

Updated Streamlined Ministerial Approval Process

Government Code Section 65913.4

Guidelines



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The matters set forth herein are regulatory mandates, and are adopted in accordance with the authorities set forth below:

Quasi-legislative regulations ... have the dignity of statutes ... [and]... delegation of legislative authority includes the power to elaborate the meaning of key statutory terms...

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785, 800 (1999)

The Department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this section. Any guidelines or terms adopted pursuant to this subdivision shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Government Code section 65913.4, subdivision (j)

Government Code section 65913.4 relates to the resolution of a statewide concern and is narrowly tailored to limit any incursion into any legitimate municipal interests, and therefore the provisions of Government Code section 65913.4, as supplemented and clarified by these Guidelines, are constitutional in all respects and preempt any and all inconsistent laws, ordinances, regulations, policies or other legal requirements imposed by any locality.

Streamlined Ministerial Approval Process Program Guidelines

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INTRODUCTION

Chapter 366, Statutes of 2017 (SB 35, Wiener) was part of a 15-bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need. Eligible developments must include a specified level of affordability, be on an infill site, comply with existing residential and mixed-use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions. The intent of the legislation is to facilitate and expedite the construction of housing. In addition, as part of the legislation, the Legislature found ensuring access to affordable housing is a matter of statewide concern and declared that the provisions of SB 35 would apply to all cities and counties, including a charter city, a charter county, or a charter city and county. Please note, the California Department of Housing and Community Development (Department) may take action in cases where these Guidelines are not adhered to under its existing accountability and enforcement authority. In addition, please also be aware that these Guidelines do not fully incorporate statutory changes to the law made by Chapter 166, Statutes of 2020 (AB 168) and Chapter 194, Statutes of 2020 (AB 831) at this time, which require, among other things, pre-application tribal scoping consultation. Changes required by AB 168 and AB 831 will be more fully incorporated in a subsequent version of these Guidelines, which are expected to be prepared and circulated in 2021. Developers and local governments using these Guidelines should refer to Government Code section 65913.4 to comply with these new mandates.

Guidelines for the Streamlined Ministerial Approval Process are organized into five Articles, as follows:

Article I. General Provisions: This article includes information on the purpose of the Guidelines, applicability, and definitions used throughout the document.

Article II. Determination Methodology: This article describes the methodology for which the Department shall determine which localities are subject to the Streamlined Ministerial Approval Process.

Article III. Approval Process: This article describes the parameters of the approval process, including local government responsibilities, approval processes, and general provisions.

- 1) Local Government Responsibility – This section specifies the types of requirements localities may require a development to adhere to in order to determine consistency with general plan and zoning standards, including objective standards, controlling planning documents, and parking.
- 2) Development Review and Approval – This section details the types of hearings and review allowed under the Streamlined Ministerial Approval Process, timing provisions for processing and approving an application, denial requirements, and timeframes related to the longevity of the approval.

Article IV. Development Eligibility: This article describes the requirements for developments in order to apply for streamlining, including type of housing, site requirements, affordability provisions, and labor provisions.

Article V. Reporting: This article describes reporting requirements specific to the Streamlined Ministerial Approval Process in the locality's Annual Progress Report on the general plan.

ARTICLE I. GENERAL PROVISIONS

Section 100. Purpose and Scope

- (a) These Guidelines (hereinafter “Guidelines”) implement, interpret, and make specific the Chapter 366, Statutes of 2017 (SB 35, Wiener), and subsequent amendments (hereinafter “Streamlined Ministerial Approval Process”) as authorized by Government Code section 65913.4.
- (b) These Guidelines establish terms, conditions, and procedures for a development proponent to submit an application for a development to a locality that is subject to the Streamlined Ministerial Approval Process provided by Government Code section 65913.4. Nothing in these Guidelines relieves a local government from the obligation to follow state law relating to the availability of the Streamlined Ministerial Approval Process.
- (c) It is the intent of the Legislature to provide reforms and incentives to facilitate and expedite the construction of affordable housing. Therefore, these Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply.
- (d) These Guidelines shall remain in effect until January 1, 2026, and as of that date are repealed.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65582.1 and 65913.4(n) and (o).

Section 101. Applicability

- (a) The provisions of Government Code section 65913.4 are effective as of January 1, 2018.
- (b) These Guidelines are applicable to applications submitted on or after January 1, 2019, including applications submitted for modification to a development per Section 301(c). Subsequent updates to the Guidelines are applicable to applications submitted on or after the date adopted as shown on the cover page. Nothing in these Guidelines may be used to invalidate or require a modification to a development approved through the Streamlined Ministerial Approval Process prior to the effective date.
- (c) These Guidelines are applicable to counties and cities, including both general law and charter cities, including a charter city and county.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(k)(6).

Section 102. Definitions

All terms not defined below shall, unless their context suggests otherwise, be interpreted in accordance with the meaning of terms described in Government Code section 65913.4

- (a) “Annual Progress Report (APR)” means the housing element Annual Progress Report required by Government Code section 65400, and due to the Department April 1 of each year, reporting on the prior calendar year’s permitting activities and implementation of the programs in a local government’s housing element.

