REAL PROPERTY LAW

CALIFORNIA LAWYERS ASSOCIATION

presents

2024 Real Property Law Retreat

Housing Streamlining: Speeding or Speed Bumps? How the New Housing Bills are Really Working

Friday, March 8, 2024
1:30 pm – 2:30 pm

Speakers: Barbara Kautz and Linda Klein

Conference Reference Materials

COX CASTLE

News & Publications

AB 1633: CEQA Reform by Leveraging the Housing Accountability Act

12.1.23 | Client Alert

On October 11, 2023, Governor Newsom signed into law AB 1633, an innovative bill that gives the developer of a qualified infill project the ability to challenge a local government's decision to deny the use of an exemption under the California Environmental Quality Act ("CEQA") or to require further environmental analysis rather than adopt or certify the CEQA document. Although limited to these specific decisions under CEQA and to projects meeting detailed criteria, this is the first legislation to expressly authorize a developer to challenge the manner in which a local government processed a CEQA determination.

The genesis of AB 1633 lies in a 2021 decision by the San Francisco Board of Supervisors to require additional CEQA review rather than certify an environmental impact report ("EIR") for a 495-unit residential project proposed on a parking lot at 469 Stevenson Street. After the planning commission certified the EIR and approved the project, the Board required additional environmental studies, citing unsubstantiated concerns about gentrification, seismic issues, and shadow impacts on historic resources. The developer sued, claiming that the Board's action was an "effective denial" under the Housing Accountability Act ("HAA"). A court upheld the Board's decision by concluding that the HAA could not apply until after the EIR was certified. AB 1633 was introduced to address this form of CEQA abuse by authorizing a developer to sue a local agency that requires further study of a mitigated negative declaration ("MND"), EIR, or other CEQA document that satisfies the requirements of CEQA.

Related Professionals

Morgan L. Gallagher

Mitchell B. Menzer

Related Practice Areas

Land Use

AB 1633 also gives the developer of a qualified residential project the right to challenge in court a local agency that determines incorrectly that a project is ineligible for an exemption under CEQA. For example, a developer applying for entitlements may believe that the project is eligible for an exemption from CEQA, only for the local agency to take a more conservative approach and require an MND or even an EIR.

Rather than amend CEQA, AB 1633 uses the HAA to create rights for the developer to challenge these CEQA decisions. Currently, the HAA prohibits a local agency from "disapproving" a housing development project in two scenarios: disapproving the land use entitlements and failing to comply with time periods in the Permit Streamlining Act. AB 1633 adds two new categories of "disapproval" of a housing development project that address the situations involving CEQA described above.

Required Showing. To challenge a local agency decision under AB 1633, the applicant must make a specific showing based on “substantial evidence in the record.”

Exemption. With respect to an exemption, the showing is relatively straightforward. If the local agency fails to make a determination that the project is exempt, the applicant must show that (i) the housing development project is eligible for an exemption sought by the applicant, and (ii) in the case of a categorical exemption in the CEQA Guidelines, the exemption is not barred by one of the exceptions set forth in Section 15300.2 of the Guidelines.

MND, EIR or Other CEQA Document. In the case of local agency’s failure to adopt an MND or certify an EIR, the required showing is more complicated. The applicant must show that (i) a negative declaration, addendum, environmental impact report, or other CEQA document that satisfies the requirements of CEQA has been prepared and was presented to the local agency at a meeting for its adoption, approval or certification, and (ii) the agency either (a) failed to decide whether to require further study or to adopt, approve, or certify the environmental document, or (b) committed an “abuse of discretion.”

Abuse of Discretion as to an MND. For an MND, an abuse of discretion occurs if the local agency decides to require further environmental study rather than adopt the MND and it acts “in bad faith” or without substantial evidence “to support a fair argument that further environmental study is necessary . . .” The HAA defines “bad faith” to mean “an action that is frivolous or otherwise entirely without merit.”

Abuse of Discretion as to an EIR, Addendum and Other CEQA Documents. In the case of an EIR, addendum or other CEQA document, an abuse of discretion occurs if the local agency decides to require further environmental study rather than certify, adopt or approve the CEQA document and the agency acted “in bad faith” or without substantial evidence “that further environmental study is legally required” to analyze potentially significant environmental impacts.

HAA Remedies. By including these “disapprovals” in the HAA, the applicant has a statutory right to file a lawsuit under the HAA to enforce its rights. In addition, the HAA makes extensive remedies available to a successful plaintiff, including, a court order to comply with HAA, attorneys’ fees and fines imposed against the local agency, and other remedies. However, AB 1633 prohibits an attorneys’ fee award if the court finds that the local agency “acted in good faith and had reasonable cause to disapprove the housing development project due to the existence of a controlling

question of law about" CEQA or "a substantial ground for difference of opinion" regarding the CEQA Guidelines.

Project Requirements. AB 1633 is limited to projects that meet a lengthy list of qualifications. Unlike other recent laws that compel local governments to approve residential development, AB 1633 does not require the project to include affordable units, pay prevailing wages or comply with other construction labor standards. To qualify for the benefits of AB 1633, the project must satisfy the following conditions:

(i) the project must be a "housing development project" (meaning it consists of residential units only, mixed-use with at least two-thirds of the floor area designated for residential use, or transitional or supportive housing) with density of at least 15 dwelling units per acre;

(ii) the project may not be located on a site meeting any of ten environmental sensitivity criteria incorporated from SB 35 (i.e., within the coastal zone, on prime farmland or farmland of statewide importance, within a wetland, on a hazardous waste site, in an earthquake fault zone, in a special flood hazard area, in a regulatory floodway, on land identified for conservation or under a conservation easement, or on habitat for protected species);

(ii) the site cannot be in a high or very high fire hazard severity zone; and

(iii) the project site must be on a legal parcel within an urbanized area and meeting one or more of the following infill development criteria:

