


January 3rd, 2023

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FROM: David DeGrazia, Deputy Director, Current Planning 

### SENATE BILL 35: STREAMLINED APPROVAL PROCESS FOR MULTIFAMILY RESIDENTIAL DEVELOPMENTS (UPDATED)

On September 29, 2017, the Governor approved Senate Bill (SB) 35 (Wiener), which added Section 65913.4 to the Government Code to require a streamlined ministerial review process for eligible multifamily residential developments that include a specified level of affordability, pay prevailing wages to all construction workers, hire a skilled and trained workforce, and meet other criteria pertaining to project locations and pre-existing site conditions. Assembly Bill (AB) 2668 (Grayson), which became effective January 1, 2023, made technical changes to the law. This memo provides information on those changes and clarifies other existing provisions. This memo supersedes the memo regarding SB 35 dated April 4, 2022. I encourage you to discuss these modifications with your respective staff in order to provide a consistent transition to the new regulations.

A copy of the new State law (Attachment A) is attached for your reference. Please be aware of the following changes pertaining to the approval of eligible projects (major changes *italicized and underlined*).

#### I. ELIGIBILITY FOR STREAMLINED MINISTERIAL REVIEW<sup>1</sup>

A multifamily residential use is eligible for the streamlined ministerial review process specified in this memo if all of the following criteria are met:

##### A. Project Components.

1. The project shall consist of two or more attached residential units and is one of the following:
  - a. A development of more than 10 dwelling units, exclusive of additional units provided by a density bonus, with a minimum of 10% of such dwelling units set

<sup>1</sup> It is not the intent of this memo to capture all projects that may be eligible for a streamlined ministerial review pursuant to SB 35. Please refer to the attached State law and the HCD's Guidelines for further information.  
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aside for lower or very low income households,<sup>2</sup> subject to the following:<sup>3</sup>

- i. Application Requirements.
  - (a) An Administrative Housing Permit (Section 22.166.040) application is required for all developments subject to this paragraph I.A.1.a; and
  - (b) A Ministerial Site Plan Review (Chapter 22.186) application is required if the project is a non-subdivision development; or
  - (c) A tentative map and a final map or a parcel map (Title 21) are required if the project is a subdivision.
- ii. Duration of Affordability.
  - (a) All set-aside rental units shall be subject to 55 years of affordability; and
  - (b) All set-aside for-sale units shall be subject to 45 years of affordability; or
- b. A development of 10 dwelling units or less, exclusive of additional units provided by a density bonus, with the required affordable housing set-aside pursuant to Chapter 22.121 (Inclusionary Housing) if applicable, subject to the following application requirements:
  - i. A Ministerial Site Plan Review (Chapter 22.186) application is required if the project is a non-subdivision development; or
  - ii. A tentative map and a final map or a parcel map (Title 21) are required if the project is a subdivision.
2. If the project is a mixed-use development, at least 2/3 of the total floor area shall be designated for residential use,<sup>4</sup> and the following shall apply:
  - a. Both residential and commercial components of a qualified mixed-use development are eligible for the streamlined ministerial review. However, certain operational uses of individual businesses in the commercial component may be subject to additional permitting requirements (e.g., a CUP for alcoholic beverage sales) and/or other applicable objective standards (e.g., a 30-day maximum stay in a hotel) as set forth in Title 22; and
  - b. If 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.

**B. Project Location.** The project shall satisfy all of the following:

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<sup>2</sup> Or the applicable affordable set-aside required pursuant to Chapter 22.121 (Inclusionary Housing), whichever is greater.

<sup>3</sup> “Minimum of 10% of such dwelling units” is calculated based on the total number of dwelling units in the development exclusive of a) any additional units provided by a density bonus and b) any manager’s units. All calculations resulting in fractional numbers shall be rounded up to the next whole number.

<sup>4</sup> Additional dwelling units, floor area, incentive, or waiver or reduction of development standards granted pursuant to Chapter 22.120 (Density Bonus) shall be included in the square footage calculation.