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- (b) “Application” means a submission requesting Streamlined Ministerial Approval pursuant to Government Code section 65913.4 and these Guidelines, which contains information pursuant to Section 300(b) describing the development’s compliance with the criteria outlined in Article IV of these Guidelines.
- (c) “Area Median Income (AMI)” means the median family income of a geographic area of the state, as determined annually by the Department within the state income limits: <http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml>.
- (d) “Car share vehicle” is an automobile rental model where people rent cars from a car-sharing network, or an exclusive car provided by the project, to be located in a designated area within the project, for roundtrip or one-way, where vehicles are returned to a dedicated or reserved parking location. An example of such a service is Zipcar or car(s) provided by the project. If the project provides an exclusive car, it shall do so at a ratio of at least one car per every 50 units.
- (e) “Density Bonus” has the same meaning as set forth in Government Code section 65915.
- (f) “Department” means the California Department of Housing and Community Development.
- (g) “Determination” means the published identification, periodically updated, by the Department of those local governments that are required to make the Streamlined Ministerial Approval Process available per these Guidelines.
- (h) “Development proponent” or “applicant” means the owner of the property, or person or entity with the written authority of the owner, that submits an application for streamlined approval.
- (i) “Fifth housing element planning period” means the five or eight-year time period between the due date for the fifth revision of the housing element and the due date for the sixth revision of the housing element pursuant to Government Code section 65588(f).
- (j) “Infill” means at least 75 percent of the linear measurement of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this definition, parcels that are only separated by a street or highway shall be considered to be adjoined.
- (k) “Locality” or “local government” means a city, including a charter city, a county, including a charter county, or a city and county, including a charter city and county.
- (l) “Low-income” means households earning 50 to 80 percent of AMI.
- (m) “Lower-income” means households earning 80 percent or less of AMI pursuant to Health and Safety Code section 50079.5.
- (n) “Ministerial processing” or “ministerial approval” means a process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely ensures that the proposed development meets all the "objective zoning standards," "objective subdivision standards," and "objective design review standards" in effect at the time that the application is submitted to the local government, but uses no special discretion or judgment in reaching a decision.

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- (o) “Moderate-income housing units” means housing units with an affordable housing cost or affordable rent for persons and families of moderate income pursuant to Health and Safety Code section 50093.
- (p) “Multifamily” means a housing development with two or more attached residential units. This includes mixed-use projects as stated in Section 400(a). The definition does not include accessory dwelling units unless the project is for new construction of a single-family home with attached accessory dwelling units. Please note, accessory dwelling units have a separate permitting process pursuant to Government Code section 65852.2.
- (q) “Objective standards” or “objective planning standards” means an objective zoning, objective subdivision and objective design review standard as those terms are defined in Section 102(r).
- (r) “Objective zoning standard”, “objective subdivision standard”, and “objective design review standard” means standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the applicant or development proponent and the public official prior to submittal, and includes only such standards as are published and adopted by ordinance or resolution by a local jurisdiction before submission of a development application.
- (s) “Project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of section 2500 of the Public Contract Code.
- (t) “Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge a set fare, run on fixed routes, and are available to the public.
- (u) “Public works project” means developments which meet the criteria of Chapter 1 (commencing with section 1720) of Part 7 of Division 2 of the Labor Code.
- (v) “Regional housing need” means the local government’s share of the regional housing need allocation as determined by Article 10.6 of the Government Code.
- (w) "Related facilities" means any manager's units and any and all common area spaces that are included within the physical boundaries of the housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas that are exclusively available to residential users, except any portions of the overall development that are specifically commercial space.
- (x) “Reporting period” means the timeframe for which APRs are utilized to create the determination for which a locality is subject to the Streamlined Ministerial Approval Process. The timeframes are calculated in relationship to the planning period of the housing element pursuant to Government Code section 65588 and are cumulative through the most recent calendar year.
- (y) “San Francisco Bay Area” means the entire area within the territorial boundaries of the Counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and the City and County of San Francisco.

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- (z) “Skilled and trained workforce” has the same meaning as provided in Chapter 2.9 (commencing with section 2600) of Part 1 of Division 2 of the Public Contract Code.
- (aa) “Subsequent permit” means any permit required subsequent to receiving approval under Section 301, and includes, but is not limited to, demolition, grading, encroachment permits, approval of sign programs, and tree removal permits, building permits, and final maps, as necessary.
- (bb) “Subsidized” means units that are price or rent restricted such that the units are affordable to households meeting the definitions of very low and lower income, as defined in Sections 50079.5 and 50105 of the Health and Safety Code. A local agency shall not reduce maximum rent below that specified in Health and Safety Code sections 50079.5 and 50105.
- (cc) “Tenant” means a person who occupies land or property rented or leased for use as a residence.
- (dd) “Urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.
- (ee) “Very low-income” means households earning less than 50 percent or less of AMI pursuant to Health and Safety Code section 50105.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4.

ARTICLE II. STREAMLINED MINISTERIAL APPROVAL PROCESS DETERMINATION

Section 200. Methodology

- (a) The Department will calculate the determination, as defined in Section 102(g), based on permit data received through the most recent APRs provided to the Department for the mid-point of the housing element planning period pursuant to Government Code section 65488 and at the end point of the planning period.
 - (1) APRs, as defined in Section 102(a), report on calendar years, while housing element planning periods may begin and end at various times throughout the year. When a planning period begins after July, the APR for that year is attributed to the prior housing element planning period. When the planning period ends before July 1, the APR for that year will be attributed to the following housing element planning period.
- (b) The determination is based on permitting progress toward a pro-rata share of the regional housing need for the reporting period.
 - (1) Determinations calculated at the mid-point of the planning period are based upon permitting progress toward a pro-rata share of half (50 percent) of the regional housing need, while determinations calculated at the end of the planning period are based upon permitting progress towards the entirety (100 percent) of the regional housing need.

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- (2) For localities, as defined in Section 102(k), on a 5-year planning period, the mid-point determination is based upon a pro-rata share of the regional housing need for the first three years in the planning period, and 60 percent of the regional housing need.
- (3) The determination applies to all localities beginning January 1, 2018, regardless of whether a locality has reached the mid-point of the fifth housing element planning period. For those local governments that have achieved the mid-point of the fifth housing element planning period, the reporting period includes the start of the planning period until the mid-point, and the next determination reporting period includes the start of the planning period until the end point of the planning period. In the interim period between the effective date of the Streamlined Ministerial Approval Process, until a locality reaches the mid-point in the fifth housing element planning period, the Department will calculate the determination yearly. This formula is based upon the permitting progress towards a pro-rata share of the regional housing need, dependent on how far the locality is in the planning period, until the mid-point of the fifth housing element planning period is reached. See example below.

Example Calculation
For a locality two years into the reporting period, the determination is calculated at two out of eight years of the planning period and will be based upon a pro-rata share of two-eighths, or 25 percent, of the regional housing need, and the following year, for the same locality, the determination will be calculated at three out of eight years of the planning period based upon a pro-rata share of three-eighths, or 37.5 percent, of the regional housing need, and the following year for the same locality the determination will be calculated at four out of eight years of the planning period based upon a pro-rata share of four-eighths, or 50 percent, of the regional housing need. At that point, the locality will reach its mid-point of the planning period and the determination, the pro-rata share, and the permitting progress toward the pro-rata share will hold until the locality reaches the end-point of the planning period.

