



# SB 35 AFFORDABLE HOUSING STREAMLINED APPROVAL: MINISTERIAL ACTION – *No CEQA Required*

## Introduction

Enacted in 2017, SB 35 added Government Code §65913.4 to the Housing Development Approvals provisions (Government Code §§65913 - 65914.5) to require streamlining of affordable housing development approvals in cities and counties that have insufficient progress toward their Regional Housing Need Allocation (RHNA) goal and/or have not submitted the latest Housing Element Annual Progress Report (APR). Since its passing, several other bills have made amendments to Government Code §65913.4, such as AB 1485, AB 168, and AB 831, to clarify certain provisions of this code section.

SB 35 requires local entities to streamline the approval by providing a ministerial process through which a project is only reviewed against objective standards. Qualifying projects are considered ministerial and are not subject to a conditional use permit (CUP). This is a voluntary program that a project sponsor may elect to pursue, provided that certain eligibility criteria are met. These provisions sunset on January 1, 2026.



## Eligibility for Streamlining

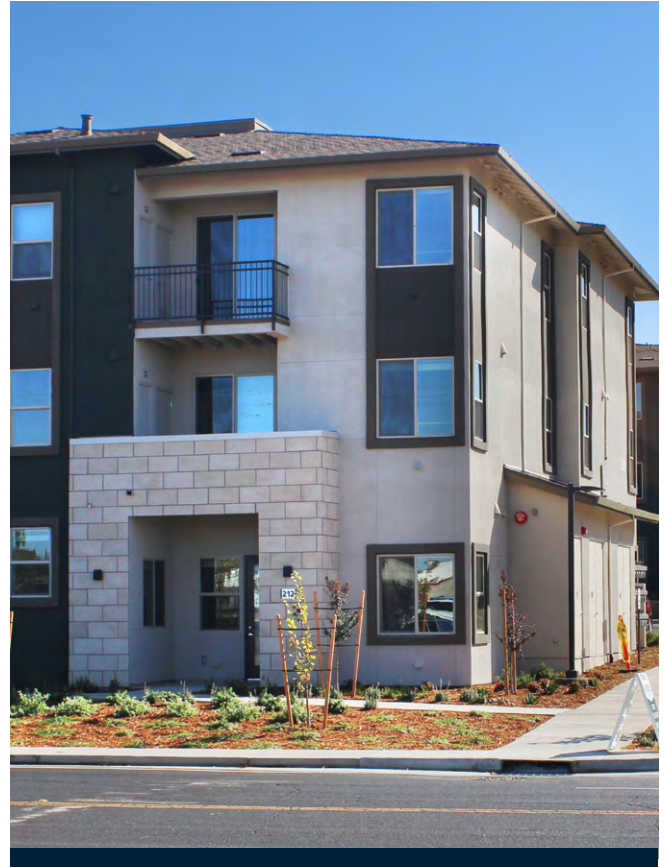
In order to be eligible for streamlining, the project must meet all of the following criteria:

### HOUSING TYPES

- ▶ **Multifamily or Mixed-Use:** The development must be a multifamily housing development containing at least two or more net new residential units, or a mixed-use project where at least 2/3 of the square footage is dedicated to residential uses.
- ▶ **Consistency with Objective Standards:** The project must meet all objective standards of the Planning Code at the time of SB 35 application submittal. Objective standards are those that require no personal or subjective (discretionary) judgment, such as objective dimensional requirements.

## SITE REQUIREMENTS

- ▶ **Infill Development:** At least 75 percent of the perimeter of the site adjoins parcels currently or formerly developed with urban uses, including parcels separated by a street or highway.
- ▶ **Zoning or General Plan Consistency:** The development must be located on a legal parcel or parcels that are zoned for or designated by the general plan for residential or residential mixed uses.
- ▶ **Not Located in Sensitive Environments:** The development must be located on a property that is not within a coastal zone, prime farmland, wetlands, a community conservation plan area, a habitat for protected species, or under a conservation easement.
- ▶ **Not Subject to Hazardous Conditions:** The project site is not within a high or very high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, flood plain, or floodway.
- ▶ **No Demolition of Residential Units:** The project does not demolish any housing units that have been occupied by tenants in the last 10 years; or demolish housing that is subject to any form of rent or price control, or are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.
- ▶ **Historic Structures:** The project does not demolish a historic structure that has been placed on a national, state, or local historic register.
- ▶ **Subdivisions:** The development did not or does not involve a subdivision of a parcel that is subject to the California Subdivision Map Act, unless the development either (a) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or (b) is subject to the requirements to pay prevailing wages and to use a skilled and trained workforce.