1. within one-half mile walking distance to a high-quality transit corridor (i.e., a bus route with a frequency of service interval of 15 minutes or less during peak periods) or a major transit stop (i.e., a rail, bus rapid transit or ferry station, or the intersection of two bus routes with a frequency of service interval of 15 minutes or less during peak periods);
2. in a very low vehicle travel area (defined as an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita);
3. developed with urban uses that adjoin at least 75% of the perimeter of the site or at least three sides of a four-sided project site (parcels separated only by a street or highway are considered adjoined); or
4. proximal to six or more specified amenities, meaning (i) within one-half mile of a bus station or ferry terminal, or (ii) within one mile, or for a parcel in a rural area (as defined), within two miles, of a supermarket or grocery store, public park, community center, pharmacy or drug store, medical clinic or hospital, public library, or school that maintains a kindergarten or any of grades 1 to 12, inclusive.

Procedural Requirements. To exercise rights under AB 1633, the applicant must first give timely written notice to the agency of the action or inaction the applicant believes constitutes a disapproval and the local agency must fail to make a correct determination within 90 days of the written notice. The local agency may extend the 90-day timeframe by up to 90 additional days if an extension is necessary to determine whether there is substantial evidence in the record to support the applicant's contention.

COX CASTLE

AB 1633 goes into effect on January 1, 2024.

DISCLAIMER: *This document is intended solely as a technical overview of required processes for reviewing discretionary housing approvals. 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.*

CITY/COUNTY OF _____
SB 330, HAA, AND PERMIT STREAMLINING ACT PROJECT TRACKING FORM

Use this form to track a project from the receipt of a Preliminary Application until the project either is approved, disapproved, or abandoned. Please note that SB 330 does not affect CEQA. All timelines and processes under CEQA apply equally to housing projects whether or not they have submitted a preliminary application.

Is the project eligible to submit a preliminary application? Only housing development projects as defined in Government Code Section 65905.5(b)(3)[1] are eligible to submit a preliminary application. If the following does **not** apply, then a preliminary application may not be submitted.

- ☐ The project is a "housing development project" as defined in the Housing Accountability Act, which includes: a project containing any of the following: (1) residential units only (at least 2 units); (2) a mix of commercial and residential uses, with 2/3 of the project's square footage used for residential purposes; or (3) transitional or supportive housing.) (§ 65589.5(h)(2).)
- ☐ A project for one single-family home.

Both discretionary and ministerial housing development projects may submit preliminary applications. *However, this tracking form is intended to be used for discretionary projects rather than for those using state-prescribed ministerial processes, such as SB 35 or AB 2011.*

Key Dates to Track:

Date Complete Preliminary Application is Submitted: _____

180 Days After Preliminary Application Submittal: _____

Date Application for Housing Development is Received: _____

30 Days After Receipt of Application: _____

Date of First Incomplete Letter (if applicable): _____

90 Days After First Incomplete Letter (if applicable): _____

Date of Resubmittal (if applicable): _____

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

Date Application is Deemed Complete Under Permit Streamlining Act:_____

Deadline for Notifying Applicant of All Inconsistencies: _____
(30 or 60 days after application deemed complete under the Permit Streamlining Act)

Enter the date on which each hearing is held for the project following the date the application is deemed complete. Reserve the bracketed hearing for a City Council appeal if the item can be appealed to the Council and is not automatically heard by the Council.

1) _____ 2) _____ 3) _____

4) _____ [5) _____]

DETAILED EXPLANATION

1. **Preliminary Application Submittal (if applicable).** Enter the date on which a complete Preliminary Application was submitted by the applicant: _____. The Preliminary Application will expire on _____ (180 days after submission) if a regular application is not submitted. **NOTE:** ***An applicant is not required to submit a Preliminary Application before submitting a project application*****, but if one is submitted, ordinances, policies, and standards in effect on the date of a complete submission vest[2] unless the Preliminary Application expires as described below, the units or square footage change by 20 percent or more, or construction is not started within 2 ½ years of "final project approval" as defined in the statute.** (§§ 65589.5(o); 65941.1)

   NOTE: The statute does not require that staff review the Preliminary Application to ensure that all required elements are included. However, a city may wish to advise the applicant of any deficiencies .

   If the Preliminary Application is complete, check here →☐

   Date applicant contacted in writing (if applicable): _____
   Date deficiencies corrected (if applicable): _____
   (Update Preliminary Application expiration date above to reflect 180 days from the date of resubmittal.)

2. **Project Application Submittal:** Date project application is received: _____

   If the project application was received prior to the expiration of the Preliminary Application, check here → ☐ Otherwise, the Preliminary Application expires and the applicant will have

[2] Note that the vesting provisions do not apply to projects for one single-family home. The vesting provisions are provided under the Housing Accountability Act, which does not apply to single-family homes. However, the statute allows an applicant for a single-family home to submit a preliminary application.

to submit a new Preliminary Application to vest ordinances, policies, and standards in effect on the date of submission.

3. **Permit Streamlining Act Compliance/Possible Preliminary Application Expiration:** Within 30 days of project application submittal, the City must notify the applicant in writing of any deficiencies with the application. Otherwise, it will be deemed complete. (§ 65943.)

   Enter the deadline to provide an incomplete letter: _____

   If the initial submittal of the project application was complete, check here and skip the rest of this section → □

   If the application is incomplete, the City must provide the applicant with an "exhaustive" explanation of any deficiencies. The City may not require the applicant to submit any materials not included in the City's application checklist.

   Enter date incomplete letter was sent: _____

   NOTE: The applicant will have 90 days to correct any deficiencies, or the Preliminary Application will expire. Although the statute is not clear, it is probably reasonable to allow the applicant to resubmit at any time within the 180-day period, so long as it is finally completed within 90 days after the applicant receives an incomplete notice regarding the last submittal. (§ 65941.1(d).)