- (c) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households, or the 20 percent moderate income option if the site is located in the San Francisco Bay Area as defined in Section 102(y), the Department shall compare the permit data received through the APR to the pro-rata share of their above-moderate income regional housing need for the current housing element planning period. If a local government has permitted less than the pro-rata share of their above-moderate income regional housing need, then the jurisdiction will be subject to the Streamlined Ministerial Approval Process for developments with 10 percent affordability or the 20 percent moderate income option if the site is located in the San Francisco Bay Area.
- (d) Local governments that do not submit their latest required APR prior to the Department's determination are subject to the Streamlined Ministerial Approval Process for developments with 10 percent of units affordable to lower-income households or the 20 percent moderate income option if the site is located in the San Francisco Bay Area.
- (e) To determine if a locality is subject to the Streamlined Ministerial Approval Process for developments with 50 percent of units affordable to lower-income households, the Department shall compare the permit data received through the APR to the pro-rata share of their independent very low- and low-income regional housing need for the

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current housing element planning period. If a local government has permitted the pro-rata share of their above-moderate income regional housing need, and submitted their latest required APR, but has permitted less than the pro-rata share of their very low- and lower-income regional housing need, they will be subject to the Streamlined Ministerial Approval Process for developments with 50 percent affordability. For purposes of these Guidelines, as the definition of lower-income is inclusive of very low-income units, very low-income units permitted in excess of the very low-income need may be applied to demonstrate progress towards the lower-income need. However, as the definition of very low-income units does not include low-income units, low-income units permitted in excess of the low-income need shall not be applied to demonstrate progress towards the very low-income need.

- (f) To determine if a locality is not subject to the Streamlined Ministerial Approval Process, the permit data from the APR shall demonstrate that the locality has permitted the entirety of the pro-rata share of units for the above moderate-, low-, and very low-income categories of the regional housing need for the relevant reporting period, and has submitted the latest APR.
- (g) The Department's determination will be in effect until the Department calculates the determination for the next reporting period, unless updated pursuant to Section 201. A locality's status on the date the application is submitted determines whether an application is subject to the Streamlined Ministerial Approval Process, and also determines which level of affordability (10 or 50 percent) an applicant must provide to be eligible for streamlined ministerial permitting.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a)(4).

Section 201. Timing and Publication Requirements

The Department shall publish the determination by June 30 of each year, accounting for the APR due April 1 of each year, though this determination may be updated more frequently based on the availability of data, data corrections, or the receipt of new information. The Department shall publish the determination on the Department's website.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a)(4).

ARTICLE III. APPROVAL PROCESS

Section 300. Local Government Responsibility

- (a) After receiving a notice of intent to submit an application for a Streamlined Ministerial Approval Process, and prior to accepting an application for a Streamlined Ministerial Approval process, the local government must complete the tribal consultation process outlined in Government Code section 65913.4(b). The notice of intent shall be in the form of a preliminary application that includes all of the information described in Government Code section 65941.1.

(b) A local government that has been designated as subject to the Streamlined Ministerial Approval Process by the Department shall provide information, in a manner readily accessible to the general public, about the locality’s process for applying and receiving ministerial approval, materials required for an application as defined in Section 102(b), and relevant objective standards to be used to evaluate the application. In no case shall a local government impose application requirements that are more stringent than required for a final multifamily entitlement or standard design review in its jurisdiction. The information provided may include reference documents and lists of other information needed to enable the local government to determine if the application is consistent with objective standards as defined by Section 102(q). A local government may only require information that is relevant to and required to determine compliance with objective standards and criteria outlined in Article IV of these Guidelines. This may be achieved through the use of checklists, maps, diagrams, flow charts, or other formats. The locality’s process and application requirements shall not in any way inhibit, chill, or preclude the Streamlined Ministerial Approval Process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects in Article IV of these Guidelines.

(1) Where a local government has failed to provide information pursuant to subsection (a) about the locality’s process for applying and receiving ministerial approval, the local government shall accept any application that meets the requirements for a standard multifamily entitlement submittal and that contains information showing how the development complies with the requirements of Article IV. The application may include use of a list of the standards, maps, diagrams, flow charts, or other formats to meet these requirements.

(c) Determination of consistency

(1) When determining consistency with objective zoning, subdivision, or design review standards, the local government shall only use those standards that meet the definition referenced in Section 102(q). For example, design review standards that require subjective decision-making, such as consistency with “neighborhood character,” shall not be applied as an objective standard unless “neighborhood character” is defined in such a manner that is non-discretionary.

Example Objective Design Review
Objective design review could include use of specific materials or styles, such as Spanish-style tile roofs or roof pitches with a slope of 1:5. Architectural design requirements such as “craftsman style architecture” could be used so long as the elements of “craftsman style architecture” are clearly defined (e.g., “porches with thick round or square columns and low-pitched roofs with wide eaves”), ideally with illustrations.

(2) A standard that requires a general plan amendment, the adoption of a specific plan, planned development zoning, or another discretionary permit or approval does not constitute an objective standard. A locality shall not require a development proponent to meet any standard for which the locality typically exercises subjective discretion, on a case-by-case basis.

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- (3) Modifications to objective standards granted as part of a density bonus, concession, incentive, parking reduction, or waiver of development standards pursuant to Density Bonus Law Government Code section 65915, or a local density bonus ordinance, shall be considered consistent with objective standards.
- (4) Project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards shall be determined consistent with Density Bonus Law.
- (5) Objective standards may include objective land use specifications adopted by a city or county, including, but not limited to, the general plan, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.
- (6) In the event that objective zoning, general plan, subdivision, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective standards pursuant to Section 400(c) of these Guidelines if the development is consistent with the standards set forth in the general plan.

(A) In no way should this paragraph be used to deem an application ineligible for the Streamlined Ministerial Approval Process when the project's use is consistent with Section 401(a)(3).

