

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT****OFFICE OF THE DIRECTOR**

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September 28, 2018

**MEMORANDUM FOR: ALL INTERESTED PARTIES****FROM:**Zack Olmstead, Deputy Director  
Division of Housing Policy Development**SUBJECT:****SB 35 STREAMLINED MINISTERIAL APPROVAL  
PROCESS DRAFT GUIDELINES FOR PUBLIC COMMENT****BACKGROUND/SUMMARY:**

Chapter 366, Statutes of 2017 (SB 35, Weiner) was part of a 15 bill housing package aimed at addressing the state's housing shortage and high housing cost. 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 observe other requirements such as locational and demolition restrictions.

Attached for public comment are draft Guidelines for the implementation of the provisions of SB 35 and recently passed legislation. 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.

**PUBLIC COMMENT WORKSHOP DATES AND LOCATIONS:**

The Department will hold a series of regional open house forums to allow stakeholders and the general public an opportunity to become acquainted with the provisions of the Streamlined, Ministerial Approval Process, ask questions and provide comments on the draft Guidelines. Public comments on the Guidelines will also be accepted at [CAHP@hcd.ca.gov](mailto:CAHP@hcd.ca.gov) through October 30, 2018. Please type "SB 35 Guideline Comments" in the subject line.

**REDDING** – October 15, 2018  
10:00am – 2:00pm  
Redding City Hall Community Room  
777 Cypress Ave, Redding, CA  
94402

**SAN MATEO** – October 23, 2018  
10:00am – 2:00pm  
San Mateo Library, Oak Room,  
55 W. Third Ave., San Mateo, CA  
94402

**BUENA PARK** – October 29, 2018  
10:00am – 2:00pm  
City of Buena Park Community Room  
6688 Beach Blvd, Buena Park, CA  
90621

**WEBINAR** – October 12<sup>th</sup>, 2018  
10:00am – 10:30am

Click on the following link for information on regional forums and Webinar  
<http://www.hcd.ca.gov/policy-research/lhp.shtml>. This link will direct you to the  
"California's 2017 Housing Package" webpage, which provides additional information on  
SB 35 and the other bills in the package.

Thank you for your interest in the Streamlined, Ministerial Approval Process Guidelines.  
Please direct any questions to [CAHP@hcd.ca.gov](mailto:CAHP@hcd.ca.gov).

Attachment

# **Streamlined Ministerial Approval Process (Chapter 366, Statutes of 2017) Draft Guidelines**



**State of California  
Governor Edmund G. Brown Jr.**

**Alexis Podesta, Secretary  
Business, Consumer Services and Housing Agency**

**Ben Metcalf, Director  
Department of Housing and Community Development  
Zachary Olmstead, Deputy Director  
Division of Housing Policy Development**

Division of Housing Policy Development  
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Sacramento, CA 95833

September 28, 2018

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.

Health and Safety Code section 65913.4, subdivision (j)

## INTRODUCTION

Chapter 366, Statutes of 2017 (SB 35, Weiner) was part of a 15 bill housing package aimed at addressing the state's housing shortage and high housing cost. 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 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.

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 can 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 – The section details the types of hearings and review allowed under 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 on 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.

**Streamlined, Ministerial Approval Process  
Development Approval Process**

**Program Guidelines**

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## **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, Weiner), 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.
- (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(j). Reference cited: Government Code section 65582.1 and 65913.4(l) and (m).

### **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 both general law and charter cities, including a charter city and county.