   Enter the deadline to cure deficiencies: _____
   Enter the date any corrected application is received: _____

   If the corrected and complete application was received prior to the 90 day deadline, check here → □ Otherwise, the Preliminary Application expires and the applicant will have to submit a new Preliminary Application for ordinances, policies, and standards in effect on the date of submission to vest.

4. **Historical Resources:** At the time the project is deemed complete, the City must advise the applicant whether historical resources exist on the project site. (§ 65913.10.) **Subject to CEQA**, a determination as to whether a parcel or property is historic shall remain valid during the pendency of the housing development project for which the application was made unless any archaeological, paleontological, or tribal cultural resources are encountered during any grading, site disturbance, or building alteration activities. As soon as possible after the project application is received, staff should advise the applicant whether any of the following exist on site: (1) any structure on a national, state, or local register; (2) any structure or feature otherwise identified as historic by the City; or (3) any structure or feature over 50 years old that may require an historic evaluation. **NOTE**: The developer as part of the Preliminary Application is supposed to indicate whether the site contains historic resources.

   If the project site is determined to contain any of the above, check here → □

NOTE: If any structure located on the project site is at least 50 years old, the applicant should submit a historic study at the same time the project application is submitted, together with DPR 523, so that the City may make a timely determination whether the structures are historic. *This requirement needs to be on the City's application form.*

Do any structures require a historic determination? Yes → ☐ No → ☐
If yes, did the applicant submit a historic evaluation and DPR 523 concurrently with the project application? Yes → ☐ No → ☐
If any structures are ultimately determined to be historic, check here → ☐

Date applicant advised of historic resource determination (if applicable): _____

5. Enter the date the project was deemed complete under the Permit Streamlining Act: _____

6. **Notification of Inconsistencies Pursuant to the Housing Accountability Act:** Government Code Section 65589.5(j)(1) limits an agency's ability to deny or reduce the density of a project that complies with objective general plan, zoning, design, and subdivision standards. Section 65589.5(j)(2) further states that:

> (2) (A) If the local agency considers a proposed housing development project to be inconsistent, not in compliance, or not in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision as specified in this subdivision, it shall provide the applicant with written documentation identifying the provision or provisions, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity as follows:
>
> (i) Within **30 days of the date that the application for the housing development project is determined to be complete**, if the housing development project contains 150 or fewer housing units.
>
> (ii) Within **60 days of the date that the application for the housing development project is determined to be complete**, if the housing development project contains more than 150 units.
>
> (B) If the local agency fails to provide the required documentation pursuant to subparagraph (A), the housing development project shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision.

Deadline to advise the applicant of inconsistencies with objective standards: _____
If the project is consistent with all objective standards, check here → ☐
Date applicant notified of inconsistencies (if applicable): _____
If deadline is missed so that the project is deemed consistent, check here → ☐

7. **Public Hearing Tracker:** *Following the date the application is deemed complete under the Permit Streamlining Act*, the City is limited to holding five public hearings for a project subject to SB 330 that complies with objective general plan and zoning standards. "Hearing" is defined to mean any public hearing, **workshop**, or similar meeting conducted by the city respect to the housing development project, whether by the city council, planning commission, zoning administrator or any other city body or official. A continued hearing and an appeal both count as a "hearing." (Government Code § 65905.5)

   Note that the five-meeting limit does not apply to the following:

   - Meetings held before the project is deemed complete under the Permit Streamlining Act.
   - Projects that are not consistent with all objective general plan and zoning standards. (However, if the general plan is inconsistent with the zoning, and the project complies with the general plan, the project is considered to be consistent.)
   - Projects that require legislative approvals.
   - Additional meetings required by CEQA.
   - Meetings not conducted by the City, such as a meeting held by the applicant.

   If City Council is not the final approval authority for any project, check here → □, and schedule not more than four hearings to reserve a hearing for a City Council appeal.

   Enter the date on which each hearing is held for the project following the date the application is deemed complete. Reserve the bracketed hearing for a City Council appeal if the above box is checked.

   1) _____ 2) _____ 3) _____

   4) _____ [5) _____]

8. **Date of final project decision** _____.

   NOTE: Use this date to track the 2 ½ year period during which standards in effect on the date the Preliminary Application is submitted are vested. "Final project approval" means the date by which: (1) the project has received all necessary approvals to be eligible to apply for, and obtain, a building permit or permits; (2) all appeal periods, statutes of limitations, and the like have expired; and (3) any legal challenges to the project have been resolved. (§ 65589.5(o)(2)(D).)

COX CASTLE

News & Publications

2023 California Legislation Update: A Continued Focus on Land Use Laws to Promote Housing Production

12.4.23 | Client Alert

In recent years, California's housing crisis has been the primary focus of land use legislation, with over 100 substantial housing-related land use bills enacted since 2016. The 2023 legislative session continued this trend, with Governor Gavin Newsom signing a package of 56 housing-related bills on October 11, 2023, most of which address land use issues.

The 2023 legislative session produced several major land use bills intended to streamline entitlement procedures to promote housing production. These include **SB 4**, which allows a religious institution or independent institution of higher education to build a housing development project on its property "by right" under certain circumstances. **SB 423** extends the sunset date of SB 35 and makes numerous substantive changes to the law. **AB 1633** extends the Housing Accountability Act to cover a local government's refusal to adopt an exemption under the California Environmental Quality Act ("CEQA") and its decision to require further study rather than certify an environmental impact report, adopt a negative declaration or approve other CEQA documents. **AB 1287** amends the Density Bonus Law to allow density bonus projects to further increase the density bonus and to include moderate-income units in a rental project for additional density. Separate Client Alerts on these bills can be accessed at the following links: SB 4, SB 423 (Part I / Part II / Part III), AB 1633 and AB 1287.