1. The project site is a legal parcel or parcels located entirely within an urbanized area or urban cluster, as designated by the U.S. Census Bureau;
2. The project site has at least 75% of its perimeter adjoining parcels developed with urban uses, which include any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses;<sup>5</sup>
3. The project site is zoned for residential or residential and commercial mixed-use developments, or has a General Plan land use designation that allows residential or residential and commercial mixed-use developments by-right or with a Conditional Use Permit; and
4. No portion of the project site shall be located in any of the following:
  - a. A Coastal Zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code;
  - b. Prime Farmland or Farmland of Statewide Importance, as identified by the California Department of Conservation;
  - c. Wetlands, as defined in the U.S. Fish and Wildlife Service Manual;
  - d. A High or Very High Fire Hazard Severity Zone, as identified by the California Department of Forestry and Fire Protection;
  - e. A hazardous waste site listed pursuant to Section 65962.5 of the Government Code (the Cortese List, which is available at <https://calepa.ca.gov/SiteCleanup/CorteseList>), or a hazardous waste site designated by the State Department of Toxic Substances Control (which is available at <https://www.envirostor.dtsc.ca.gov/public/map/>), pursuant to Section 25356 of the Health and Safety Code, unless either of the following apply:
    - i. The site is an underground storage tank site that received a uniform closure letter issued pursuant to Section 25296.10(g) of the Health and Safety Code based on closure criteria established by the State Water Resources Control Board for residential use or residential mixed uses.
    - ii. The State Department of Public Health, State Water Resources Control Board, State Department of Toxic Substances Control, or the Department of Public Health making a determination pursuant to Section 25296.10(c) of the Health and Safety Code, has otherwise determined that the site is suitable for residential use or residential mixed uses.
  - f. A special flood hazard area subject to inundation by the 1% annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency (FEMA) in any official maps published by the FEMA, unless:

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<sup>5</sup> Parcels that are only separated by a street or highway shall be considered adjoining.

- i. The site has been subject to a Letter of Map Revision prepared by the FEMA and issued to the County; or
  - ii. The site meets FEMA requirements necessary to meet 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;<sup>6</sup>
- g. A regulatory floodway as determined by the FEMA in any official maps published by the FEMA, unless 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;
- h. A Significant Ecological Area or lands under conservation easement or 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], or in a habitat conservation plan pursuant to the Federal Endangered Species Act of 1973, or other adopted natural resource protection plan; or
- i. A critical habitat designated by the U.S. Fish and Wildlife Service.

**C. Pre-Existing Site Condition.** The project is not located on a site where any of the following apply:

1. There is an existing residential use, which is subject to a recorded covenant and agreement restricting rents to levels affordable to moderate, lower, or very low-income households, that would be demolished as a result of the proposed development;
2. There is an existing residential use, which has been occupied by tenants during the 10-year period prior to the application submittal, that would be demolished as a result of the proposed development;
3. There was a residential use occupied by tenants and subsequently demolished during the 10-year period prior to the application submittal;
4. There is an existing historic structure, which was placed on a national, state, or local historic register, that would be demolished as a result of the proposed development;
5. There is an existing residential use, which is occupied by tenants, that would require a subdivision (e.g., condo conversion) as a result of the proposed development; or
6. There is an existing mobile home park, recreational trailer park, or travel trailer park.

The applicant shall submit the “Pre-Existing Site Condition Questionnaire” (Attachment C).

**D. Zoning Conformance.**

The project, excluding any additional density, waivers, and/or incentives granted via

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<sup>6</sup> A hydrology study must be submitted to and reviewed by the Department of Public Works in order to determine the sites’ compliance with all applicable FEMA requirements.

the Administrative Housing Permit, shall comply with all applicable objective planning, zoning, or subdivision requirements where the project is located.

1. *Density and Floor Area Ratio (FAR)*. In determining whether the project is consistent with development standards pertaining to maximum allowable density and FAR, the General Plan shall prevail and supersede any contrary provisions in Title 22.
2. *Parking*
  - a. The project shall be exempt from any parking requirements if any of the following apply:
    - i. The project is located within a ½ mile of public transit.<sup>7</sup>
    - ii. The project is located within a historic district;
    - iii. When on-street parking permits are required but not offered to the occupants of the development; or
    - iv. When there is a car share vehicle located within one block of the development.<sup>8</sup> For example, this can be verified by checking the maps on Zipcar ([www.zipcar.com](http://www.zipcar.com)).
  - b. If the project does not fall within any of the criteria described in Subsection 2.a. above, one parking space shall be required per unit unless fewer parking spaces are required pursuant to *Title 22, in which case the parking ratio provided in Title 22 shall prevail.*

#### **E. Labor Compliance.**

1. *Prevailing Wages*. If the project is more than 10 units, or if the project is or will be under contract and funded in whole or in part by public money, all construction workers employed in the execution of the project shall be paid prevailing wages pursuant to the State Prevailing Wage Law (Sections 1720 et seq. of the Labor Code).

