



RESOLUTION NO. XXX-2021

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

RESOLUTION DESIGNATING APPROVAL AUTHORITY FOR SB 35 STREAMLINED MINISTERIAL PROJECTS WHERE A DISCRETIONARY REVIEW WOULD OTHERWISE BE REQUIRED BY TITLE 130 OF THE COUNTY CODE

WHEREAS, Senate Bill 35 (SB 35) (Wiener, 2017), codified at Government Code section 65913.4, was part of a fifteen-bill housing package aimed at addressing the state’s housing shortage and high housing costs; and

WHEREAS, SB 35 declares that providing affordable housing opportunities is a matter of statewide concern and requires a “streamlined, ministerial approval process” for affordable residential developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need with the intent of facilitating and expediting the construction of affordable housing; and

WHEREAS, El Dorado County has been included on the Department of Housing and Community Development’s (HCD) determination list of cities and counties subject to SB 35; and

WHEREAS, in November of 2018, HCD adopted Streamlined Ministerial Approval Process Guidelines (HCD Guidelines) for implementing SB 35 as authorized by section 65913.4(j), and the HCD Guidelines shall be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply; and

WHEREAS, section 65913.4(d)(1) and section 301(a) of the HCD Guidelines require that ministerial approval may not include the exercise of discretion and cannot require a conditional use permit or other discretionary local government review or approval; that public oversight is not required, but the County may provide for a ministerial design review or public oversight of the application by the Zoning Administrator, Planning Commission, or Board of Supervisors; that the design review or public oversight shall be objective and strictly focused on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective zoning, subdivision, general plan, and design review standards in effect at the time that the application is submitted and that are broadly applicable to development within the locality; and the design review or public oversight shall not in any way inhibit, chill, stall, delay, or preclude the ministerial approval required by section 65913.4; and

WHEREAS, section 65913.4(a) and Article IV of the HCD Guidelines outline the project eligibility requirements for SB 35, including: housing type requirements (Sec. 400); site requirements (Sec. 401); affordability provisions (Sec. 402); labor provisions (Sec. 403); and additional provisions (Sec. 404); and

WHEREAS, pursuant to section 65913.4 and section 301 of the HCD Guidelines, the Planning and Building Department must determine whether an application qualifies for SB 35 within 60 days of application submittal for projects with 150 or fewer units and 90 days for projects with more than 150 units (section 65913.4(c)(1)) and any public oversight and final decision on the application, including any appeal, must be completed within 90 days from project application submittal for projects with 150 or fewer units and 180 days from project submittal for projects with more than 150 units (section 65913.4(d)(1)); and

WHEREAS, as a ministerial approval, section 65913.4(d)(2) provides that approval of any SB 35 project is statutorily exempt from the California Environmental Quality Act; and

WHEREAS, section 65913.4(g)(1) and section 301(c) of the HCD Guidelines allow a development proponent to request a modification to a development that has been approved under the streamlined ministerial approval process if the request is submitted to the local government before the issuance of the final building permit required for construction. The local government shall approve the modification if it determines that the modification is consistent with the objective planning standards that were in effect when the original development application was first submitted. Pursuant to section 65913.4(g)(2) and HCD section 301(c)(1)(B) the request for the modification shall be either approved or denied within 60 days after submission of the modification, or 90 days if design review is required.

WHEREAS, Assembly Bill 168 (AB 168) (Aguiar-Curry, 2020), codified at Government Code section 65913.4(b), created a process for tribal scoping consultation for SB 35 projects. In accordance with section 65913.4(b)(a)(1)(i), developers are now required to submit a notice of intent in the form of a preliminary application with key project details (outlined in section 65913.4(b)(1)(A)(i)) and engage in tribal scoping consultation that potentially influences the project's eligibility for SB 35; and

WHEREAS, in November of 2020, the Governor's Office of Planning and Research adopted Tribal Scoping Consultation Requirements for Projects seeking Review Under the Streamlined Ministerial Approval Process (SB 35); and

WHEREAS, the El Dorado County Zoning Ordinance Sections 130.27.50 (Design Review – Community Combining Zone) and 130.27.60 (Design Review – Historic Combining Zone) establishes Design Review Combining Zones requiring discretionary review of development projects in accordance with Section 130.52.030 (Design Review Permit) on parcels within those combining zones; and

WHEREAS, the El Dorado County Zoning Ordinance Sections 130.28 (Planned Development Combining Zone) establishes Planned Development Combining Zones requiring discretionary review of development projects in accordance with Section 130.52.040 (Planned Development Permit) on parcels within that combining zone; and

WHEREAS, the County's current discretionary approval process and administrative timelines for

projects as outlined in Title 130, Article 5 (Planning Permit Processing) creates barriers to meeting the streamlining provisions of SB 35 for eligible projects; and

WHEREAS, neither section 65913.4 nor the HCD Guidelines determine the approval authority for SB 35 projects or require a public meeting to review the project, but both provide that ministerial design review or public oversight of an SB 35 application may be conducted by the Planning Commission or any equivalent board or commission responsible for review and approval of development projects, including the Board of Supervisors.

NOW, THEREFORE, BE IT RESOLVED, the Board of Supervisors of the County of El Dorado hereby finds that all objective zoning, subdivision, general plan, design review, and residential development standards in existence at the time of an SB 35 application shall apply to that SB 35 project and identifies that the [REDACTED] will be the final approving authority for SB 35 Streamlined Ministerial Approvals on parcels within Combining Zones that, absent SB 35, would require a discretionary approval.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Board of Supervisors of the County of El Dorado hereby provides that an appeal of an SB 35 project may be filed within three (3) days of approval and identifies that the [REDACTED] will be the approving authority for appeals of an SB 35 project on parcels within Combining Zones that, absent SB 35, would require discretionary approval. Any appeal shall be in writing and shall clearly identify on the appeal form the specific reasons for the appeal and the relief requested. Consistent with County Code section 130.52.090, no person shall seek judicial review of a County decision on an SB 35 project until such appeal has been exhausted.

NOW, THEREFORE, BE IT FURTHER RESOLVED, the Board of Supervisors of the County of El Dorado hereby finds that for all modification requests to approved SB 35 projects that all objective zoning, subdivision, general plan, design review, and residential development standards in existence at the time of the original application shall apply to that SB 35 project modification project and identifies that the [REDACTED] will be the approving authority for modifications to approved SB 35 Streamlined Ministerial Approvals on parcels within Combining Zones that, absent SB 35, would require a discretionary approval.

NOW, THEREFORE, BE IT FURTHER RESOLVED, if any section, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution. The Board of Supervisors hereby declares that it would have passed this resolution and adopted each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

NOW, THEREFORE, BE IT FURTHER RESOLVED, unless the California Legislature extends Government Code section 65913.4, this Resolution shall remain in effect until section 65913.4 automatically sunsets on January 1, 2026 pursuant to section 65913.4(m).

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the ____ day of _____, 2021, by the following vote of said Board:

ATTEST

Ayes:

Kim Dawson
Clerk of the Board of Supervisors

Noes:
Absent:

By _____
Deputy Clerk

Chairman, Board of Supervisors

I CERTIFY THAT:

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE

Date _____

ATTEST: Kim Dawson, Clerk of the Board of Supervisors
of the County of El Dorado, State of California.

By _____
Deputy Clerk