Related Professionals

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Related Practice Areas

Land Use

Real Estate

This Client Alert examines the other important housing-related land use bills that were signed into law this year and are listed below.

The legislature's efforts this year are notable for the wide range of areas that produced substantial legislation. We have selected the most significant bills to summarize, which are grouped in the following areas:

Density Bonus Law

SB 713: Density Bonus Law Preempts Any Local Ordinance Enacted by Initiative.

AB 323: Sale of Density Bonus Units to a Nonprofit Housing Organization.

Parking Requirements

AB 1317: Certain Residential Properties Must Unbundle Parking from the Price of Rent.

AB 894: Local Agencies Must Approve Shared Parking Agreements for Underutilized Parking.

Entitlement Streamlining

SB 684: Streamlined Approval Processes for Development Projects of 10 or Fewer Residential Units.

AB 835: State Fire Marshal to Research Standards for Single-Exit Multifamily Buildings.

CEQA

AB 1307: Noise Generated by Residential Project Occupants and Their Guests Is Not a Significant Impact.

SB 69: Expanded CEQA Noticing Requirements.

AB 1449: New CEQA Exemption for Certain Affordable Housing Projects.

AB 356: No Consideration of Aesthetic Effects for Specified Dilapidated Building Refurbishment Projects.

SB 91: CEQA Exemption for Conversion of Transient Structures to Supportive or Transitional Housing Made Permanent.

Surplus Land Act

SB 747 and AB 480: Amendments to Surplus Land Act.

AB 1734: Surplus Land Act Exemption for the City of Los Angeles.

SB 240: Surplus State Real Property and Affordable Housing for Formerly Incarcerated Individuals.

Enforcement and Litigation

SB 439: Special Motion to Strike Created for Challenges to 100% Affordable Housing Projects.

AB 821: Zoning Consistency For Non-Residential Projects.

AB 1114: Permitting After Entitlements.

AB 1485: Housing Element Enforcement.

Accessory Dwelling Units

AB 1033: Local Ordinances May Allow Separate Conveyance of Accessory Dwelling Units.

AB 976: Owner-Occupant Requirements are Prohibited.

AB 1332: Local Agencies Must Create an Accessory Dwelling Unit Preapproved Plan Program.

Adaptive Reuse

AB 1490: Adaptive Reuse for 100% Affordable Housing Projects.

AB 529: Prohousing Policy and State Building Standards for Adaptive Reuse.

Housing Replacement

AB 1218: Expansion of Prohibitions on Demolition of Protected Units.

These bills go into effect on January 1, 2024, except for AB 1307 (which took effect September 7, 2023) and SB 684 (which takes effect on July 1, 2024).

Density Bonus Law

SB 713 (Padilla): Density Bonus Law Preempts Any Local Ordinance Enacted by Initiative.

SB 713 amends the state Density Bonus Law's definition of "development standards" to include any standard that is enacted by the local government's electorate through an initiative or referendum. SB 713 confirms a technical assistance letter issued by the state Department of Housing and Community Development that the state Density Bonus Law applied to height limits in a local voter initiative (the San Diego Coastal Height Limit Overlay Zone). As a result of SB 713, the incentives, concessions and waivers in the Density Bonus Law will be available to supersede restrictive development standards in voter-approved initiatives or referenda.

AB 323 (Holden): Sale of Density Bonus Units to a Nonprofit Housing Organization.

AB 323 imposes additional requirements on the developer of for-sale housing in a project that uses the Density Bonus Law, specifying that the developer must sell the unit to an individual who meets the income requirements or, if the unit is not sold within 180 days after the project's certificate of occupancy is issued, to a non-profit that meets certain requirements. The non-profit must be a tax-exempt affordable housing corporation based in California and whose board members live in California. In reselling the unit, the non-profit must retain a repurchase option that requires the purchaser to first offer the non-profit the opportunity to repurchase the property in the event of certain sales.

AB 323 also prohibits a developer who sells a unit constructed pursuant to a local inclusionary zoning ordinance (regardless of whether the Density Bonus Law was used) to anyone other than an individual meeting the income qualifications or a non-profit that meets the requirements described above. AB 323 prescribes civil penalties of up to $15,000 for each violation of this prohibition.

Parking Requirements

AB 1317 (Carrillo): Certain Residential Properties Must Unbundle Parking from the Price of Rent.

AB 1317 requires certain residential projects in specified counties to lease parking separately from the lease of the residential unit. This bill applies to residential property that (i) is issued a certificate of occupancy on or after January 1, 2025, (ii) consists of sixteen or more units, and (iii) is located in any of the following counties: Alameda, Fresno, Los Angeles, Riverside, Sacramento, San Bernardino, San Joaquin, Santa Clara, Shasta, or Ventura. Parking may not be included in any residential rental agreement and the property owner and tenant must execute a separate rental agreement or addendum for the parking space. If a tenant fails to pay the parking fee by the forty-fifth day after payment is due, the property owner may revoke the tenant's right to lease that parking space. A tenant's failure to pay the parking fee for a separately leased parking space, however, is not a basis for an unlawful detainer action. AB 1317 also provides tenants with a right of first refusal to parking spaces that become available on the property. If no parking spaces are available at the start of the term and new parking spaces are subsequently built or become available for the property, the tenant will have the right of first refusal to an available parking space. If there are excess parking spaces not leased by tenants, then the landlord may rent the parking space to off-site residential users on a month-to-month basis.

AB 1317 does not apply to one-hundred percent affordable housing projects, developments that receive low-income tax credits or are financed with tax-exempt bonds, and residential properties with individual garages that are functionally part of the unit, such as townhouses and row houses.

AB 894 (Friedman): Local Agencies Must Approve Shared Parking Agreements for Underutilized Parking.

