



DISCLAIMER: This document is intended solely as a technical overview of required processes for reviewing housing developments proposed under SB 35 (Government Code 65913.4). It is not intended to serve as legal advice regarding any jurisdiction's specific policies or any proposed housing development project. Local staff should consult with their city attorney or county counsel regarding this document.

SB 35 Application Processing for Local Governments

Effective January 1, 2024

Background

This document provides a step-by-step guide for processing SB 35 applications. This document can be used to develop an internal application review process for staff to process and review applications. It is meant to be used along with the [SB 35 Template Application Checklist](#), also available on ABAG's Regional Housing Technical Assistance Program web pages.

Steps for Application Processing

Step 1: Receipt of Notice of Intent

- a. The [City/County] receives notice of intent to submit an SB 35 application. A notice of intent is a preliminary application (sometimes called an SB 330 application) containing *all* of the items listed in Gov. Code section 65941.1¹ as it existed on January 1, 2020.²

[Note: The city/county should include on the preliminary application form a space for applicants to indicate whether the applicant is submitting the preliminary application as a notice of intent for SB 35, since a preliminary application may be submitted for other purposes.]

- b. Although a jurisdiction is not required to review a preliminary application for completeness, if it is being submitted as a notice of intent for SB 35 review, staff should review the preliminary application to determine if it contains all of the items listed in Section 65941.1. If not, staff should advise the applicant that items are

¹ All future references are to the Government Code unless otherwise stated.

² Only one change has been made in the list of required information since January 1, 2020. Section 65941.1(a)(8)(C) previously referenced a hazardous waste site listed pursuant to Section 65962.5 or a site designated by the Department of Toxic Substances Control pursuant to Health & Safety Code section 25356. Also, subsection (e) of Section 65941.1 was adopted after January 1, 2020, and so is not applicable to a preliminary application filed for an SB 35 project.

missing, and the preliminary application will not be considered to have been submitted until those items are provided.

Step 2: Required Actions before an SB 35 Application May Be Submitted

1. Tribal Consultation

Prior to accepting an SB 35 application, the [City/County] must consult with Native American tribes based on the submitted notice of intent.

- a. The [City/County] must contact the Native American Heritage Commission to identify tribes traditionally and culturally affiliated with the area.
- b. Within 30 days of receiving the notice of intent, the [City/County] must invite the identified tribes to participate in a formal scoping consultation. The notice must include the following information:
 - i) Description of the proposed development;
 - ii) Location of the proposed development; and
 - iii) Invitation to engage in a scoping consultation.
- c. The tribes have 30 days after receipt of the notice to accept the invitation to engage in a formal scoping consultation. If no tribe accepts the invitation, or no tribe responds, then the applicant may submit an SB 35 application.
- d. If any tribe accepts the invitation, the [City/County] must commence the scoping consultation within 30 days of receiving the response. If more than one tribe responds, the tribes may jointly participate in the consultation or request separate consultations, as each tribe chooses. The parties to a scoping consultation are the [City/County] and each tribe that accepted the invitation. A tribe can approve or deny participation of the development proponent or applicant and any consultants and may rescind its approval at any time. (Section 65913.4(b) describes the principles applicable to the scoping consultation.)
- e. Result of scoping consultation:
 - i) The project is eligible for SB 35 application process if:
 - Parties agree that no potential tribal cultural resource would be affected; or
 - A potential tribal cultural resource could be affected, and an enforceable agreement is documented between the tribe and [City/County] on methods, measures, and conditions for tribal cultural resource treatment. The [City/County] must ensure that the agreement is included in the conditions of approval.
 - A tribe accepted the invitation but failed to engage in the scoping consultation after repeated documented attempts by the [City/County] to engage the tribe.
 - ii) The project is not eligible for SB 35 application process if a potential tribal cultural resource could be affected and the tribes and [City/County] do not document an enforceable agreement; or if there is disagreement about whether a tribal cultural resource exists; or if there is a tribal cultural resource on a federal, state, tribal, or local register.
- f. If the project is not eligible for SB 35 review, the [City/County] must notify the applicant and any tribe that is party to the consultation in writing, explaining the reasons, and explaining how the applicant can request a discretionary approval.
- g. Once the scoping consultation begins, there is no time limit for approval. If agreement cannot be reached between the [City/County] and the tribes, no SB 35 application may be submitted.

2. Public Meeting

- a. If the development is in a moderate resource area, low resource area, or an area of high segregation and poverty, as shown on the CTCAC/HCD Opportunity Map, the [City/County] is required to hold a public meeting within 45 days of receiving a notice of intent and before the developer submits an SB 35 application.
- b. The meeting must be held at a regular meeting of the [City Council/Board of Supervisors] (for applications in unincorporated areas), except in communities with a population over 250,000, where it must be held by the Planning Commission.
- c. If the [City/County] fails to hold the hearing within 45 days, the applicant must hold the public hearing.
- d. In its SB 35 application, the applicant must attest in writing that it attended the public meeting and reviewed the public testimony and written comments from the meeting.

Step 3: Submittal and Review of SB 35 Application

1. Required Application

Once the tribal consultation and public meeting, if required, are completed, the developer is eligible to submit an SB 35 application. This typically has two parts: (a) evidence that the project is eligible for SB 35 review; and (b) required application materials, usually the same as those required for the [City/County]'s last discretionary approval, such as design or site plan approval. If a subdivision is included, subdivision application materials must also be submitted.