- (7) Developments are only subject to objective zoning standards, objective subdivision standards, and objective design review standards enacted and in effect at the time that the application is submitted to the local government.
- (8) Determination of consistency with objective standards shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. For example, design review standards or other objective standards that serve to inhibit, chill, or preclude the development of housing under the Streamlined Ministerial Approval Process are inconsistent with the application of state law.

(d) Density calculation

- (1) When determining consistency with density requirements, a development that is compliant with up to the maximum density allowed within the land use element designation of the parcel in the general plan is considered consistent with objective standards. For example, a development on a parcel that has a multifamily land use designation allowing up to 45 units per acre is allowed up to 45 units per acre regardless of the density allowed pursuant to the zoning code. In addition, the development may request a density of greater than 45 units per acre if eligible for a density bonus under Density Bonus Law.
- (2) Growth, unit, or other caps that restrict the number of units allowed in the proposed development or that expressly restricts the timing of development may be applied only to the extent that those caps do not inhibit the development's ability to achieve the maximum density allowed by the land use designation, and any density bonus the project is eligible for, and do not restrict the issuance of building permits for the project.

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- (3) Additional density, floor area, or units granted as a density bonus shall be considered consistent with maximum allowable densities.
- (4) Development applications are only subject to the density standards in effect at the time that the development is submitted to the local government.

(e) Parking requirements

- (1) Automobile parking standards shall not be imposed on a development that meets any of the following criteria:
 - (A) The development is located where any part of the parcel or parcels on which the development is located is within one-half mile of any part of the parcel or parcels of public transit, as defined by Section 102(t) of these Guidelines.
 - (B) The development is located within a district designated as architecturally or historically significant under local, state, or federal standards.
 - (C) When on-street parking permits are required, but not made available to the occupants of the development.
 - (D) When there is a car share vehicle, (i.e., a designated location to pick up or drop off a car share vehicle as defined by Section 102(d),) within one block of the development. A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.
- (2) For all other developments, the local government shall not impose automobile parking requirements for streamlined developments approved pursuant to this section that exceed one parking space per unit.

(f) A local government shall not adopt or impose any requirement, including, but not limited to, increased fees or inclusionary housing requirements, or rent levels other than what is defined for very-low income, lower-income, and moderate-income in Section 102, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined processing.

- (1) A local government shall not deny a project access to local housing funds, including housing trust funds, or state housing funds solely on the basis that the project is eligible to receive streamlined processing.
- (2) This section should not be construed to preclude a jurisdiction from waving, reducing, or otherwise reducing fees and other costs for the project in an effort to facilitate lower project costs.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), (e), and (n).

Section 301. Development Review and Approval

(a) Ministerial processing

- (1) Ministerial approval, as defined in Section 102(n), of a project that complies with Article IV of these Guidelines shall be non-discretionary and cannot require a conditional use permit or other discretionary local government review or approval.
- (2) Ministerial design review or public oversight of the application, if any is conducted, may be conducted by the local government's planning commission or any equivalent board or commission responsible for review and approval of development projects, or the city council or board of supervisors, as appropriate.
 - (A) Design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards published and adopted by ordinance or resolution by a local government before submission of the development application, and shall be broadly applicable to development within the locality.
 - (B) If a local government determines that a development submitted pursuant to this section is in conflict with any of the objective planning standards, it shall provide the development proponent, as defined in Section 102(h), written documentation in support of its denial identifying with specificity the standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards, within the timeframe specified in Section 301(b)(2) below. If the application can be brought into compliance with minor changes to the proposal, the local government may, in lieu of making the detailed findings referenced above, allow the development proponent to correct any deficiencies within the timeframes for determining project consistency specified in Section 301(b)(4) below.
 - (C) When determining consistency, a local government shall find that a development is consistent with the objective planning standards if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective standards. The local government may only find that a development is inconsistent with one or more objective planning standards, if the local government finds no substantial evidence in favor of consistency and that, based on the entire record, no reasonable person could conclude that the development is consistent with the objective standards.
- (3) A determination of inconsistency with objective planning standards in Section 301(b)(3)(A) does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review, or from applying for the project under other local government processes. If the development proponent elects to resubmit its application for streamlined review under that Section, the timeframes specified in Section 301(b) below shall commence on the date of resubmittal.

- (4) Approval of ministerial processing does not preclude imposing standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality, regardless of streamlined approval, and such conditions implement objective standards that had been adopted prior to submission of a development application. This includes any objective process requirements related to the issuance of a building permit. However, any further approvals, such as demolition, grading and building permits or, if required, final map, shall be issued on a ministerial basis subject to the objective standards.
 - (A) Notwithstanding Paragraph (5), standard conditions that specifically implement the provisions of these Guidelines, such as commitment for recording covenant and restrictions and provision of prevailing wage, may be included in the conditions of approval.
- (5) The California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) does not apply to the following in connection with projects qualifying for the Streamlined Ministerial Approval Process:
 - (A) Actions taken by a state agency, local government, or the San Francisco Bay Area Rapid Transit District to lease, convey, or encumber land or to facilitate the lease, conveyance, or encumbrance of land owned by the local government, or for the lease of land owned by the San Francisco Bay Area Rapid Transit District in association with an eligible transit oriented development project, as defined pursuant to section 29010.1 of the Public Utilities Code, nor to any decisions associated with that lease.
 - (B) Actions taken by a state agency or local government to provide financial assistance to a development that receives streamlined approval pursuant to this section that is to be used for housing for persons and families of very low, low, or moderate income.
 - (C) Approval of improvements located on land owned by the local government or the San Francisco Bay Area Rapid Transit District that are necessary to implement a development that receives streamlined approval pursuant to this section where such development is to be used for housing for persons and families of very low, low, or moderate income, as defined in section 50093 of the Health and Safety Code.
 - (D) The determination of whether an application for a development is subject to the Streamlined Ministerial Approval Process.
- (b) Upon a receipt of an application, the local government shall adhere to the following:
 - (1) An application submitted hereunder shall be reviewed by the agency within the timeframes required under paragraph (2) below whether or not it contains all materials required by the agency for the proposed project, and it is not a basis to deny the project if either:
 - (A) The application contains sufficient information for a reasonable person to determine whether the development is consistent, compliant, or in conformity with the requisite objective standards (outlined in Article IV of these Guidelines); or