The applicant shall submit a notarized Prevailing Wage Certification (Attachment D) and the “Source of Funds Questionnaire” (Attachment E).

2. *Skilled and Trained Workforce*. If the project is not 100% affordable to lower or very low-income households and consists of 50 or more units, the project shall use a skilled and trained workforce as defined in Sections 2600 et seq. of the State Public Contract Code.

The applicant shall submit a Skilled and Trained Workforce Certification (Attachment F).

3. *Additional Requirements for Subdivisions*. If the project is a condominium development, either of the following shall apply:

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<sup>7</sup> Planners should refer to the latest HCD Guidelines for the updated definition of public transit.

<sup>8</sup> A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.

- a. The project has received or will receive a low-income housing tax credit and is subject to the prevailing wage requirement set forth in paragraph I.E.1, above.
- b. The project is subject to the prevailing wage requirement and the hiring of a skilled and trained workforce requirement set forth in paragraph I.E.1 and I.E.2, above.

**F. Tribal Cultural Resources.**

1. Preliminary Application Required. Prior to submitting an application for the streamlined ministerial review specified in this memo, the applicant must notify the Department of their intent by submitting an SB 35 Preliminary Application (Attachment G).
2. Tribal Notification and Consultation. Within 30 days of the acceptance of a complete SB 35 Preliminary Application, staff must notify each California Native American tribe that is traditionally and culturally affiliated with the geographic area of the project of the applicant's intent to submit the application. After receiving the notice, the tribe(s) has/have 30 days to request a scoping consultation to discuss potential impacts to tribal cultural resources. Staff should refer to the SB 35 Tribal Consultation Procedures (Attachment H) and SB 35 Tribal Consultation Flowchart (Attachment I) to complete the Tribal Notification/Consultation Process prior to determining eligibility for streamlined ministerial review.
3. Application Acceptance. After acceptance of the complete SB 35 Preliminary Application, an application<sup>9</sup> for streamlined ministerial review may be accepted only if one of the following applies:
  - a. All tribes that received a notice of the applicant's intent to submit an application for streamlined ministerial review did not accept the invitation to engage in a scoping consultation;
  - b. The tribe(s) accepted the invitation to engage in a scoping consultation, but substantially failed to engage in the scoping consultation after repeated documented attempts by staff to engage the tribe;
  - c. The parties to the scoping consultation(s) find that no potential tribal cultural resource will be affected by the project; or
  - d. A scoping consultation between a tribe(s) and staff has resulted in an enforceable agreement between the tribe(s) and the Department on methods, measures, and conditions for tribal cultural resource treatment. Staff shall ensure that the enforceable agreement is included in the requirements and conditions for the project.
4. Written Notification on Ineligibility.
  - a. A written notification shall be provided to the applicant and to any tribe that is a

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<sup>9</sup> For applications submitted but not approved prior to September 25, 2020, the assigned planner should notify the applicant of the new requirement for tribal consultation to determine eligibility for streamlined ministerial review.

party to the scoping consultation if, after the scoping consultation, the project is found to be ineligible for streamlined ministerial review due to any of the following reasons:

- i. The project site contains a tribal cultural resource that is on a national, state, tribal, or local historic register list;
  - ii. There is a potential tribal cultural resource that could be affected by the project and the parties to a scoping consultation do not document an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment; or
  - iii. The parties to a scoping consultation do not agree as to whether a potential tribal cultural resource will be affected by the project.
- b. In addition, the written notification provided to the applicant must include information on how the applicant may apply for a Conditional Use Permit or other discretionary entitlement(s) for the project.