AB 894 requires local agencies to ministerially approve shared parking agreements to meet parking requirements. A local agency must approve a shared parking agreement and allow the shared parking spaces to satisfy parking requirements in new or existing developments if the parking agreement (i) uses underutilized (20% or more unoccupied) parking, (ii) includes a parking analysis using peer-reviewed methodologies (e.g., ULI, ICSC, NPA), (iii)

secures long-term provision of parking or allows for periodic review and approval, (iv) involves parking located on the same or contiguous parcels, and (v) does not require more than 2,000 feet of travel by the shortest walking route or, if more than 2,000 feet of travel is necessary, provides shuttles or other accommodations. Local agencies may also require proof of execution of the agreement as a condition for approval of the project. This bill provides additional requirements for new development using state or public funds.

Entitlement Streamlining

SB 684 (Caballero): Streamlined Approval Processes for Development Projects of 10 or Fewer Residential Units.

To encourage smaller developments and homeownership and to address "missing middle" housing, SB 684 creates a streamlined approval process for qualifying infill projects in urban areas that include 10 or fewer lots and 10 or fewer housing units**.** SB 684 creates a new subdivision process that requires the local government to consider the subdivision "without discretionary review or a hearing". The proposed subdivision must be on land zoned for multifamily residential development, be no larger than five acres, be substantially surrounded by urban uses, and within an incorporated city or an urbanized area of a county with a population greater than 600,000 people. The housing units must be constructed on fee simple lots, be part of a common interest development or housing cooperative or owned by a community land trust. Proposed units cannot exceed 1,750 square feet. Projects developed under SB 684 are not required to include affordable units, pay prevailing wages or meet other construction labor standards.

In addition, if the proposed development is on a site identified in a jurisdiction's housing element, it must result in at least as many units as projected for that site. If not identified in a housing element, the development must result in at least as many units as the underlying maximum allowable residential density.

Local governments have 60 days to approve an application and cannot impose objective standards that (i) preclude development at the prescribed density, (ii) are below specified floor area ratios, (iii) require setbacks between units or side and rear setbacks greater than those permitted under SB 9, or (iv) require enclosed or covered parking. Local governments can only deny an application by making a finding that the proposed development would have a specific, adverse impact on public health and safety, which is a difficult finding to make.

SB 684 goes into effect July 1, 2024.

AB 835 (Lee): State Fire Marshal to Research Standards for Single-Exit Multifamily Buildings.

Current state law requires that apartment buildings over three stories have two stairwells, or "means of egress." Having two stairwells results in extra floor area dedicated to the second stairwell, effectively limiting the development potential of many infill lots and increasing construction costs. Originally adopted for fire safety, the requirement has become obsolete with modern building codes and fire safety requirements. Numerous other countries, and cities such as New York City and Seattle, currently permit construction of single-stair buildings above three stories (generally up to 10 stories). AB 835 requires that the State Fire Marshal research standards for single-exit, single stairway apartments in buildings above three stories and report on new building codes that could permit such structures.

AB 835 expires on January 1, 2028.

CEQA

AB 1307 (Wicks): Noise Generated by Residential Project Occupants and Their Guests Is Not a Significant Impact.

AB 1307 clarifies that the effects of noise generated by occupants of residential projects and their guests on human beings is not a significant environmental effect. This bill is a direct response to the recent ruling in *Make UC A Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656, which invalidated an environmental impact report for a student housing project over this issue.

As an urgency statute, AB 1307 took effect on September 7, 2023.

SB 69 (Cortese): Expanded CEQA Noticing Requirements.

SB 69 adds a new filing requirement for notices of determination and notices of exemption. In addition to filing the notice with the county clerk for the county in which the project is located, the local agency must file the notice with the State Clearinghouse in the Office of Planning and Research to commence the applicable CEQA statute of limitations period. SB 69 also requires the county recorder and the State Clearinghouse to post the notices on their websites within 24 hours.

AB 1449 (Alvarez): New CEQA Exemption for Certain Affordable Housing Projects.

AB 1449 creates a new CEQA exemption for affordable housing projects meeting specific requirements, which include: (i) the project consists of residential uses or a mix of residential and nonresidential uses with at least two-thirds of the square footage of the project designated for residential use, (ii) all of the residential units within the project, exclusive of any manager's units, are reserved for lower income households, (iii) compliance with specified construction labor standards (i.e., prevailing wages) incorporated from AB 2011, and (iv) compliance with various site eligibility requirements.

The bill's site requirements include the project being located on a legal parcel in any of the following locations: (a) in a city where the city boundaries include some portion of either an urbanized area or urban cluster, or, if in an unincorporated area, the legal parcel or parcels are wholly within the boundaries of an urbanized area or urban cluster, (b) within one-half mile walking distance to either a high-quality transit corridor or a major transit stop (i.e., rail, bus rapid transit or ferry station, or the intersection of two bus routes with a frequency of service interval of 15 minutes or less during peak periods), (c) in a very low vehicle travel area (defined as an urbanized area, as designated by the United States Census Bureau, where the existing residential development generates vehicle miles traveled per capita that is below 85 percent of either regional vehicle miles traveled per capita or city vehicle miles traveled per capita), or (d) "proximal to six or more amenities" listed in the bill. Proximal to an amenity means (i) within one-half mile of a bus station or ferry terminal, and (ii) within one mile, or for a parcel in a rural area (as defined), within two miles, of a supermarket or grocery store, public park, community center, pharmacy or drug store, medical clinic or hospital, public library, or school that maintains a kindergarten or any of grades 1 to 12, inclusive. If the lead agency uses this exemption, it must file a notice of exemption with the county clerk of the county in which the project is located and

the Office of Planning and Research.

AB 1449 expires on January 1, 2033.