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- (B) The application contains all documents and other information required by the local government as referenced in Section 300(a) of these Guidelines.
- (2) Local governments shall make a determination of consistency, as described in Section 301(a)(3), as follows:
 - (A) Within 60 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.
 - (B) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.
 - (C) Documentation of inconsistency(ies) with objective standards must be provided to the development proponent within these timeframes. If the local government fails to provide the required documentation determining consistency within these timeframes, the development shall be deemed to satisfy the objective planning standards and shall be deemed consistent.
- (3) Notwithstanding Section 301(b)(2), design review or public oversight may be conducted by the local government's city council, board of supervisors, planning commission, or any equivalent board or commission, as described in Section 301(a)(2), and shall be completed as follows:
 - (A) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.
 - (B) Within 180 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.
 - (C) Although design review may occur in parallel with or as part of the consistency determination set forth in paragraphs (1) and (2) above, failure to meet subjective design review standards or obtain design review approval from the oversight board shall not in any way inhibit, chill, stall, delay, or preclude a project from being approved for development pursuant to these Guidelines if objective design review standards are met. This means that discussion or consideration of the application shall only relate to design standards that meet the definition of objective pursuant to Section 102(r). If the local government fails to complete design review within the timeframes provided above, the project is deemed consistent with objective design review standards.
- (4) Approval timelines: Local government must determine if an application for a Streamlined Ministerial Approval complies with requirements and approve or deny the application pursuant to these Guidelines as follows:
 - (A) Within 90 calendar days of submittal of the application to the local government pursuant to this section if the development contains 150 or fewer housing units.
 - (B) Within 180 calendar days of submittal of the application to the local government pursuant to this section if the development contains more than 150 housing units.

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- (5) Timeframes for determining project eligibility for a density bonus concession, incentive, parking reduction, or waiver of development standards or protections of the Housing Accountability Act (Government Code section 65589.5) shall be subject to the timeframes outlined in paragraph (2) and (3) above.
- (c) Modifications to the development subsequent to the approval of the ministerial review, but prior to issuance of a final building permit, shall be granted in the following circumstances:
 - (1) For modification initiated by the development proponent.
 - (A) Following approval of an application under the Streamlined Ministerial Approval Review Process, but prior to issuance of the final building permit required for construction of the development, an applicant may submit a written request to modify the development. The modification must conform with the following:
 - i. The change is consistent with the Streamlined Ministerial Approval Process Guidelines.
 - ii. The change is consistent with the objective planning standards specified in subdivision (a) that were in effect when the original development application was first submitted.
 - iii. The change will not conflict with a plan, ordinance or policy addressing community health and safety.
 - iv. If the change results in modifications to the concessions, incentives or waivers to development standards approved pursuant to Density Bonus Law, then the modified concession, incentive, or waiver must continue to meet the standards of the Density Bonus Law.
 - v. The local government may apply objective planning standards adopted after the development application was first submitted to the requested modification in any of the following instances:
 - I. The development is revised such that the total number of residential units or total square footage of construction changes by 15 percent or more.
 - II. The development is revised such that the total number of residential units or total square footage of construction changes by 5 percent or more, and it is necessary to subject the development to an objective standard beyond those in effect when the development application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined in subparagraph (A) of paragraph (1) of subdivision (j) of Section 65589.5, upon the public health or safety, and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.
 - III. Objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, may be applied to all modifications.

- (B) Upon receipt of the request, the local agency shall determine if the requested modification is consistent with the local agency's objective standards in effect when the original application for the development was submitted. The local agency shall not reconsider consistency with objective planning standards that are not affected by the proposed modification. Approval of the modification request must be completed within 60 days of submittal of the modification or 90 days if design review is required. A proposed modification shall not cause the original approval to terminate.
 - (C) The local government's review of a modification request pursuant to this subdivision shall be strictly limited to determining whether the modification, including any modification to previously approved density bonus concessions or waivers, modify the development's consistency with the objective planning standards and shall not reconsider prior determinations that are not affected by the modification.
- (2) For modification initiated by the local agency.
- (A) Following approval of an application under the Streamlined Ministerial Approval Process, but prior to issuance of a building permit for the development, a local agency may require one-time changes to the development that are necessary to comply with the objective building standards contained in the California Building Standards Code (Title 24 of the California Code of Regulations), including, but not limited to, building plumbing, electrical, fire, and grading codes, or to mitigate a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without modifying the development. A "specific, adverse impact" has the meaning defined in Government Code section 65589.5(d)(2). Any local standard adopted after submission of a development application, including locally adopted construction codes, shall not be considered an "objective zoning standard," "objective subdivision standard," or "objective design review standard" that is applicable to a development application.
 - (B) A determination that a change is required is a ministerial action. If a revised application is required to address these modifications, the application shall be reviewed as a ministerial approval within 60 days of re-submittal of the application.
- (d) If a local government approves a development under the Streamlined Ministerial Approval Process, notwithstanding any other law, the following expiration of approval timeframes apply:
- (1) If the project includes public investment in housing affordability, beyond tax credits, where 50 percent of the units are affordable to households making at or below 80 percent of the AMI, then that approval shall not expire.
 - (2) If the project does not include public investment in housing affordability (including local, state, or federal government assistance) beyond tax credits, and at least 50 percent of the units are not affordable to households making at or below 80 percent of the AMI, that approval shall remain valid for three years from the date of the final action establishing that approval, or if litigation is filed challenging that approval,

from the date of the final judgment upholding that approval. Approval shall remain valid for a project provided that vertical construction of the development has begun and is in progress. "In progress" means one of the following:

- (A) The construction has begun and has not ceased for more than 180 days.
 - (B) If the development requires multiple building permits, an initial phase has been completed, and the project proponent has applied for and is diligently pursuing a building permit for a subsequent phase, provided that once it has been issued, the building permit for the subsequent phase does not lapse.
- (3) The development may receive a one-time, one-year extension if the project proponent provides documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application. The local government's action and discretion in determining whether to grant the foregoing extension shall be limited to considerations and processes set forth in this section.
- (e) A local government shall issue subsequent permits as defined in Section 102(aa) required for a development approved under the Streamlined Ministerial Approval Process if the application for those permits substantially complies with the development as it was approved. Upon receipt of an application for a subsequent permit, the local government shall process the permit without unreasonable delay and shall not impose any procedure or requirement that is not imposed on projects that are not approved using the Streamlined Ministerial Approval Process. Issuance of subsequent permits shall implement the approved development, and review of the permit application shall not inhibit, chill, or preclude the development. For purposes of this subsection "unreasonable delay" means permit processing times that are longer than other similar permit requests for projects not approved using the Streamlined Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(-l). Reference cited: Government Code section 65913.4(a), (b), (c), (d), (g), (h), (j), and (m).