## AFFORDABILITY PROVISIONS

- ▶ **Affordability:** At least 10 or 50 percent depending upon the jurisdiction's insufficient progress toward their Above Moderate income or Lower Income (Very Low and Low Income) RHNA allocation of the proposed residential units must be dedicated as affordable to households at or below 80 percent AMI for either rental or ownership projects. See the latest SB 35 [Statewide Determination Summary](#) for the jurisdictions that are eligible with  $\geq 10$  percent affordability and the jurisdictions that are eligible with  $\geq 50$  percent affordability.



### ADDITIONAL REQUIREMENTS

- ▶ **Notification to California Native American Tribes:** After providing notice of the intent to develop the site to California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed development site, a determination shall be made by the city or county that: the development site is not a tribal or cultural resource on a national, state, tribal or local historic register list; that the parties involved in the scoping consultation have documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment; or that the parties to the scoping consultation do not disagree as to whether a potential tribal cultural resource will be affected by the proposed development.
- ▶ **Parking:** Project must provide at least one parking space per unit. Parking standards shall not be imposed if the project meets any of the following:
  - The project is located within one half mile of a public transit stop.
  - The development is located within an architecturally and historically significant historic district.
  - The project is located within one block of a car share vehicle station.
  - When on-street parking permits are required but not offered to the development occupants.

See [SB 35 Worksheet](#) to determine whether the project is eligible for SB 35.

### LABOR PROVISIONS

- ▶ **Prevailing Wages:** If the development is more than 10 units and not in its entirety a public work, as defined in Government Code §65913.4 (a)(8)(A), all construction workers employed in the execution of the development must be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.
- ▶ **Skilled and Trained Workforce Provisions:** A skilled and trained workforce, as defined in Section 2601 of the California Public Contracts Code, must complete the development if the project consists of units that are not 100 percent subsidized affordable housing as follows:

County Type	Population Density	Number of Housing Units
Coastal	225,000 or more	50 or more
Non-Coastal	Fewer than 550,000	More than 25

## Process for Streamlined Approval

Applicants must submit to a lead agency a “preliminary application” with a notice of intent to invoke the provisions of SB 35. The “preliminary application” is the same as mentioned in SB 330 (Government Code §65941.1). Many agencies have developed SB 35 applications to evaluate project eligibility and provide a framework for the lead agency’s SB 35 review procedures.

Within 30 calendar days of receiving the applicant’s “preliminary application” for SB 35, the lead agency must provide formal notice to each California Native American tribes about the proposed development. The formal notice must include the location and description of the proposed development, and an invitation to engage in scoping consultation. Each Tribe then has 30 calendar days to respond and accept the invitation to engage in consultation, and after the receiving the acceptance to invitation, the agency has 30 calendar days to initiate consultation. If there is no response to the notification of intent or there is an agreement reached in a scoping consultation and the project application is deemed complete and qualifies for SB 35 review, the project is eligible for SB 35 ministerial approval. If agreement with one or more tribes is not reached, then a project is not eligible for SB 35 approval. Provided that the notification and scoping session result in either an agreement or no response, SB 35 timelines shall commence provided an application is submitted.

SB 35 establishes mandatory timelines for lead agencies to complete their streamlined review. Lead agencies must determine if a project is eligible for streamlining within:

- ▶ **60 days** of application submittal for projects of 150 or fewer units, or
- ▶ **90 days** of application submittal for projects containing more than 150 units.

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. A determination of inconsistency with objective planning standards does not preclude the development proponent from correcting any deficiencies and resubmitting an application for streamlined review.

If the lead agency provides written comments to an applicant detailing that a project, as proposed, is not SB 35 eligible, or requests additional information to make such a determination, then the 60- or 90-day timeline will restart upon submittal of a revised development application in response to that written notice. SB 35 projects are ministerial, which do not require public hearings. Design review or public oversight may be conducted by Planning Commission, City Council or an equivalent board but can only assess streamlining criteria such as if the city or county so chooses, objective design review or development standards. Design review or public oversight must be completed within:

- ▶ **90 days** of application submittal for projects with 150 or fewer units, or
- ▶ **180 days** of application submittal for projects with more than 150 units.

If the lead agency does not meet the applicable timeline, then the project is automatically approved. See Gov. Code §65913.4(e) for permit approval expiration guidelines.