## II. TIME LIMITS FOR NOTIFICATION AND DECISION

**A. Written Notification on Ineligibility after Application Submittal.**<sup>10</sup> After the application for the streamlined ministerial review is accepted as described in paragraph I.F.3 above, if, upon reviewing all required application materials, it is determined that a project is ineligible for the streamlined ministerial review in accordance with the criteria specified in paragraph I.A through I.E above, the applicant shall be notified, in writing, of which criterion or criteria the project fails to meet with detailed explanations within the required time period, as follows:

1. Within 60 days of application submittal if the project contains 150 or fewer units.
2. Within 90 days of application submittal if the project contains more than 150 units.

**B. Permit Processing.** A decision on the Administrative Housing Permit, the Site Plan Review, and/or the subdivision application shall be made within the required time period, as follows:

1. Within 90 days of application submittal if the project contains 150 or fewer units.
2. Within 180 days of application submittal if the project contains more than 150 units.

**C. Modification.** Following the approval of the Administrative Housing Permit, the Site Plan Review, and/or the subdivision application but prior to the issuance of a building permit for the project, the applicant may submit a written request to modify the project. Approval of the modification request must be completed within 60 days of submittal of the modification, subject to the following findings:

1. The change is consistent with all criteria set forth in this memo and HCD's Streamlined Ministerial Approval Process Guidelines;

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<sup>10</sup> "Application submittal" refers to the application for streamlined ministerial review, not the SB 35/SB 330 Preliminary Application.

2. The change, including modifications to additional density, waivers, and/or incentives granted via the Administrative Housing Permit, will not modify the project's consistency with all eligibility criteria for streamlined review and the requirements of Chapter 22.120 (Density Bonus), if applicable; and
3. The change complies with objective planning, zoning, or subdivision requirements that were adopted after the original application was submitted if it results in either of the following:
  - a. The total number of residential units or total square footage of construction<sup>11</sup> changes by 15% or more; or
  - b. The total number of residential units or total square footage of construction<sup>12</sup> changes by 5% or more, and it is necessary to subject the project to objective requirements beyond those in effect when the original application was submitted in order to mitigate or avoid a specific, adverse impact, as that term is defined Section 65589.5(j)(1)(A) of the California Government Code, upon the public health or safety and there is no feasible alternative method to satisfactorily mitigate or avoid the adverse impact.

### III. APPROVAL EXPIRATION AND TIME EXTENSION

The streamlined ministerial approval is valid for three years,<sup>13</sup> except that:

- A. A project may receive a discretionary one-time, one-year extension if the applicant can provide documentation that there has been significant progress toward getting the development construction ready, such as filing a building permit application.
- B. The approval shall not expire if the project 1) contains a minimum of 50% of the total number of units for lower or very low-income households; and 2) receives public funding for affordable housing other than tax credits.
- C. Approval shall remain valid beyond the three years so long as construction activity, including demolition and grading activity, on the development site has begun pursuant to a permit issued by the County<sup>14</sup> and is in progress.
- D. If an applicant submits a written request to modify the project, approval shall be extended for the number of days between the submittal of a modification request and the date of its final approval, plus an additional 180 days to allow time to obtain a building permit. If litigation is filed relating to the modification request, the time shall be further extended for the pendency of the litigation. The extension required by this paragraph shall only apply to the first request for a modification submitted by the applicant.<sup>15</sup>

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<sup>11</sup> The calculation of the square footage of construction changes shall not include underground space.

<sup>12</sup> The calculation of the square footage of construction changes shall not include underground space.

<sup>13</sup> If litigation is filed challenging the approval, three years from the date of the final judgment upholding that approval.

<sup>14</sup> Applies retroactively to projects approved prior to January 1, 2022.

<sup>15</sup> Applies retroactively to projects approved prior to January 1, 2022.



If you have any questions regarding this memo, please contact Tina Fung in the Housing Policy Section at (213) 974-6417 or [tfung@planning.lacounty.gov](mailto:tfung@planning.lacounty.gov).

DD:CC:TF:CT

Attachments:

- A. Government Code Section 65913.4
  - B. HCD Streamlined Ministerial Approval Process Guidelines
  - C. Pre-Existing Site Condition Questionnaire
  - D. Prevailing Wage Certification
  - E. Source of Funds Questionnaire
  - F. Skilled and Trained Workforce Certification
  - G. SB35 Preliminary Application
  - H. SB35 Tribal Consultation Procedures
  - I. SB 35 Tribal Consultation Flowchart
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