ARTICLE IV. DEVELOPMENT ELIGIBILITY

Section 400. Housing Type Requirements

To qualify to apply for the Streamlined Ministerial Approval Process, the development proponent shall demonstrate the development meets the following criteria:

- (a) Prior to submitting an application for the Streamlined Ministerial Approval Process, the development proponent must submit to the local government a notice of intent to submit an application and the local government must have completed the tribal consultation process outlined in Government Code section 65913.4(b). The notice of intent shall be in the form of a preliminary application that includes all of the information described in Government Code section 65941.1.
- (b) Is a multifamily housing development. This includes mixed-use projects when the project satisfied the requirement under subsection (b). The development offers units for rental or for-sale.

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- (c) At least two-thirds of the square footage of the development shall be designated for residential use:
 - (1) For purposes of these Guidelines, the two-thirds calculation is based upon the proportion of gross square footage of residential space and related facilities, as defined in Section 102(w), to gross development building square footage for an unrelated use such as commercial. Structures utilized by both residential and non-residential uses shall be credited proportionally to intended use.
 - (A) Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law shall be included in the square footage calculation.
 - (B) The square footage of the development shall not include non-habitable underground space, such as basements or underground parking garages.
 - (2) Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined Ministerial Approval Process. Additional permitting requirements pertaining to the individual business located in the commercial component (e.g., alcohol use permit or adult business permit) are subject to local government processes.
 - (3) When the commercial component is not part of a vertical mixed-use structure, construction of the residential component of a mixed-use development shall be completed prior to, or concurrent with, the commercial component.
- (d) The development is consistent with objective zoning standards, objective subdivision standards, and objective design review standards in effect at the time of the development application submittal per Section 300 of these Guidelines, provided that any modifications to density or other concessions, incentives, or waivers granted pursuant to the Density Bonus Law shall be considered consistent with such objective zoning standards, objective subdivision standards, and objective design review standards.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a) and (b).

Section 401. Site Requirements

- (a) The development proponent shall demonstrate in the application that, as of the date the application is submitted, the proposed development is located on a site that meets the following criteria:
 - (1) The site is a legal parcel, or parcels, located in either:
 - (A) A city where the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or
 - (B) An unincorporated area where the area boundaries are wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.
 - (2) The site meets the definition of infill as defined by Section 102(j) of these Guidelines.

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- (3) The site must be zoned for residential use or residential mixed-use development or have a general plan designation that allows residential use or a mix of residential and nonresidential uses.
 - (A) To qualify for the Streamlined Ministerial Approval Process, the site's zoning designation, applicable specific plan or master plan designation, or general plan designation must permit residential or a mix of residential and nonresidential uses by right or with a use permit.
- (b) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a legal parcel(s) that is any of the following:
 - (1) Within a coastal zone, as defined in Division 20 (commencing with section 30000) of the Public Resources Code.
 - (2) Prime farmland or farmland of statewide importance, as defined pursuant to the United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that locality.
 - (3) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
 - (4) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Government Code section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Public Resources Code section 4202.
 - (A) This restriction does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to Government Code section 51179(b), or sites that are subject to adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
 - (B) This restriction does not apply to sites that have been locally identified as fire hazard areas, but are not identified by the Department of Forestry and Fire Protection pursuant to Government Code section 51178 or Public Resources Code section 4202.
 - (5) A hazardous waste site that is currently listed pursuant to Government Code section 65962.5, or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Health and Safety Code section 25356.
 - (A) This restriction does not apply to sites the California Department of Public Health, California State Water Resources Control Board, or the Department of Toxic Substances Control has cleared for residential use or residential mixed uses.

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- (6) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist.
 - (A) This restriction does not apply if the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

- (7) Within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.
 - (A) This restriction does not apply if the site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local government.

 - (B) This restriction does not apply if the development proponent can demonstrate that they will be able to meet the minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.
 - i. If the development proponent demonstrates that the development satisfies either subsection (A) or (B) above, and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for the development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to special flood hazard areas.

 - ii. If the development proponent is seeking a floodplain development permit from the local government, the development proponent must describe in detail in the application for the Streamlined Ministerial Approval Process how the development will satisfy the applicable federal qualifying criteria necessary to obtain the floodplain development permit. Construction plans demonstrating these details shall be provided to the locality before the time of building permit issuance, however construction plans shall not be required for the local jurisdiction to take action on the application under the Streamlined Ministerial Approval Process.

- (8) Within a regulatory floodway, as determined by the Federal Emergency Management Agency, in any official maps published by the Federal Emergency Management Agency.
 - (A) This restriction does not apply if the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

- (B) If the development proponent demonstrates that the development satisfies subsection (A) above and that the development is otherwise eligible for the Streamlined Ministerial Approval Process, the local government shall not deny the application for development on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by that local government that is applicable to that site related to regulatory floodways.
- (9) Lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), a habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or another adopted natural resource protection plan.
- (10) Habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
 - (A) The identification of habitat for protected species discussed above may be based upon information identified in underlying environmental review documents for the general plan, zoning ordinance, specific plan, or other planning documents associated with that parcel that require environmental review pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).
- (11) Lands under conservation easement.
- (12) An existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).
- (c) The development proponent shall demonstrate that, as of the date the application is submitted, the development is not located on a site where any of the following apply:
 - (1) The development would require the demolition of the following types of housing:
 - (A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
 - (B) Housing that is subject to any form of rent or price control through a locality's valid exercise of its police power.
 - (C) Housing that has been occupied by tenants, as defined by Section 102(cc), within the past 10 years.