AB 356 (Mathis): No Consideration of Aesthetic Effects for Specified Dilapidated Building Refurbishment Projects.

Existing law, until January 1, 2024, eliminates consideration of aesthetic effects under CEQA for specified projects involving the refurbishment, conversion, repurposing, or replacement of an existing abandoned, dilapidated, or vacant (for more than one year) building. AB 356 extends this law until January 1, 2029. If the lead agency determines that it is not required to evaluate the aesthetic effects of a project under this law, it must file a notice with the county clerk of the county in which the project is located and the Office of Planning and Research.

SB 91 (Umberg): CEQA Exemption for Conversion of Transient Structures to Supportive or Transitional Housing Made Permanent. Public Resources Code Section 21080.50, which exempts from CEQA projects related to the conversion of a structure with a certificate of occupancy as a motel, hotel, residential hotel, or hostel to supportive or transitional housing that meet certain requirements, was set to expire on January 1, 2025. SB 91 extends that exemption indefinitely.

<u>Surplus Land Act</u>

SB 747 (Caballero) and AB 480 (Ting): Amendments to Surplus Land Act.

The Surplus Land Act ("SLA") establishes complex procedures and priorities governing a local government's disposition of surplus property. The SLA requires all local agencies to offer surplus land for sale or lease to affordable housing developers and certain other entities before selling or leasing the land to any other individual or entity. SB 747 and AB 480 make numerous changes to the SLA, primarily by clarifying and expanding exemptions to the SLA.

The SLA permits local agencies to declare certain categories of surplus land as "exempt surplus land," which provides for a more streamlined process by eliminating certain procedural steps. To dispose of exempt surplus land, a local agency must submit a resolution with written findings supporting the exemption to the state Department of Housing and Community Development ("HCD") for review. After HCD concurs that the land qualifies as exempt surplus land, the local agency is free to sell or lease the land. By comparison, the disposition of non-exempt surplus land requires the local agency to submit documents to HCD twice during the process for its review and approval and requires additional public noticing.

SB 747 and AB 480 modify several categories of "exempt surplus land." For example, the current exemption that is based on square footage or lot size has been expanded to exempt surplus land that is less than one-half acre in area. The exemption for leasing property has been expanded to cover leases for a term of less than 15 years, inclusive of extension or renewal options (increased from 5 years) and entered into after January 1, 2024 and leases for land on which no development or demolition will occur. The current exemption for land that a local agency transfers to another agency has also been expanded to allow for a local agency to transfer land to a third-party intermediary for future dedication to the receiving agency pursuant to a legally binding agreement. The exemption for property subject to valid legal restrictions that prohibit housing has been clarified to include: (i) existing constraints under

ownership rights or contractual obligations that prevent the use of the property for housing, if they were agreed to prior to September 30, 2019; (ii) conservation or other easements or encumbrances that prevent housing development; (iii) existing leases or other obligations or restrictions agreed to prior to September 30, 2019; and (iv) restrictions imposed by a source of funding a local agency used to purchase a property under certain circumstances.

SB 747 and AB 480 also add new categories of exempt surplus land, including (i) land owned by a public-use airport on which residential uses are prohibited, (ii) land transferred to a community land trust under certain circumstances, and (iii) land developed for commercial or industrial uses or for the sole purpose of investment or generation of revenue if the agency meets several conditions, including adoption of a land use plan or policy that meets specified minimum residential designations.

The bills also create an exemption for dispositions that will result in a project with at least 25 percent of units restricted to low-income households, so long as the surplus land is sold through the local agency's open, competitive solicitation process or an open, competitive bid. The development must be at least 10 acres and have the greater of (i) not less than 300 residential units, or (ii) the lesser of (a) the number of residential units equal to 10 times the number of acres of the surplus land, or (b) 10,000 residential units.

Similarly, the bills create a new category of exempt surplus land for mixed-use developments that (i) restrict at least 25 percent of the residential units to low-income households, (ii) have at least 50 percent of the floor area of new construction designated for residential use, and (iii) are not located in an urbanized area.

SB 747 and AB 480 also specify that for certain categories of exempt surplus land, the local agency may issue a 30-day notice of findings that is available for public comment instead of taking action at a public meeting.

Notably, AB 480 amends certain sections of the SLA that SB 747 does not address, including the section that governed those situations in which a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property. In those circumstances, the SLA as it existed on December 31, 2019 (i.e., before changes to the SLA enacted by the landmark bill AB 1486) applies to the disposition of the property provided the disposition is completed by December 31, 2027. Prior to AB 480, the date for completion was either December 31, 2022, or December 31, 2024, depending upon where the property was located.

Finally, a local agency must send out a Notice of Availability (NOA) before "participating in negotiations" to sell or lease surplus land. SB 747 and AB 480 clarify what "participating in negotiations" under the SLA means. In addition to the items that are currently excluded from "participating in negotiations," the bills add the following exclusions: (i) issuing a request for proposals or qualifications to entities under certain circumstances, (ii) negotiating a lease, exclusive negotiating agreement, or option agreement under certain circumstances, and (iii) negotiating with a developer to determine if the local agency can satisfy disposal exemption requirements.

AB 1734 (Jones Sawyer): Surplus Land Act Exemption for the City of Los Angeles.

AB 1734 creates a special exemption from the Surplus Land Act for the City of Los Angeles where the disposition is for use as: (i) a low barrier navigation center, (ii) supportive housing, (iii) transitional housing for youth and young adults, or (iv) 100% affordable housing. To qualify for this exemption, the city's housing element must comply with state law and the city must be designated prohousing by the state Department of Housing and Community Development. AB 1734 specifies that if Los Angeles disposes of land that qualifies under the criteria above and the development it not a public work in its entirety, prevailing wages must be paid and other labor standards satisfied. If the city disposes of land involving construction or rehabilitation of 40 or more housing units, the work must be subject to a project labor agreement. AB 1734 imposes civil penalties on the city for violations in the amount of 30% of the greater of the final sale price or the fair market value of the land in the case of a sale for the first violation, which is increased to 50% for subsequent violations.

