

SB 35/423

Streamlined Ministerial Affordable Housing Projects

1



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SB 35

2

- California Senate Bill 35 (“SB 35”)
 - Enacted Government Code section 65913.4.
 - Effective January 1, 2018, was set to sunset on January 1, 2026, extended to 2036 by SB 423.
 - Section 65913.4 has been amended/updated over 20 times since 2018.
- In adopting SB 35, the Legislature found that providing affordable housing opportunities is a matter of statewide concern, which preempts local control.

Applicability of SB 35

3

- SB 35 applies to localities without sufficient progress toward their Regional Housing Need Allocation (“RHNA”).
- Department of Housing and Community Development (“HCD”) publishes a dashboard of cities and counties subject to SB 35.
 - 40 cities and counties are not subject to SB 35.
 - 298 cities and counties have insufficient progress toward their Above Moderate income RHNA and/or have not submitted the latest Housing Element Annual Progress Report and are subject to SB 35 for projects with at least 10% affordability.
 - 201 jurisdictions have insufficient progress toward their Lower income RHNA (Very Low and Low income) and are subject to SB 35 for projects with at least 50% affordability.
- **El Dorado County is in the 50% affordability category.**

Does SB 35 Apply?

4

- Multifamily housing development with two or more attached residential units.
- Project cannot:
 - Involve demolition of affordable housing.
 - Demolish a registered historic structure.
 - Have a registered tribal cultural resource.
- Prior to first building permit, must record a restriction dedicating units for affordable households making below 80% of area median income (Low or Very Low income).
 - Restriction is 55 years if rented or 45 years if owned.

Does SB 35 Apply?

5

- Project is on a legal parcel that is:
 - Within an urban area (U.S. Census Bureau).
 - Infill: At least 75% of perimeter adjoins parcels developed with “urban uses” defined as “any current or former residential, commercial, public institutional, public park that is surrounded by other urban uses, parking lot or structure, transit or transportation passenger facility, or retail use, or any combination of those uses.”
 - Zoned for residential or mixed-use, has General Plan designation allowing residential or mixed use, or meets the requirements of the Middle Class Housing Act of 2022 (SB 6).

Does SB 35 Apply?

6

- Site cannot be within a very high fire hazard severity zone, unless adopted fire hazard mitigation measures are applied:
 - *Public Resources Code §4291 or § 51182*, as applicable (defensible space).
 - *Public Resources Code § 4290* (road standards for fire equipment, fuels breaks, etc.).
 - Chapter 7A of the California Building Code (requirements for fire-resistant materials and ignition-resistant construction).

Does SB 35 Apply?

7

- Development parcel does not have:
 - Prime farmland or farmland of statewide importance
 - Wetlands
 - Hazardous waste site
 - Delineated earthquake fault zone
 - Special flood hazard area or regulatory floodway
 - Conservation plan or easement for habitat or natural resources
 - Habitat for protected species

Does SB 35 Apply?

8

- Generally, project required to pay prevailing wages and comply with skilled workforce requirements.
- Project site does not have:
 - Tenant-occupied housing that was demolished within 10 years of application; or
 - Tenant-occupied housing or units that were offered for sale.
- Development is not on a parcel that is governed by state laws for mobilehomes, recreational vehicles, or special occupancy parks.

Does SB 35 Apply?

9

- Development is consistent with objective zoning standards, objective subdivision standards, and objective design review standards.
 - Objective standards must be in place at the time the application is submitted and must be “available and knowable by both the development applicant or proponent and the public official before submittal.”
 - Objective standards are “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.”

Tribal Scoping Consultation

10

- Project applicant must file a notice of intent (NOI) to submit an SB 35 application (a preliminary application).
- County cannot accept an application until tribal consultation concludes.
- Tribal consultation concludes if 1) agreement of no potential impact; 2) if there is a potential impact, an enforceable agreement regarding the treatment of the tribal resources; or 3) one or more parties, acting in good faith and after a reasonable effort, conclude that mutual agreement cannot be reached.
- If parties cannot reach an enforceable agreement regarding tribal cultural resources, the project is ineligible for SB 35.

Pre-Submission Public Meeting

11

- If Development is proposed in a census tract designated either as a moderate/low resource area, or an area of high segregation and poverty on the most recent CTCAC/HCD Opportunity Map [2025 CTCAC/HCD AFFH Mapping Tool](#):
 - BOS meeting within 45 days of receipt of NOI for the public and County to comment on the project.
 - Developer is required to attend the meeting and review the testimony and comments.
 - If not held by the County, the applicant must hold the public meeting prior to application submittal.

