File #: 20-1559, **Version:** 1

Planning and Building Department, Planning Division, recommending the Board:
1) Receive and file a presentation on the SB 35 Legislation and the County's proposed SB 35 Processing Application Checklists and Procedures;
2) Provide direction to staff on the preferred Approval Authority for SB 35 Streamlined Ministerial Projects where a discretionary review would otherwise be required by Title 130 of the County Code;
3) Provide direction to staff on whether or not the Board wishes to provide an opportunity for appeal within the County's streamlined ministerial process, and if so, who should be the approval authority for appeals of streamlined ministerial projects where a discretionary review would otherwise be required by Title 130 of the County Code;
4) Provide direction to staff on whether or not the County should reduce the time to submit an appeal of a SB 35 Streamlined Ministerial Project from 10 days to 3 days; and
5) Approve and authorize the Chair to sign Resolution **211-2021** identifying the Approval Authority and Appeal process for SB 35 Streamlined Ministerial Projects where a discretionary review would otherwise be required by Title 130 of the County Code.

FUNDING: There is no funding associated with this item. Future SB 35 Projects will be paid for by the Project Applicant.

DISCUSSION/BACKGROUND

California Senate Bill 35 (SB 35), codified at Government Code section 65913.4, was part of a fifteen -bill housing package aimed at addressing California's overall housing shortage and high housing costs. The law requires cities and counties that have not yet made sufficient progress towards their allocation of the regional housing need to establish a streamlined ministerial approval process for eligible affordable housing projects, and also exempts these projects from environmental review under the California Environmental Quality Act (CEQA).

The Department of Housing and Community Development's (HCD) has developed a list of cities and counties that are subject to SB 35. Further, HCD has adopted Streamlined Ministerial Approval Process Guidelines (HCD Guidelines) (Exhibit A) for implementing SB 35 as authorized by section 65913.4(j). The HCD Guidelines are intended to be interpreted and implemented in a manner to afford the fullest possible weight to the interest of increasing housing supply. The HCD Guidelines outline all of the eligibility requirements for SB 35 projects, including housing type, site requirements, affordability provisions, labor provisions, and additional provisions.

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. 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. Further, 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. 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.

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)). 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)).

In November of 2020, the Governor's Office of Planning and Research (OPR) adopted Tribal Scoping Consultation Requirements for Projects seeking Review under the Streamlined Ministerial Approval Process (SB 35) (Exhibit B). The guidance outlines the requirement for a Developers to submit a preliminary application with key project details (found in Government Code §65913.4(b)(1)(A)) and engage in tribal scoping consultation that potentially influences the project's eligibility for ministerial approval.

El Dorado County has been included on the HCD determination list of cities and counties subject to SB 35, and therefore the Planning Division, in coordination with the Department of Transportation, have developed a set of draft applications to be used for processing SB 35 eligible projects. The draft applications for processing the required SB 35 Notice of Intent/Pre-Application (NOI/PA) (Exhibit C) and SB 35 Design Review (Exhibit D), have been prepared in accordance with the appropriate applicable guidelines, and in consultation with outside agencies including El Dorado Irrigation District, CalFire, and local fire districts. The draft SB 35 Design Review application will need to be updated pending the designation of the approval authority as requested in this item.

The SB 35 streamlined ministerial process, although it allows for a ministerial design review or public oversight of the application by the Zoning Administrator, Planning Commission, or Board of Supervisors, does not provide direction on who the approval authority should be and leaves that determination to the local jurisdiction.

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. Also, Section 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. Many of the County's parcels which could support multi-family affordable housing projects are located within Design Review and Planned Development Combining zones requiring additional discretionary approval. Therefore, staff is seeking policy direction on who the approval authority should be for SB 35 eligible projects on the parcels within these combining zones. 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.

Staff is seeking policy direction from the Board of Supervisors (Board) on: 1) who the original approval authority should be for SB 35 streamlined ministerial projects where a discretionary review would otherwise be required by Title 130 of the County Code; and 2) whether or not the Board wishes

to provide an opportunity for appeal within the County's streamlined ministerial process; and if so, who should be the approval authority for appeals of streamlined ministerial projects where a discretionary review would otherwise be required by Title 130 of the County Code. If the Board wishes to allow an appeal, and based on the timeframes listed above, the Planning Division recommends that the BOS reduce the County's 10-day appeal period for discretionary approvals to 3 -days to reduce overall processing times for appeals.

Formal application processing shall be conducted by the Planning Division, subject to applicable departmental application processing fees. To date, a total of two SB 35 projects have been approved by the County; however, as of recently there has been an increased interest in SB 35 eligible projects, and two projects are currently undergoing the tribal consultation processes for SB 35 eligible projects. Establishing a clear path on the approval authority for SB 35 projects will provide clarity, predictability, and consistency in the processing of the projects for the public, applicants, staff, and decision makers alike.

ALTERNATIVES

The Board could choose to not identify an Approval Authority for SB 35 Streamlined Ministerial Projects where a discretionary review would otherwise be required by Title 130 of the County Code. However, if the Board decides to not approve provide direction on the Approval Authority, County Departments, staff, project applicants, and the public will not have a clearly identified decision making body and inconsistency in project processing and decision making may occur.

PRIOR BOARD ACTION

N/A

OTHER DEPARTMENT/AGENCY INVOLVEMENT

Department of Transportation and County Counsel

CAO RECOMMENDATION

It is recommended that the Board receive and file the report and provide direction to staff.

FINANCIAL IMPACT

There is no financial impact associated with identification of the Approval Authority for SB 35 Streamlined Ministerial Projects where a discretionary review would otherwise be required by Title 130 of the County Code. County costs to process SB 35 eligible projects will be funded by the Project Applicant.

CLERK OF THE BOARD FOLLOW UP ACTIONS

1) The Clerk of the Board will secure the Chair's signature on the original copy of the Resolution; and

2) The Clerk of the Board will provide two (2) certified Resolution copies to Planning and Building Department, attention of Rob Peters, Planning Division.

STRATEGIC PLAN COMPONENT

Economic Development, Healthy Communities and Good Governance - Providing a streamlined ministerial approval process for SB 35 eligible projects supports the County's Strategic Plan goal of

Economic Development by allowing for development of affordable housing options, which in-turn supports the Healthy Communities goal by providing low-income residents with housing. Further, the streamlined ministerial approval process for SB 35 eligible projects supports the County's Good Governance goal by providing the best possible process for making and implementing decisions in evaluating these projects.

CONTACT

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Planning and Building Department