The development would not demolish a historic structure that is on a national, state, or local historic register (Section 65913.4(a)(7)(C)).
- (g) **Consistent with Objective Planning Standards.** Must meet all objective general plan, zoning, subdivision and design review standards in effect at the time the application is submitted. Objective standards are those that require no personal or subjective (discretionary) judgment, and must be verifiable by reference to an external and uniform source available prior to submittal (Section 65913.4(a)(5)).
- (h) **Prevailing Wages.** If the development is not in its entirety a public work, as defined in Government Code Section 65913.4(a)(8)(A), all construction workers employed in

the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area. (Section 65913.4(a)(8)(A)). This requirement does not apply to projects that include 10 or fewer units and is not a public work project (Section 65913.4(a)(8)(C)).

(i) **Skilled and Trained Workforce Provisions.** A skilled and trained workforce must complete the development if the project consists of 75 or more units that are not 100 percent subsidized affordable housing (Section 65913.4(a)(8)(B)). This requirement does not apply to projects that include 10 or fewer units and is not a public work project (Section 65913.4(a)(8)(C)).

(j) **Subdivisions.** Does not involve a subdivision subject to the Subdivision Map Act, unless the development either (i) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or (ii) is subject to the requirements to pay prevailing wages and to use a skilled and trained workforce (Section 65913.4(a)(9)).

(k) **Parking.** The project must provide at least one parking space per unit; however, no parking may be required if 1) the project is located within a) one half mile of a public transit stop, b) an architecturally and historically significant historic district, c) one block of a car share vehicle station, or 2) on-street parking permits are required but not offered to the development occupants (Section 65913.4(d)).

(l) **Mobilehome Site.** The project site cannot be governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act (Section 65913.4(a)(10)).

V. REVIEW AND APPROVAL TIMELINE FOR SB 35 PROCESS

Projects that elect to take advantage of this process must submit a planning application indicating the application or entitlement requested and the project's eligibility under SB 35 (see, HCD Guidelines, Article III, Section 301(b)). A locality must determine whether the project is eligible for streamlining, including whether the development conflicts with any objective planning standards, within 60 days of application submittal for projects with 150 or fewer units, and 90 days for projects with more than 150 units (Section 65913.4(b)(1)). If the locality fails to timely provide the documentation identifying conflicts with any objective planning standard, the development is deemed to satisfy all objective planning standards (Section 65913.4(b)(2)). Thereafter, project design review and consideration of any information requested of the applicant must be completed in 90 days from project application submittal for projects with 150 or fewer units and 180 days from project submittal for projects with more than 150 units (Section 65913.4(c)).

VI. PUBLIC HEARINGS ARE NOT ALLOWED ON SB 35 PROJECTS

Public hearings are not allowed on SB 35 projects because these projects are specifically identified by the statute as ministerial projects which do not require public hearings. SB 35 allows “design review or public oversight” to occur if a locality so chooses. This process may be conducted by the planning commission or equivalent board or commission responsible for review and approval of development projects, or the city council. This process must be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards that were in effect before the application was submitted. This process may not in any way “inhibit, chill, or preclude the ministerial approval” allowed by SB 35 (Section 65913.4(c)(1)).

VII. STUDIES ANALYZING THE POTENTIAL IMPACTS ON THE ENVIRONMENT OR COMMUNITY MAY NOT BE REQUIRED

Because projects eligible for the streamlining provisions of SB 35 are considered ministerial by the statute, such projects are not subject to CEQA. Moreover, SB 35 was amended in 2018 to include a specific exemption from CEQA for qualifying projects (Section 65913.4(c)(2)).

Therefore, an SB 35 project applicant cannot be required to prepare any studies that would otherwise be required under CEQA (i.e., traffic, air quality, noise, etc.) Rather, a locality can only require an applicant to abide by objective planning standards that were in effect at the time the SB 35 application was submitted. If an objective planning standard requires certain studies to be performed and there are objective standards to address the preparation and results of those studies, then the applicant would be required to prepare and implement those requirements.

VIII. EXPIRATION OF AN SB 35 PROJECT APPROVAL

The expiration dates for projects approved under SB 35 are as follows:

- (a) Projects that include public investment in housing affordability will not expire where 50% of the units are affordable to households making below 80% of the area median income (below moderate income levels).
- (b) Projects that do not include 50% of the units as affordable to households making below 80% of the area median income (below moderate income levels) automatically expire after three years except a one-time, one-year extension may be granted if progress is being made toward construction, such as filing a building permit application.
- (c) Projects shall remain valid for three years and shall remain in effect as long as vertical construction has begun and is in progress. A one-year extension to the original three year period may be granted if making progress toward construction. (Section 65913.4(e)(1-3)).

IX. WHAT IS THE RELATIONSHIP BETWEEN SB 35 AND DENSITY BONUS LAWS?

SB 35 projects can utilize benefits under state and local density bonus laws (Section 65913.4(a)(5)). When determining consistency with density requirements under SB 35, the maximum density allowed is considered consistent with objective standards and any additional density or units granted as a density bonus are considered consistent with the maximum allowable densities (See, HCD Guidelines, Article III, Section 300(c)).

State Density Bonus Law, which can be found at California Government Code section 65915 *et seq.*, requires all cities and counties to offer a density bonus, allow concessions, incentives and waivers of development standards to housing developments that include either a certain percentage of affordable housing or housing for qualified individuals. The State Density Bonus Law prevails in the event of any inconsistencies between the state law and local ordinance.

A density bonus is an increase in the number of housing units allowed under a general plan and/or zoning (“base density,”) to encourage the production of affordable housing. Depending on the amount and affordability of the proposed affordable housing, a project may be allowed a density bonus between 5% and 35% above the base maximum density.

In addition to a density bonus, concessions, incentives and waivers can be requested by an applicant to assist the project in providing affordable units. Depending on the percentage of affordable housing provided, a project may be eligible to receive up to three concessions and incentives. A concession or incentive is a reduction in a site development standard or modification of zoning or architectural requirements, or any other regulatory incentives or concessions that would result in identifiable and actual cost reductions to provide affordable housing. A waiver pertains to a development standard (setback, height, etc.) that would “physically preclude” construction of the project.

X. CONCLUSION

To date, SB 35 has only been utilized by a handful of applicants in a few communities, namely, San Francisco, Oakland, Berkeley and Cupertino. Given the significant criteria thresholds an application must clear in order to be eligible for processing and approval pursuant to SB 35, it remains to be seen how many applicants will utilize SB 35. The HCD Guidelines require local governments to annually report, as part of its APR, the number of applications submitted and/or approved under SB 35, and the number of building permits issued and units constructed (see, HCD Guidelines, Article V, Section 500).

To be ready for such projects, many local agencies have already prepared objective planning standards to address SB 35 projects. HCD Guidelines now require that local agencies subject to SB 35, provide information on the application process and identify the relevant objective planning standards to be used for such projects (see, HCD Guidelines, Article III, Section 300(a)).