

Senate Bill No. 35 Eligibility Checklist

(prepared by Meyers Nave on October 10, 2017)

Senate Bill No. 35 becomes law on January 1, 2018 and creates a streamlined and ministerial approval process for certain housing projects. After January 1, 2018, if the answers to all of the 11 questions in the checklist below are “yes,” then a project is eligible for the new approval process under Government Code section 65913.4. (See *process notes* on page two.) If any of the answers to the 11 questions is “no,” then the project is not eligible for the new streamlined, ministerial review. This checklist provides an overview of SB 35’s requirements. Please contact legal counsel for additional information and assistance.

Eligibility Requirements	Yes?	No?
<p>1. Has HCD has determined that the local agency is subject to SB 35 (subd. (a)(4)(A))?</p> <p>–HCD determination is based on whether the agency has issued fewer building permits than its share of the regional housing needs, by income category, for the reporting period.</p> <p>–The “reporting period” is either the first half or the second half of the regional housing needs assessment period. (subd. (h)(7).)</p> <p>–The determination remains in effect until HCD’s determination for the next reporting period.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>2. Is the project a multifamily housing development (2 or more units) (subd. (a)(1))?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3. Has the applicant dedicated the applicable minimum percentage of units in the project to households making below 80% of the area median income (subd. (a)(4)(B))?</p> <p>10%: If the project contains more than 10 units and the agency’s latest “production report” (first due April 1, 2018) reflects that the agency <i>approved fewer above moderate-income</i> units “than were required by the regional housing needs assessment cycle for that reporting period.”</p> <p>50%: If the agency’s latest “production report” reflects that the agency <i>issued building permits for fewer below moderate-income</i> units “than were required by the regional housing needs assessment cycle for that reporting period.”</p> <p>10% or 50% at applicant’s option: If the agency has not submitted its latest production report by deadline or if the agency’s latest production report reflects that the agency <i>issued building permits for fewer units of either category of households</i> “than were required by the regional housing needs assessment cycle for that reporting period.”</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>4. If the site is in a city, is a portion of the city designated by the Census as either an “urbanized area” or “urban cluster,” or, if the site is in an unincorporated area, is the parcel entirely within the boundaries of “urbanized area” or “urban cluster” (subd. (a)(2)(A))?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>5. Does at least 75% of the perimeter of the site adjoin parcels currently or formerly developed with “urban uses” (subds. (a)(2)(B), (h)(8))?</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>6. Does the site have <i>either</i> zoning or a general plan designation that allows for residential use or residential mixed-use development (subd. (a)(2)(C))?</p> <p>For property designated for mixed use, the designation must require at least “two-thirds of the square footage of the development” to be residential.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>7. Does the project not involve a subdivision of land (subd. (a)(9))?</p> <p>Projects can involve subdivisions if (a) they are financed with low-income housing tax credits and the applicant certifies that prevailing wages will be paid or (b) if the development is subject to a requirement that prevailing wages will be paid and a skilled and trained workforce will be used.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>8. Does the project meets density requirements, “objective zoning standards,” and “objective design review standards” (subd. (a)(5))?</p> <p>–Objective standards are those that are “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.”</p> <p>–A project is deemed to meet housing density standards if the project density, excluding any density bonuses, is within the <i>maximum</i> density allowed within the general plan land use designation.</p> <p>–Any local policies that limit maximum unit allocations must be ignored.</p> <p>–Offsite parking standards cannot be more than 1 space per unit; and, in certain cases, the local agency may not impose parking standards at all. (subd. (d).)</p>	<input type="checkbox"/>	<input type="checkbox"/>

Eligibility Requirements		Yes?	No?
9. Is the project <i>outside of</i> each of the following areas (subds. (a)(6)–(a)(7))?		<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> –Coastal zone –Prime farmland or farmland of statewide importance –Wetlands as defined under federal law –Earthquake fault zones –High or very high fire hazard severity zones –Hazardous waste site –FEMA designated flood plain or floodway –Protected species habitat –Lands under a conservation easement –Lands designated for conservation in a habitat conservation plan 	<ul style="list-style-type: none"> –A site that would require demolition of (a) housing subject to recorded rent restrictions, (b) housing subject to rent control, (c) housing occupied by tenants within past 10 years, or (d) an historic structure placed on a local, state, or federal register –A site that previously contained housing occupied by tenants within past 10 years –A parcel of land governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act. 		
10. Has the project proponent certified that either that the entire development is a “public work” for purposes of the prevailing wage law or that the construction workers will be paid at least the prevailing wage (subd. (a)(8)(A))?		<input type="checkbox"/>	<input type="checkbox"/>
<p>This requirement is not applicable to projects of 10 units or less and that are not a “public work for purposes of the prevailing wage law.</p>			
11. Has the project proponent certified that “a skilled and trained workforce” will be used to complete the development, if the requirement is applicable (subd. (a)(8)(B))?		<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> –The requirement applies to Bay and Coastal counties of more than 225,000 in population (excludes Del Norte, Humboldt, Mendocino, and Napa) and to jurisdictions of less than 550,000 in population that are not in Bay and Coastal Counties. –In Bay and Coastal counties, the requirement only applies to projects of 75 or more until 2022; and projects of 50 or more thereafter. –In applicable non-Bay and Coastal jurisdictions, the requirement only applies to projects of 75 or more until 2020; 50 or more units until 2022; and 25 or more thereafter. 			

Process Notes:

- The first “production report” (a new requirement added to Government Code section 65400 by SB 35) is not due until April 1, 2018. Therefore, agencies can argue that the third requirement cannot be met until either an agency submits its first production report or it fails to do so by the deadline.
- If a local ordinance requires more units to be affordable households making below 80% of the area median income, the local ordinance’s requirement applies.
- Because the section 65913.4 process is ministerial, eligible projects are exempt from CEQA.
- A local agency has 60 days from project submittal to determine if the project conflicts with any “objective planning standards” (90 days if project is more than 150 units). If the agency fails to respond within the timeframes, the project is deemed to satisfy the standards. (subd. (b).)
- A local agency has 90 days from project submittal to complete any “design review or public oversight” (180 days if the project is more than 150 units). The review or 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.” (subd. (c).)

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