Expedited Time Limits

12

- County must provide readily accessible information about ministerial approval requirements and required application information.
 - Application cannot be used to “inhibit, chill, or preclude” SB 35 projects.
- From submission of application, County staff must determine SB 35 eligibility within:
 - 60 days if 150 or fewer housing units; or
 - 90 days if more than 150 housing units.
 - 30 days on a resubmission in response to feedback.
- Request for modification of a SB 35 project prior to building permit issuance also subject to the 60/90 day deadlines.

Determine of Ineligibility

13

- Ineligible determination must be in writing, identify specific objective standards with which the project does not comply, and be based on substantial evidence.
 - County can find inconsistency with an objective standard only if “no reasonable person could conclude that the development is consistent with the objective standards.”
- If County does not provide this written determination within the required time (60 or 90 days), the project is “deemed to satisfy” all required objective standards, including the County’s objective zoning, General Plan, and other standards.

Determine of Ineligibility-Studies

14

- The County is prohibited from requiring: “Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development.”
- The County cannot determine that a development conflicts with the objective planning standards on the basis that application materials are not included, if the application contains substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

Limits of Design Review

15

- Prior SB 35 language providing for a “public oversight” meeting has been removed, leaving only design review.
- Any design review “shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards.”
- Design review “shall not in any way inhibit, chill, or preclude the ministerial approval.”

Limits of Design Review

16

- May only apply objective design review standards.
 - Subjective example: consistency with “neighborhood character”.
 - Acceptable standards include use of specific materials, such as Spanish-style tile roofs or roof pitches with a slope of 1:5.
 - Objective Design Standards (interim) adopted in December of 2024.

Design Review Timeline

17

- Design review shall be completed within:
 - 90 days of submission if 150 or fewer housing units; or
 - 180 days of submission if more than 150 housing units.

Board Direction on SB 35 Projects

18

- Board of Supervisors adopted Resolution 214-2024, in December of 2024 with adoption of the Interim Objective Design Standards which:
 - Requires the Planning Director to make the Project's eligibility determination (as authorized under SB 423).
 - Delegates design review for compliance with the Interim Objective Design Standards to staff.
 - As with prior 2021 resolution, no right of appeal.

Decision is Ministerial

19

- “Ministerial processing approval” means a “process for development approval involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project.”
 - Public official “merely ensures” that the proposed development meets all the objective zoning, subdivision, and design review standards.
 - County cannot require a conditional use permit.
- 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.”

Limits of Analysis of Traffic Impacts

20

- Can apply objective traffic standards and policies, including payment of existing traffic impact fees.
- Cannot require a traffic study that involves the exercise of discretion and project-specific mitigation analysis and formulation.
- LOS traffic mitigation requires subjective staff judgment and a collaborative mitigation process and does not implement externally referenced objective mitigation criteria.

Limits on Parking Requirements

21

- No parking requirements can be imposed if:
 - Located within ½ mile of public transit;
 - Located within historic district;
 - On-street parking permits are required, but not offered to occupants of development; or
 - Car share vehicle is within one block.
- If project does not come within above restrictions, can impose only one parking space per unit.

Mixed Use Projects

22

- Under HCD Guidelines, SB 35 project may include commercial so long as:
 - At least 2/3 of square footage is designated residential and concurrent construction.

If a mixed-use project complies with these requirements, then the commercial component may proceed under the streamlined ministerial process.

Legal Challenges: *Ruegg & Ellsworth v. City of Berkeley*

63 Cal.App.5th 277 (April 2021)

23

- First published appellate decision interpreting SB 35.
- Upheld state's preemption of local authority under SB 35.
 - SB 35 was “intended to decrease delays and local resistance to such developments, and does so by removing local governments’ discretion to deny applications for affordable housing developments meeting specified *objective* criteria.”
- Strictly applied SB 35 deadlines and faulted the City for the lack of specificity about any alleged inconsistencies.
- The Court found: “Section 65913.4 addresses the crisis level statewide lack of affordable housing by eliminating local discretion to deny approval where specified objective planning criteria are met...”
- Found City's LOS mitigation requirements not objective.

HCD/AG Interventions

24

- HCD now has enforcement authority over SB 35 (AB 434)
 - HCD has issued numerous Technical Assistance letters and commonly intervene in local matters with these “sticks”:
 - Referral to the AG for initiation of litigation.
 - Fines of 10k-100k per month.
 - Revocation of the local Housing Element (Builders Remedy).
- HCD lawsuit/settlement against Elk Grove for denying a SB 35 project (2024):
- Five years of HCD oversight of all affordable housing applications in the City.
 - Required the City to rezone a parcel for a future project.
 - \$150,000 in attorney’s fees.

Questions?