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- (2) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under the Streamlined Ministerial Approval Process.
 - (A) When property with a building that was demolished in the past 10 years has been zoned for exclusively residential use, there is a presumption that it was occupied by tenants, unless the development proponent provides verifiable documentary evidence from a government or independent third party source to rebut the presumption for each of the 10 years prior to the application date.
 - (B) When property with a building that was demolished in the past 10 years has been zoned to allow residential use in addition to other uses, the developer proponent shall include in its application a description of the previous use and verification it was not occupied by residential tenants.
 - (3) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register prior to the submission of an application.
 - (4) The property contains housing units that are occupied by tenants and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.
- (d) A development that involves a subdivision of a parcel that is, or, notwithstanding the Streamlined Ministerial Approval Process, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land is not eligible for the Streamlined Ministerial Approval Process.
- (1) Subdivision (d) does not apply if the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:
 - (A) The development has received, or will receive, financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to Section 403 of these Guidelines.
 - (B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used.
 - (2) An application for a subdivision pursuant to the Subdivision Map Act (Division 2 (commencing with Section 66410)) for a development that meets the provisions in (1) shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Such an application shall be subject to a ministerial process as part of the Streamlined Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), (c), (d).

Section 402. Affordability Provisions

- (a) A development shall be subject to a requirement mandating a minimum percentage of units be affordable to households making at or below 80 percent Area Median Income (AMI), based on one of the following categories:
 - (1) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200(c), the development shall dedicate either:
 - (A) A minimum of 10 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the AMI. If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.
 - (B) Or, if located in the San Francisco Bay Area pursuant to Section 200 (x), the project may elect to dedicate 20 percent of the total number of units to housing affordable to households making below 120 percent of the AMI. However, to satisfy this requirement and be eligible to proceed under these provisions, the average income of the tenant income restrictions for those units must equal at or below 100 percent of the AMI. A local ordinance adopted by the locality applies if it requires greater than 20 percent of the units be dedicated to housing affordable to households making at or below 120 percent of the AMI, or requires that any of the units be dedicated at a level less than 120 percent.
 - (i) In order to comply with subparagraph (A), the rent or sale price charged for units that are dedicated to housing affordable to households between 80 percent and 120 percent of the AMI shall not exceed 30 percent of the gross income of the household.
 - (C) Developments of 10 units or less are not subject to either affordability provision outlined in subparagraphs (A) and (B), above.
 - (D) A development proponent may satisfy the affordability requirements of this subsection with a unit that is restricted to households with incomes lower than those prescribed under subparagraph (A) and (B).
 - (2) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (e), the development shall dedicate a minimum of 50 percent of the total number of units prior to calculating any density bonus to housing affordable to households making at or below 80 percent of the AMI.
 - (A) If the locality has adopted a local ordinance that requires greater than 50 percent of the units be dedicated to housing affordable to households making at or below 80 percent of the AMI, that local affordable housing requirement applies.

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- (3) In a locality that the Department has determined is subject to the Streamlined Ministerial Approval Process pursuant to Section 200, subparagraph (d), the development shall dedicate a minimum of 10 percent of the total number of units to housing affordable to households making at or below 80 percent of the AMI.
 - (A) If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the AMI, that local affordable housing requirement applies.
 - (B) A development proponent may satisfy the affordability requirements of this subsection with a unit that is restricted to households with incomes lower than 80 percent of AMI.
- (b) A covenant or restriction shall be recorded against the development dedicating the minimum percentage of units to housing affordable to households making at or below 80 percent of the AMI pursuant to Section 402 (a)(1-3).
 - (1) The recorded covenant or restriction shall remain an encumbrance on the development for a minimum of either:
 - (A) 55 years for rental developments or
 - (B) 45 years for owner-occupied properties.
 - (2) The development proponent shall commit to record a covenant or restriction dedicating the required minimum percentage of units to below market housing prior to the issuance of the first building permit.
 - (3) The percentage of units affordable to households making at or below 80 percent of the AMI per this section is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.
 - (4) The percentage of units affordable to households making at or below 80 percent of the AMI per this section shall be built on-site as part of the development.
- (c) The percentage of units affordable to households making at or below 80 percent of the AMI per this section is calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.
- (d) The percentage of units affordable to households making at or below 80 percent of the AMI per this section shall be built on-site as part of the development.
- (e) If the locality has adopted an inclusionary ordinance, the objective standards contained in that ordinance apply to the development under the Streamlined Ministerial Approval Process. For example, if the locality's adopted ordinance requires a certain percentage of the units in the development to be affordable to very low-income units, the development would need to provide that percentage of very low-income units to be eligible to use the Streamlined Ministerial Approval Process.
- (f) All affordability calculations resulting in fractional units shall be rounded up to the next whole number. Affordable units shall be distributed throughout the development, unless otherwise necessary for state or local funding programs, and have access to the same

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common areas and amenities as the market rate units. Identification in the development application of the location of the individual affordable units is not required for ministerial approval but distribution of units per this subsection can be included as a condition of approval per Section 301(a)(5), and the methods to achieve distribution is recorded through an affordable housing agreement or as part of a recorded covenant or restriction, unless providing location of affordable units at time of application is required by ordinance or as an adopted objective standard.

- (g) Affordability of units to households at or below 80 percent of the AMI per this Section is calculated based on the following:
 - (1) For owner-occupied units, affordable housing cost is calculated pursuant to Health and Safety Code Section 50052.5.
 - (2) For rental units, affordable rent is calculated pursuant to Health and Safety Code Section 50053.
- (h) Units used to satisfy the affordability requirements pursuant to this Section may be used to satisfy the requirements of other local or state requirements for affordable housing, including local ordinances or the Density Bonus Law, provided that the development proponent complies with the applicable requirements in the other state or local laws. Similarly, units used to satisfy other local or state requirements for affordable housing may be used to satisfy the affordability requirements of this Section provided that the development proponent complies with all applicable requirements of this Section.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a).