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

- (b) “Application” means a submission containing such information necessary for the locality to determine whether the development complies with the criteria outlined in Article IV of these Guidelines. This may include a checklist or other application documents generated by the local government pursuant to Section 300(a) that specifies in detail the information required to be included in an application, provided that the information is not information that the locality regularly requires of applicants for discretionary permits, but does not regularly require of applicants for ministerial permits.
- (c) “Area Median Income (AMI)” means the median family income of a geographic area of the state, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937, and as published annually by the Department within the State Income Limits <http://www.hcd.ca.gov/grants-funding/income-limits/index.shtml>.
- (d) “Density Bonus” means the same as Government Code section 65915.
- (e) “Department” means the Department of Housing and Community Development.
- (f) “Determination” means the published identification, periodically updated, of the Department of those local governments that are required to make the Streamlined, Ministerial Approval Process available per these Guidelines.
- (g) “Development proponent” means the developer who submits an application for streamlined approval or an organization representing the developer or development pursuant to Government Code section 65913.4.
- (h) “Fifth housing element planning period” means the most recent cycle of the regional housing needs allocation required to be updated between 2013 and 2015.
- (i) “Infill” means at least 75 percent 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.
- (j) “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.
- (k) “Lower-income or Low-Income” means households earning less than 80 percent of AMI pursuant to Health and Safety Code section 50079.5.
- (l) “Ministerial processing or approval” means a non-discretionary development approval process review that ensures the proposed development meets all the existing “objective zoning standard”, “objective subdivision standard”, and “objective design review standard” requirements.
- (m) “Multifamily” means a housing development with two or more attached residential units.

- (n) “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 development applicant or proponent and the public official prior to submittal.
- (o) “Project labor agreement” has the same meaning as set forth in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.
- (p) “Public transit” means a site containing an existing rail transit station (e.g. light rail, Metro, or BART), a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. For purposes of these Guidelines, measurements for frequency of bus service can include multiple bus lines.
- (q) “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.
- (r) “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.
- (s) "Related facilities" means any manager's units and any and all common area spaces that are included within the physical boundaries of the rental housing development, including, but not limited to, common area space, walkways, balconies, patios, clubhouse space, meeting rooms, laundry facilities, and parking areas, except any portions of the overall development that are specifically commercial space.
- (t) “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.
- (u) “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.
- (v) “Subsidized” means units that are price or rent restricted such that the units are permanently 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.
- (w) “Tenant” means a person who occupies land or property rented from a landlord for use as a residence.
- (x) “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.

- (y) “Very low-income” means households earning less than 50 percent of AMI pursuant to Health and Safety Code section 50105.

NOTE: Authority cited: Government Code section 65913.4(j). 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, based on permit data received through APRs at 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, 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.
- (2) For localities, as defined in Section 102, 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, 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 three 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 affordability, 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, they will be subject to the Streamlined, Ministerial Approval Process for developments with 10 percent affordability.
- (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 affordability.
- (e) To determine if a locality is subject to the Streamlined, Ministerial Approval Process for developments with 50 percent affordability, 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 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 low-income is inclusive of very-low income units permitted in excess of the very-low income, need can be applied to demonstrate progress towards the lower-income need. However, as the definition of very-low income units does not include lower-income, units permitted in excess of the low-income need cannot 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 the above-moderate, low, and very-low income 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.

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

## **ARTICLE III. APPROVAL PROCESS**

### **Section 300. Local Government Responsibility**

- (a) The local government that has been designated with a determination by the Department shall provide information to the developer, including the process for applying and receiving ministerial approval, relevant objective standards, with reference documents, and other information to enable objective assessment for qualifying an application as defined by Section 102. This could be through the use of checklists, maps, diagrams, flow charts, or similar formats.
- (b) Determination of consistency
- (1) When determining consistency with objective zoning, subdivision, or design review standards, as defined in Section 102, the local government can only use those standards that meet the definition referenced in Section 102. For example, design review standards that require subjective decision-making, such as consistency with “neighborhood character”, cannot be applied as an objective standard unless “neighborhood character” was defined in such a manner that is non-discretionary, such as requiring the use of Spanish-style tile roofs or craftsmen style architecture.
  - (2) General plan or zoning ordinance requirements for a specific plan or another discretionary permit is not an objective zoning standard.
  - (3) Modifications to standards granted as part of a concession, incentive, or waiver for development standards granted pursuant to Density Bonus Law, Government Code section 65915, shall not be considered when determining consistency with objective standards.
  - (4) Objective standards may be embodied in alternative objective land use specifications adopted by a city or county, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

- (5) 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 zoning and subdivision standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.
- (6) 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.
- (7) 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.