# Modifications

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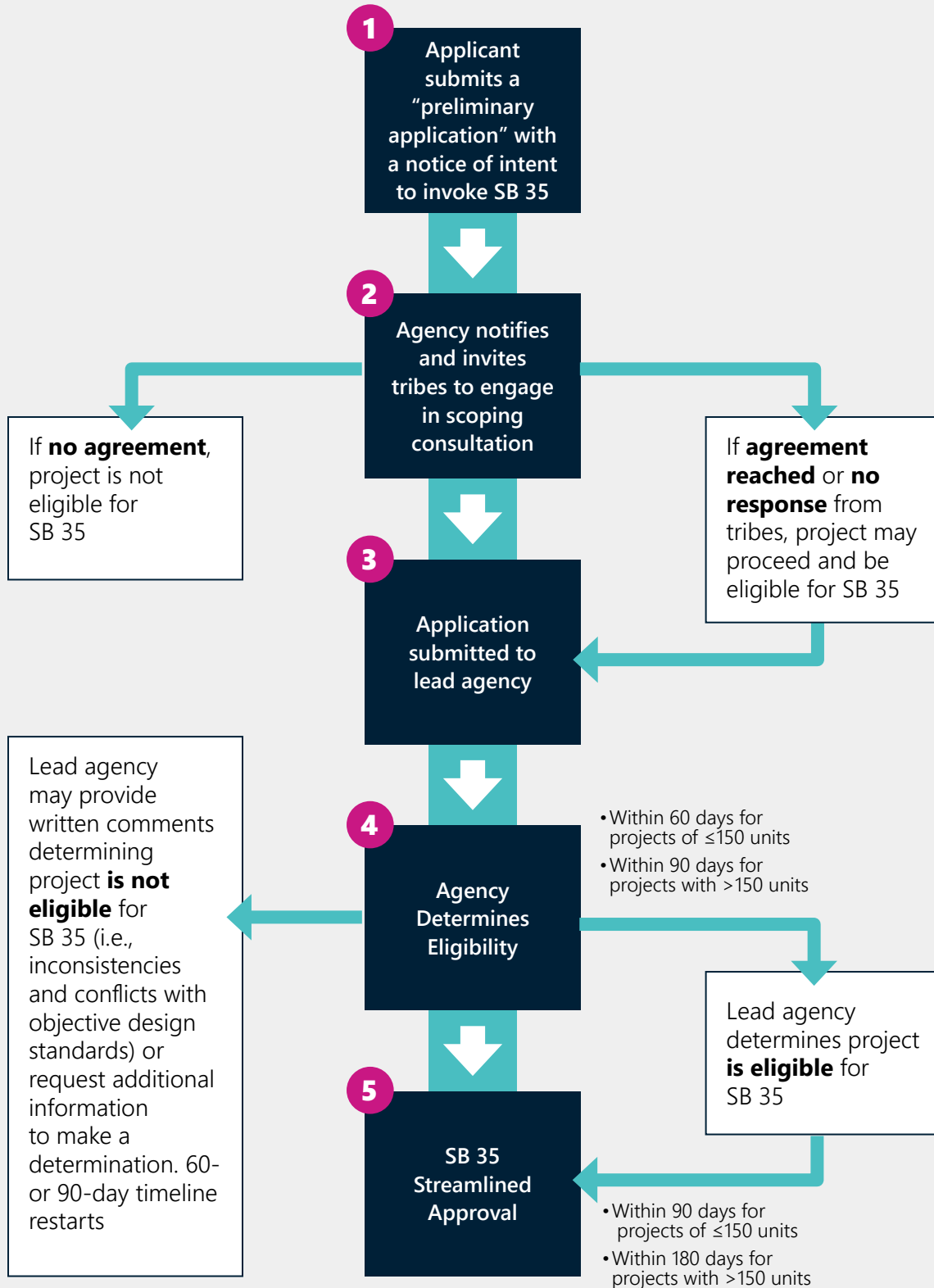
AB 831 amended SB 35 to allow applicants to make modification requests to their project prior to the issuance of the final building permit. The modification has to be consistent with development standards that applied to original application, with limited exceptions to changes to unit count and total floor area [Gov. Code §65913.4 (f)(3)].

In addition, AB 1174 amended and added that if the development proponent requests a modification to a development that has been approved pursuant to SB 35, then the time during which the approval will remain valid is extended for the number of days between the submittal of the 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 is further extended during the pendency of the litigation. However, these required extensions apply only to the first request for a modification submitted by the development proponent.