AB 1734 sunsets on January 1, 2034.

SB 240 (Ochoa Bogh): Surplus State Real Property and Affordable Housing for Formerly Incarcerated Individuals.

Disposition of surplus land owned by the State of California, although not covered by the SLA, has its own statutory procedures and requirements. Currently, prior to disposing of state-owned property to a private entity or individual, the state Department of General Services ("DGS") must first offer the property to "potential priority buyers." "Potential priority buyers" are local agencies and nonprofit affordable housing sponsors that intend to use the property for open space, public parks, affordable housing projects, or local government-owned facilities. SB 240 adds an additional category to the current list of "potential priority buyers" to include local agencies and nonprofit affordable housing sponsors that intend to utilize surplus property to house formerly incarcerated individuals.

"Potential priority buyers" must notify DGS of their interest in surplus state property within 90 days of DGS posting availability of the property on its website. In its notification to DGS, the "potential priority buyer" must demonstrate, to the satisfaction of DGS, that the property, or a portion thereof, will be used for one of the stated purposes. If title is transferred from the state to an agency or nonprofit for housing formerly incarcerated individuals, a regulatory agreement must be recorded on the property mandating continuous use for that purpose for at least 40 years.

If more than one public agency expresses interest in the property, priority must be given to the public agency that intends to use the surplus land for affordable housing or housing for formerly incarcerated individuals. If the property is not transferred for those purposes, the priority will be given to the local agency that intends to use the property for open space, public parks, or development of local government-owned facilities. If more than one local agency requests to use the property for affordable housing or to house formerly incarcerated individuals, DGS must transfer the property to the local agency offering the greatest number of units.

If the surplus property is not sold to a "potential priority buyer" within 60 days of authorization of the sale, DGS is authorized to proceed with a sale to private entities or individuals. If no local agency or nonprofit affordable housing sponsor is interested in the property, the disposal of the surplus property to private entities or individuals must be completed through a public bidding process designed to obtain the highest, most certain return for the state from a responsible bidder.

SB 240 also creates a CEQA exemption for the development of surplus land by a local agency or nonprofit affordable housing sponsor for an affordable housing project acquired pursuant to this law.

Enforcement and Litigation

SB 439 (Skinner): Special Motion to Strike Created for Challenges to 100% Affordable Housing Projects. SB 439 creates a new Code of Civil Procedure section that authorizes a developer defending a lawsuit to file a special motion to strike all or a part of any lawsuit, including one filed under CEQA, that challenges a "priority housing development project," which is defined as a development in which 100 percent of the units, exclusive of any manager's units, will be reserved for lower income households for at least 55 years. To survive the motion, the plaintiff must establish that there is a "probability that the plaintiff will prevail on the claim." If the developer's motion to strike is successful, it will be entitled to recover attorneys' fees and costs.

AB 821 (Grayson): Zoning Consistency For Non-Residential Projects.

Government Code Section 65860 requires consistency between a local agency's zoning ordinance and its general plan and authorizes a resident or property owner to file a lawsuit to enforce such consistency. In most instances, however, practical considerations make the litigation remedy available to developers a non-starter. As a result, local agencies could often ignore the consistency "requirements" of state law.

In 2018, the Legislature amended Housing the Accountability Act ("HAA") to address this inconsistency situation for "housing development projects," which include mixed-use projects where at least two-thirds of the project's square footage consists of residential use. Under the HAA, subject to certain requirements, a proposed "housing development project" may not be denied on the grounds that the property's zoning is inconsistent with the local agency's general plan, as long as the project is consistent with the "objective general plan standards and criteria."

AB 821 provides, in limited circumstances, protection against zoning inconsistency to development applications for projects that are not covered by the HAA. Those include commercial, industrial, and retail projects, as well as housing projects that do not fall within the HAA's definition of a "housing development project." For example, with AB 821, a mixed-use project where less than two-thirds of the project's square footage consists of residential use will get the benefit of not always requiring strict consistency between the general plan and zoning.

The limited circumstances under which AB 821 applies are those where (i) a general plan amendment makes a property's zoning inconsistent with the general plan and (ii) a development application is received that is consistent with the general plan but not the zoning. In those cases, the local agency is required to either (i) amend the zoning to be consistent with the general plan within 180 days of the filing of the development application, or (ii) process the application using the objective standards of the general plan, but not those of the inconsistent zoning. With the second option, the objective general plan standards must be applied to allow density as proposed by the application, provided that density is consistent with the objective general plan standards. AB 821 specifically applies to charter cities.

AB 1114 (Haney): Permitting After Entitlements.

In 2022, the legislature enacted timelines and procedures that cover local government approval of building permits and other permits and approvals needed after the entitlement process is complete. "Postentitlement phase permits" are defined in Section 65913.3(j)(3) and consist of nondiscretionary permits and review procedures that (i) are needed after the entitlement process, (ii) are required or issued by the local agency, and (iii) relate to the construction of projects that are at least two-thirds residential.

For the most part, AB 1114 tightens the procedural handling of the local agency review of applications for postentitlement phase permits. It also provides, among other things, that once an application is determined to be complete (i.e., it contains all the information required on a list posted by the local agency at the time the application is submitted), neither appeals nor additional hearings are allowed. Permits for minor and standard excavation, grading, and off-site improvements continue to be included within the definition of postentitlement phase permits, with the local agency continuing to be allowed to "identify" the standard for designating permits as "minor" or "standard." Importantly, AB 1114 also clarifies that postentitlement phase building permits also include all building permits and other permits issued under either the California Building Standards Code (Title 24 of the California Code of Regulations) or any applicable local building code for the construction, demolition, or alteration of buildings, whether discretionary or nondiscretionary.