Section 403. Labor Provisions

The Labor Provisions in the Streamlined Ministerial Approval Process, located in paragraph (8) of subdivision (a) of Government Code section 65913.4, contain requirements regarding payment of prevailing wages and use of a skilled and trained workforce in the construction of the development.

The development proponent shall certify both of the following to the locality to which the development application is submitted:

- (a) The entirety of the development is a public work project, as defined in Section 102(s) above, or if the development is not in its entirety a public work, that all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
 - (1) The Department of Industrial Relations posts on its website letters and decisions on administrative appeal issued by the Department in response to requests to determine whether a specific project or type of work is a “public work” covered under the state’s Prevailing Wage Laws. These coverage determinations, which are advisory only, are indexed by date and project and available at:
<https://www.dir.ca.gov/OPRL/pwdecision.asp>

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- (2) The general prevailing rate is determined by the Department of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code. General prevailing wage rate determinations are posted on the Department of Industrial Relations' website at: <https://www.dir.ca.gov/oprl/DPreWageDetermination.htm>.
- (3) Apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate. To find out if an apprentice is registered in an approved program, please consult the Division of Apprenticeship Standards' "Apprenticeship Status and Safety Training Certification" database at <https://www.dir.ca.gov/das/appcertpw/appcertsearch.asp>.
- (4) To find the apprentice prevailing wage rates, please visit the Department of Industrial Relations' website at: <https://www.dir.ca.gov/OPRL/PWAppWage/PWAppWageStart.asp>. If you are interested in requesting an apprentice, a list of approved programs is available at: <https://www.dir.ca.gov/databases/das/aigstart.asp>. General information regarding the state's Prevailing Wage Laws is available in the Department of Industrial Relations' Public Works website (<https://www.dir.ca.gov/Public-Works/PublicWorks.html>) and the Division of Labor Standards Enforcement Public Works Manual (<https://www.dir.ca.gov/dlse/PWManualCombined.pdf>).
- (5) For those portions of the development that are not a public work, all of the following shall apply:
 - (A) The development proponent shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.
 - (B) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.
 - (C) All contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided therein.
 - i. The obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the development, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

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ii. The payroll record and Labor Commissioner enforcement provisions in (C) and (C)(i), above, shall not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement, as defined in Section 102(r) above, that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure.

(D) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Sections 511 or 514 of the Labor Code.

(b) For developments for which any of the following conditions in the charts below apply, that a skilled and trained workforce, as defined in Section 102(y) above, shall be used to complete the development if the application is approved.

Developments Located in Coastal or Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2021	225,000 or more	75 or more
January 1, 2022, until December 31, 2025	225,000 or more	50 or more

Developments Located in Non-Coastal or Non-Bay Counties

Date	Population of Locality to which Development Submitted pursuant to the last Centennial Census	Number of Housing Units in Development
January 1, 2018, until December 31, 2019	Fewer than 550,000	75 or more
January 1, 2020, until December 31, 2021	Fewer than 550,000	More than 50
January 1, 2022, until December 31, 2025	Fewer than 550,000	More than 25

(1) Coastal and Bay Counties include: Alameda, Contra Costa, Del Norte, Humboldt, Los Angeles, Marin, Mendocino, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma and Ventura.

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- (2) Non-Coastal and Non-Bay Counties include: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba.
- (3) The skilled and trained workforce requirement in this subparagraph is not applicable to developments with a residential component that is 100 percent subsidized affordable housing.
- (4) If the development proponent has certified that a skilled and trained workforce will be used to complete the development and the application is approved, the following shall apply:
 - (A) The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the development.
 - (B) Every contractor and subcontractor shall use a skilled and trained workforce to complete the development.
 - (C) The applicant shall provide to the locality, on a monthly basis while the development or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
 - i. A monthly report provided to the locality pursuant to this subclause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) and shall be open to public inspection. An applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided.
 - ii. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the development using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.
 - iii. The requirements in (C), (C)(i), and (C)(ii), above, do not apply if all contractors and subcontractors performing work on the development are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

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- (c) Notwithstanding subsections (a) and (b), a development is exempt from any requirement to pay prevailing wages or use a skilled and trained workforce if it meets both of the following:
 - (1) The project includes 10 or fewer housing units.
 - (2) The project is not a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
- (d) Offsite fabrication is not subject to this Section if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular development. However, offsite fabrication performed at a temporary facility that is dedicated to the development is subject to Section 403.

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(a), Subdivision (d) of Section 2601 of the Public Contract Code, *Sheet Metal Workers' International Association, Local 104, v. John C. Duncan* (2014) 229 Cal.App.4th 192 [176 Cal.Rptr.3d 634].

Section 404. Additional Provisions

- (a) A local government subject to the Streamlined Ministerial Approval Process shall allow for a development proponent's use of this process. However, the ability for a development proponent to apply for the Streamlined Ministerial Approval Process shall not affect a development proponent's ability to use any alternative streamlined by right permit processing adopted by a local government, including, but not limited to, the use by right provisions of Housing Element Law Government Code section 65583.2(i), local overlays, or ministerial provisions associated with specific housing types.
- (b) A development qualifying for the Streamlined Ministerial Approval Project does not prevent a development from also qualifying as a housing development project entitled to the protections of the Housing Accountability Act (Government Code section 65589.5).

NOTE: Authority cited: Government Code section 65913.4(l). Reference cited: Government Code section 65913.4(i).

ARTICLE V. REPORTING

Section 500. Reporting Requirements

As part of the APR due April 1 of each year, local governments shall include the following information. This information shall be reported on the forms provided by the Department. For forms and more specific information on how to report the following, please refer to the Department's Annual Progress Report Guidelines at <http://www.hcd.ca.gov/community-development/housing-element/index.shtml>

- (a) Number of applications submitted under the Streamlined Ministerial Approval Process.
- (b) Location and number of developments approved using the Streamlined Ministerial Approval Process.

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- (c) Total number of building permits issued using the Streamlined Ministerial Approval Process.
- (d) Total number of units constructed using the Streamlined Ministerial Approval Process by tenure (renter and owner) and income category.

NOTE: Authority cited: Government Code section 65400(a)(2)(B). Reference cited: Government Code section 65400(a)(2)(E).