

SB 35 Streamlining Checklist

City of Oakland

January 2023

Review the criteria below for proposals being processed subject to the streamlined, ministerial approval process for affordable housing developments under Government Code Section 65913.4, commonly referred to as an SB 35 project. To be eligible for this process, a development proponent must demonstrate that the proposal satisfies all of the following objective planning standards. If the answer for any of the questions is “no” the proposed project is not subject to streamlining.

In addition, prior to submitting an application for streamlined ministerial approval under Government Code Section 65913.4, an applicant must first submit a notice of intent preapplication to the City, which commences the tribal scoping consultation process in accordance with AB 168. Only when the tribal scoping consultation is completed may an applicant submit an application for streamlined ministerial approval.

1. The development is a multifamily housing development that contains two or more residential units.
2. The development and the site on which it is located satisfy all of the following:
 - a. It is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau.

(Note: Project site consisting of legal parcel(s) located within the City of Oakland will meet this criterion. The City of Oakland is designated by the United States Census Bureau as an urbanized area.)

- b. At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

(Note: The State Housing and Community Development Guidelines define an urbanized area as any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.)

- c. It is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, and at least two-thirds of the square footage of the development is designated for residential use.

(Note: Additional density, floor area, and units, and any other concession, incentive, or waiver of development standards granted pursuant to the Density Bonus Law in Section 65915 shall be included in the square footage calculation. The square footage of the development shall not include underground space, such as basements or underground parking garages.)

3. The development proponent proposes to dedicate at least 50% of the total number of residential units, whether rental or for-sale, to below market rate housing affordable to households making below 80% area median income (AMI).

(Note: According to the determination summary published by the California Department of Housing and Community Development, the City of Oakland has met its 2013-2021 Regional Housing Need Allocation (“RHNA”) goals for the “above market” income category; however, the City has not demonstrated sufficient progress in meeting the RHNA for the lower income categories. Therefore, the City of Oakland is subject to SB 35 and projects are required to provide 50 percent of the total (base density) for lower-income households to qualify for streamlined, ministerial approval.)

4. The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the Density Bonus Law in Section 65915, is consistent with all applicable objective zoning standards, objective subdivision standards, and objective design review standards.
5. The development is not located on a site that is any of the following:
 - a. Within a coastal zone
 - b. Prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by a local ballot measure
 - c. Wetlands
 - d. Within a very high fire hazard severity zone
 - e. A hazardous waste site (Cortese list site)
 - f. Within a delineated earthquake fault zone
 - g. A special flood hazard area subject to inundation by the 1% annual chance flood,
 - h. A regulatory floodway,
 - i. Lands identified for conservation in an adopted community conservation plan, habitat conservation plan, or other adopted natural resource protection plan
 - j. A habitat for protected species,
 - k. Land under conservation easement
6. The development is not located on a site where any of the following apply:
 - a. The development would require the demolition of (i) housing subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; (ii) housing that is subject to any form of rent or price control; or (iii) housing that has been occupied by tenants within the past 10 years.
 - b. The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submitted an application for development.
 - c. The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.
 - d. The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.
7. The development did not or does not involve a subdivision of a parcel that is subject to the Subdivision Map Act unless the development is consistent with all objective subdivision standards in the local subdivision ordinance, and either of the following apply:
 - a. The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid.
 - b. The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used.

8. The development is not be located on an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

IF THE PROPOSAL IS DETERMINED ELIGIBLE FOR SB 35 STREAMLINING:

Approvals must be completed within 90 days of submittal (for proposed projects involving 150 or fewer units) or 180 days of submittal (for proposed projects containing more than 150 housing units). As ministerial approvals, these projects are NOT subject to CEQA under CEQA Guidelines Section 15268.

The development proponent must certify to the City that, assuming the entirety of the proposed project is not a public work as defined under Government Code Section 65913.4(a)(8)(A) and includes more than 10 units, 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, as determined by the California Department of Industrial Relations, and shall ensure that the prevailing wage requirement be included in all contracts for the performance of the work. (See Gov. Code § 65913.4(a)(8)(A).)

If the proposed project consists of 50 or more units with a residential component that is not 100 percent subsidized affordable housing, the development proponent must further certify to the City that the work will be performed by a skilled and trained workforce. (See Cal. Gov. Code § 65913.4(a)(8)(B).)

The development proponent must commit to record, prior to issuance of the first building permit, a land use restriction or covenant providing that any affordable housing units included in the project remain available at affordable housing costs or rent for no less than 55 years for units that are rented and 45 years for units that are owned. (See Cal. Gov. Code § 65913.4(a)(3).)

No parking requirements may be imposed on a qualified streamlining project if it is located

- Within a half-mile of public transit;
- Within an architecturally and historically significant historic district;
- In an area where on-street parking permits are required but not offered to the occupants of the development; or
- Where there is a car-share vehicle located within one block of the proposed project.

Automobile parking requirements not to exceed one parking space per unit may be required of all other qualified streamlining projects.

All SB 35 approvals remain valid for a period of three years from approval and as long as vertical construction has begun and is in progress.