2. Review for Completeness.

Review for completeness must be completed within 30 days of submittal. If the [City/County] does not respond within 30 days, the application is "deemed complete." (Section 65943).

3. Review for Consistency

- a. Review for consistency with SB 35 requirements and [City/County] objective standards (as defined in Section 65913.4) must be completed by the planning director or equivalent position within the following time limits:
 - i. 150 or fewer units: within 60 days of **submittal**
 - ii. More than 150 units: within 90 days of **submittal**
- b. These time limits are not extended even if the application is incomplete.
- c. The [City/County] cannot apply any standards that are imposed only on projects using SB 35. CEQA does not apply to a qualifying project.
- d. The [City/County] must provide written documentation to the applicant within these timeframes detailing which objective SB 35 requirements and [City/County] objective standards are not met by the project and how the project conflicts with the standards, or indicating that the project is consistent with all objective standards.
- e. A project is considered to be consistent with objective standards even if it receives a density bonus, concessions, waivers, or parking reductions under state density bonus law (Section 65915 *et seq.*). As part of this review, staff should determine if the bonus, concessions, waivers, and parking reductions can be granted.
- f. Applicants may not submit a complete application. Where applicable, staff then may indicate that it cannot determine if the project meets an objective standard because insufficient information has been submitted. If the applicant submits additional information between the receipt of an incomplete letter and the deadline to

determine consistency, the [City/County] may not have sufficient time to review revised plans. [Cities/Counties] may wish to indicate on their application forms that any new or revised submittal is considered a new application for purposes of the time limits.

- g. Comments from all [City/County] departments that are required to approve the development and evaluate compliance with objective standards must be provided within the time limits listed above.
- h. However, [Cities/Counties] cannot require studies that do not pertain directly to compliance with objective planning standards, nor require compliance with any standards necessary to receive a “postentitlement” permit, such as a building permit. Cities may wish to advise applicants of postentitlement issues if known, but are not required to do so, and cannot make the applicant change the plans to resolve the problem.
- i. If the [City/County] does not respond within the timelines, the project is "deemed consistent" with objective standards.
- j. If the planning director or equivalent position determines that the project is consistent, the [City/County] must approve the development.
- k. If the application is not consistent with objective standards or SB 35 requirements, or if there is insufficient information to make the determination, the [City/County] should deny the application but allow the applicant to either reapply or apply under ordinary discretionary review, as applicable.

4. Optional Design Review

- a. Design review of the project may be undertaken by the body that usually reviews design review applications, so long as it is completed, and a decision is made on the project within the following time limits:
 - i. 150 or fewer units: within 90 days of **submittal**
 - ii. More than 150 units: within 180 days of **submittal**
- b. Design review approval cannot "inhibit, chill, or preclude" ministerial SB 35 approval. This step is usually undertaken after the project has been found to be consistent with all objective standards and other SB 35 requirements. Since a determination has already been made regarding the project’s consistency with objective standards, design review cannot really change the conclusions.
- c. In addition, this added time can be used to develop conditions of approval.

5. Approval of Project

- b. If the project conforms with all objective standards and SB 35 requirements, a decision must be made on the project within the time limits listed in subsection (d) above.
 - i. Standard conditions of approval may be applied to the project, as well as conditions to implement the provisions of SB 35 (such as prevailing wage and affordable housing requirements) and conditions required to comply with local objective standards and to obtain a postentitlement permit.
 - ii. The approval shall not expire if at least 50 percent of the units are affordable to households making 80% of annual median income or less and includes a public investment beyond tax credits.
 - iii. For other projects, the approval will remain valid for three years from date of the SB 35 approval or final judgment upholding the approval if litigation is filed. The permit remains valid so long as construction, including demolition and grading, has begun under a valid permit and is “in progress,” as defined in Section 65913.4(g)(2)(A). The [City/County] may grant a one-year extension if the owner has made “significant progress” toward getting construction ready.

Step 4: Post-Approval Modifications and Permits

1. Modifications to Original Project

- a. After the project has been approved, the applicant may request modifications before the issuance of the final building permit required for construction.
- b. If the modification is consistent with the objective planning standards in effect when the original application was submitted, the [City/County] shall approve the modification unless one of the exceptions in (iv) below applies.
- c. Review of the modification request must be completed within 60 days of submission of the modification or within 90 days if design review is required.
- d. Objective standards adopted after the original project approval are applied if at least one of the following is true:
 - i. the modification would increase the number of units or square footage of construction by at least 15 percent, not including underground space;
 - ii. the total number of residential units or total square footage of construction changes by 5 percent or more and it is necessary to subject the development to a new objective standard to mitigate or avoid a specific, adverse impact on health or safety; or
 - iii. if the modification request is made before submittal of the first building permit application, the building standards contained at that time in the California Building Standards Code (Title 24 of the California Code of Regulations) may be applied to the project. Otherwise, SB 35 projects are not required to conform to building codes adopted after the project receives SB 35 approval unless the applicant agrees to do so.

2. Postentitlement Permits

- a. Applications for postentitlement permits such as demolition, grading, encroachment, and building permits and for final maps must be processed under state and local standards that were in effect when a preliminary application was submitted that contained all required elements, unless the applicant agrees to any change in standards. Review of these permits is subject to the time limits in Section 65913.3.
- b. If public improvements are required on [City/County]-owned property, the [City/County] may not use its discretion to inhibit, chill, or preclude the development.