(c) 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 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 can match that maximum allowable density regardless of the density allowed pursuant to the zoning code.
- (2) Growth, unit, or other caps that restrict the number of units allowed applying to the proposed development or parcel can be applied only to the extent that those caps do not inhibit the development's ability to achieve maximum densities with any density bonuses allowed under the land use designation.
- (3) Additional units granted from a density bonus shall not be considered when calculating consistency 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.

(d) 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 within one-half mile of public transit, as defined by Section 102 of these Guidelines.
  - (B) The development is located within an architecturally and historically significant district.
  - (C) When on-street parking permits are required, but not offered to the occupants of the development.

- (D) When there is a car share vehicle, e.g. a designated location for a car share vehicle, within one block of 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.
- (e) A local government shall not adopt any requirement, including, but not limited to, increased fees or inclusionary housing requirements, that applies to a project solely or partially on the basis that the project is eligible to receive streamlined processing.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a) and (d).

### **Section 301. Development Review and Approval**

#### (a) Ministerial processing

- (1) Ministerial approval, as defined in Section 102, 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) Any non-discretionary design review or public oversight of the development 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) That 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 a development application, and shall be broadly applicable to development within the locality.
  - (B) That design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval provided by these Guidelines or its effect.
- (3) 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, written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standards. This does not prohibit a local government from allowing the developer to correct deficiencies within the timeframes provided below.
- (4) A determination of inconsistency does not constitute a denial of the project, only the denial of the application. The denial of an application for streamline processing does not preclude the applicant the opportunity to correct deficiencies and resubmit an

application, or to apply under normal local government processes.

- (5) Approval of ministerial processing does not preclude the provision of standard conditions of approval as long as those conditions are objective and broadly applicable to development within the locality regardless of streamline approval.
  - (A) Notwithstanding conditions that specifically implement the provisions of these Guidelines such as commitment for recording covenant and restrictions and provision of prevailing wage.

- (6) For purposes of Streamlined, Ministerial Approval Process, pursuant to the Guidelines of the California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code) the following does not apply:

- (A) Actions taken by a state agency or local government to lease, convey, or encumber land or to facilitate the lease, conveyance, or encumbrance of land owned by the local government.
- (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) The determination of whether an application for a development is subject to the Streamlined, Ministerial Approval Process.

- (b) Upon a receipt of application, the local government shall adhere to the following timing:

- (1) An application submitted hereunder shall be reviewed by the agency whether or not it contains all materials required by the agency for the proposed project, and such application shall be deemed completed 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

- (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 follows:

- (A) Within 60 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.
- (B) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains more than 150 housing units.

- (C) 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 deemed approved.
- (3) Any design review or public oversight including resulting final approval shall be completed as follows:
- (A) Within 90 days of submittal of the development to the local government pursuant to this section if the development contains 150 or fewer housing units.
  - (B) Within 180 days of submittal of the development 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 of the approval process set forth in paragraphs (1) and (2) above, failure to obtain design review approval shall not itself prevent or otherwise preclude a project from being approved for development pursuant to this Section.
- (c) 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 below 80 percent of the AMI, then that approval shall not expire.
  - (2) If the project does not include 50 percent of the units affordable to households making below 80 percent of the AMI, that approval shall automatically expire after three years.
    - (A) That development may receive a one-time, one-year extension if the project proponent can provide 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 process set forth in this section.
    - (B) Approval shall remain valid for a development so long as vertical construction of the development has begun and is in progress.

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a),(b), (c), (e), (h), and (k).

## **ARTICLE IV. DEVELOPMENT ELIGIBILITY**

### **Section 400. Housing Type Requirements**

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

- (a) Is a multifamily housing development. The development can offer units for rental or for-sale.
- (b) 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 gross square footage ratio of residential space, including density bonus units, and related facilities as defined above, to space for an unrelated use such as commercial.
  - (2) Both residential and non-residential components of a qualified mixed-use development are eligible for the Streamlined, Ministerial Approval Process.
  - (3) Construction of the residential component of a mixed-use development shall be completed prior to, or concurrent with, the commercial component. Concurrent construction includes when the commercial component is part of the building containing the residential component.
- (c) 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 400 of these Guidelines.