## Additional Resources

- ▶ [SB 35 Streamlined Ministerial Approval Program Guidelines](#): Last updated March 2021. Developments that may be experiencing barriers to utilizing SB 35 Streamlining may contact [compliance@hcd.ca.gov](mailto:compliance@hcd.ca.gov).
- ▶ [SB 35 Statewide Determination Summary](#): Summary of jurisdictions that are not subject to SB 35 streamlining, are currently subject to SB 35 streamlining for developments with at least 10 percent affordability, and are currently subject to SB 35 streamlining for developments with at least 50 percent affordability (as of June 1, 2022).
- ▶ [SB 35 Determination Methodology and Background Data](#): Additional detail on the determination methodology and background data.
- ▶ [Interactive SB 35 Determination Online Map](#): This online interactive map can quickly allow users to view whether a city/county:
  - has an HCD-approved housing element,
  - is subject to streamlined ministerial housing approvals, and
  - has been submitting its Annual Progress Reports.

# SB 35 PROCESS



\*If the lead agency does not meet the applicable timeline, then the project is automatically approved.

*The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.*

# WORKSHEETS

## SB 35 Eligibility Checklist

Requirements	Applicability	Yes	No	N/A
<b>HOUSING TYPES</b>				
<b>Multi-family or Mixed-use</b>	The development is a multifamily housing development containing at least two or more net new residential units, or a mixed-use project where at least 2/3 of the square footage is dedicated to residential uses.			
<b>Consistent with Objective Standards</b>	The project meets all objective standards of the Planning Code at the time of SB 35 application submittal.			
<b>SITE REQUIREMENTS</b>				
<b>Infill Development</b>	At least 75 percent of the perimeter of the site adjoins parcels currently or formerly developed with urban uses, including parcels separated by a street or highway.			
<b>Zoning or General Plan Consistency</b>	The development is located on a legal parcel or parcels that are zoned or designated by the general plan for residential or mixed uses.			
<b>Not Located in Sensitive Environments</b>	The project site is not within a coastal zone, prime farmland, wetlands, a community conservation plan area, a habitat for protected species, or under a conservation easement.			
<b>Not Subject to Hazardous Conditions</b>	The project site is not within a high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, flood plain, or floodway.			
<b>No Demolition of Residential Units</b>	The project does not demolish any housing units that have been occupied by tenants in the last 10 years; or demolish housing subject to any form of rent or price control, or are subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low incomes.			
<b>Historic Structures</b>	The project does not demolish a historic structure that has been placed on a national, state, or local historic register.			
<b>Subdivisions</b>	The development did not or does not involve a subdivision of a parcel that is subject to the California Subdivision Map Act, unless the development either (a) receives a low-income housing tax credit and is subject to the requirement that prevailing wages be paid, or (b) is subject to the requirements to pay prevailing wages and to use a skilled and trained workforce.			

Requirements	Applicability	Yes	No	N/A
<b>AFFORDABILITY PROVISIONS</b>				
<b>Affordability</b>	<p>At least 10 percent or 50 percent (depending upon the jurisdiction's insufficient progress toward their Above Moderate income or Lower Income RHNA, Very Low and Low Income) of the proposed residential units will be dedicated as affordable to households at 80% AMI for either rental or ownership projects.</p> <p>(See the latest <a href="#">Statewide Determination Summary</a> for the jurisdictions that are eligible with &gt;10 percent affordability and the jurisdictions that are eligible with &gt;50 percent affordability).</p>			
<b>LABOR PROVISIONS</b>				
<b>Prevailing Wages</b>	If the development is more than 10 units and not in its entirety a public work, as defined in Government Code Section 65913.4 (a) (8)(A), all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area.			
<b>Skilled and Trained Workforce Provisions</b>	<p>A skilled and trained workforce, as defined in Section 2601 of the California Public Contracts Code, will complete the development if the project consists of:</p> <ul style="list-style-type: none"> <li>• 50 or more units in coastal counties with populations of 225,000 or more,</li> <li>• More than 25 units in non-coastal counties with populations fewer than 550,000.</li> </ul>			
<b>ADDITIONAL REQUIREMENTS</b>				
<b>Notification to California Native American Tribes</b>	The lead agency has provided notice of the intent to develop the site to California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed development site, and a determination has been made by the lead agency that: the development site is not a tribal or cultural resource on a national, state, tribal or local historic register list; that the parties to a scoping consultation have documented an enforceable agreement on methods, measures, and conditions for tribal cultural resource treatment; or that the parties to the scoping consultation do not disagree as to whether a potential tribal cultural resource will be affected by the proposed development.			
<b>Parking</b>	<p>The project provides at least one parking space per unit, unless it meets any of the following:</p> <ul style="list-style-type: none"> <li>• The project is located within one half mile of a public transit stop.</li> <li>• The development is located within an architecturally and historically significant historic district.</li> <li>• The project is located within one block of a car share vehicle station.</li> <li>• When on-street parking permits are required but not offered to the development occupants.</li> </ul>			