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

### **Section 401. Site Requirements**

- (a) The development proponent shall demonstrate that 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 of these Guidelines.

- (3) The site must be zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses.
  - (A) The development can be in a zone, including areas in a specific plan or master plan, or a general plan designation that permits, or permits with a use permit, residential or a mix of residential and nonresidential uses to qualify for the Streamline Process.
- (b) The development proponent shall demonstrate the development is not located on a legal parcel(s) that meets any of the following conditions:
  - (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 have 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 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 Department of Toxic Substances Control has cleared for residential use or residential mixed uses.
  - (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. The local government shall not deny the application for Streamlined, Ministerial Approval Process 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.
    - ii. If the developer is seeking a floodplain development permit from the local government, the developer must describe in detail in the application for Streamline Provision 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, but is not necessary for approval of the Streamline Provision.
- (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) The local government shall not deny the application for Streamline Provision 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.
- (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 above could be 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 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, within the past ten years.
  - (2) The site was previously used for housing that was occupied by tenants that was demolished within ten 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 ten years has been zoned for exclusively multifamily residential use, there is a presumption that it was occupied by tenants, unless the development proponent can provide verifiable documentary evidence from a government or independent third party source to rebut the presumption for each of the ten years prior to the application date.

- (B) When property with a building that was demolished in the past ten years has been zoned to allow multifamily residential 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.
- (4) The property contains housing units that were occupied by tenants in the last ten years, 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 this section, 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 Streamlined, Ministerial Approval Process.
  - (1) This restriction 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).

NOTE: Authority cited: Government Code section 65913.4(j). Reference cited: Government Code section 65913.4(a) and (c).

#### **Section 402. Affordability Provisions**

- (a) A development shall be subject to a requirement mandating a minimum percentage of units be affordable to households making below 80 percent AMI, based on one of the following categories:
  - (1) In a locality that the Department has determined is subject to the Streamline Provisions pursuant to Section 200, subparagraph (b), the development shall dedicate a minimum of 10 percent of the total number of units to housing affordable to households making below 80 percent of the area median income.

- (A) Developments of ten units or less are not subject to the 10 percent affordability provision.
  - (B) 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 zoning ordinance applies.
- (2) In a locality that the Department has determined is subject to the Streamline Provisions pursuant to Section 200, subparagraph (c), the development shall dedicate a minimum of 50 percent of the total number of units to housing affordable to households making 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 below 80 percent of the AMI, that zoning ordinance applies.
- (3) In a locality that the Department has determined is subject to the Streamline Provisions 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 below 80 percent of the AMI.
- (b) A covenant or restriction shall be recorded against the development dedicating the minimum percentage of units to housing affordable to households making below 80 percent of the AMI pursuant to either (a) or (b).
- (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 that satisfy the equity sharing requirements of for-sale units set forth in Government Code 65915(c)(2).
  - (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.
- (c) The percentage of units affordable to housing affordable to households making below 80 percent of the area median income 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 housing affordable to households making below 80 percent of the area median income 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 would apply to the units per the Streamlined, Ministerial Approval Process. For example, if the locality's adopted ordinance requires a certain percentage of those units to be affordable to very-low income units, that percentage would apply to the total below market rate housing provided through the Streamlined, Ministerial Approval Process.

NOTE: Authority cited: Government Code section 65913.4(j). 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 is submitted:

- (a) The entirety of the development is a public work project, as defined in Section 102 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>
  - (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 on the Department of Industrial Relations' Public Works website (<https://www.dir.ca.gov/Public-Works/PublicWorks.html>) and the

- (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.
    - 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 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 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	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	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.
- (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 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)(i) and (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.
- (D) 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.
- (c) 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 ten or fewer 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 Section 303 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 303.

NOTE: Authority cited: Government Code section 65913.4(j). 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 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.

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

### **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.

- (a) Number of applications submitted under the Streamlined, Ministerial Approval Process.
- (b) Location and number of developments approved using Streamlined, Ministerial Approval Process.
- (c) Total number of building permits issued using Streamlined, Ministerial Approval Process.
- (d) Total number of units constructed using 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).