AB 1485 (Haney): Housing Element Enforcement.

Under California's Code of Civil Procedure, a court may allow a "nonparty" to an action to join in that action ("intervene") if the nonparty can show that it has either (i) an unconditional right to intervene, or (ii) an interest in the action that is not adequately represented by the existing parties. AB 1485 grants the state Department of Housing and Community Development ("HCD") and the Attorney General the "unconditional right" to intervene in any action brought by any party to enforce a wide array of state housing laws listed under Government Code Section 65585(j), including the Housing Element Law, Density Bonus Law, the Housing Accountability Act, and the Housing Crisis Act. The practical effect of AB 1485 is that if, for example, a developer brought an action against a local agency to enforce the Housing Accountability Act, the court would be required to allow HCD and/or the Attorney General to intervene to support the developer in that action without demonstrating that they had an interest in the case that the developer could not adequately represent.

Accessory Dwelling Units

AB 1033 (Ting): Local Ordinances May Allow Separate Conveyance of Accessory Dwelling Units.

AB 1033 permits local agencies to adopt an ordinance that allows for the separate conveyance of the primary dwelling unit and an accessory dwelling unit (ADU) as condominiums. A local ordinance must require (i) the conveyance to comply with the Davis-Stirling Common Interest Development Act, the Subdivision Map Act, and any objective requirements of a local subdivision ordinance, (ii) recordation of the condominium plan, (iii) safety inspection of the ADU, (iv) consent of all lienholders, which must be recorded, (v) consumer protection notices, (vi) utility provider notification, and (vii) if the ADU is located within an existing homeowners association, approval of the association. A

local ordinance may also require a new or separate utility connection for the ADU.

AB 976 (Ting): Owner-Occupant Requirements are Prohibited.

This bill prohibits local agencies from establishing owner-occupant requirements (of either the primary dwelling unit or accessory dwelling unit) for ADU permit applications. The bill also allows local agencies to require that the property be rented for a term of 30 days or longer, thereby prohibiting short-term rentals of ADUs.

AB 1332 (Carrillo): Local Agencies Must Create an Accessory Dwelling Unit Preapproved Plan Program.

To encourage ADU development, AB 1332 requires all local agencies to develop a program for preapproved ADU plans by January 1, 2025. This bill allows individuals and organizations to submit plans for preapproval and the local agency must approve or deny the plan pursuant to the ADU standards established by the state ADU law, Government Code Section 65852.2. Preapproved ADU plans must be posted on the local agency's website, effectively creating a catalog of preapproved ADU plans for residents interested in building an ADU to choose from. Local agencies may also add ADU plans to the program that was developed by the local agency itself and plans that were preapproved by other local agencies.

This bill also provides that a detached ADU plan that (i) has been preapproved by the local agency's program, or (ii) is identical to a plan used in an application for a detached ADU approved by the local agency within the current triennial California Building Standards Code rulemaking cycle is subject to an expedited ministerial application approval process. The local agency must approve or deny the application within 30 days – half the time required under Government Code Section 65852.2.

Adaptive Reuse

AB 1490 (Lee): Adaptive Reuse for 100% Affordable Housing Projects.

AB 1490 requires a local government to allow an "extremely affordable adaptive reuse project" that meets certain qualifications, even if the use is inconsistent with the local agency's general plan, specific plan, zoning ordinance, or other regulations. Generally, an adaptive reuse project converts an existing commercial building to multifamily residential use. An "extremely affordable housing project" is defined as a project that meets the following criteria: (i) it is a housing development project (i.e., it consists of residential units only, mixed-use with at least two-thirds of the floor area designated for residential use, or transitional or supportive housing), (ii) it involves the retrofitting and repurposing of a residential building or commercial building that currently allows temporary dwelling or occupancy (i.e., hotels and motels), (iii) the development will be entirely within the envelope of the existing building, and (iv) it is 100% affordable (except for any managers' units) to low-income households, with at least 50% of the units dedicated to very-low income households.

The project must also meet certain site-related requirements. The project (i) must be located on an infill parcel, (ii) cannot be on a site or adjoined to any site where more than one-third of the square footage on the site is dedicated to industrial uses, (iii) cannot eliminate existing open space, and (iv) for developments of 50 units or more, there must be onsite management services. An infill parcel must have at least 75 percent of the perimeter of the site adjoining

parcels that are developed with urban uses and the parcel must be within one-half mile of a major transit stop.

A project that meets all these requirements will be an "allowable use" notwithstanding any conflict with the local agency's general plan, specific plan, zoning ordinance, or other regulations. Furthermore, local agencies may not "impose or require the curing" of any of the following zoning standards: (i) maximum density, (ii) maximum floor area ratio, (iii) any requirement to add additional parking, and (iv) any requirement to add additional open space. A local agency may apply objective design standards so long as the design standards do not affect the foregoing zoning standards.

AB 1490 provides that a project that meets its requirements will, for purposes of the Housing Accountability Act (the "HAA"), be deemed to be compliant with "an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision," and therefore eligible for the benefits of the HAA.

AB 1490 requires the local agency to provide a written determination as to whether the project conflicts with objective planning standards and objective design review standards (i) within 60 days or less if the development contains 150 or fewer housing units, or (ii) within 90 days or less if the development contains more than 150 units. If the local agency fails to respond within these timeframes, the application will be deemed to be in compliance with the applicable development standards and requirements.

AB 529 (Gabriel): Prohousing Policy and State Building Standards for Adaptive Reuse.

Currently, a jurisdiction that has been designated as "prohousing" can receive additional points and other preferences in the scoring of competitive housing, community development, and infrastructure programs. Under existing law, "prohousing local policy" is a local policy that facilitates the planning, approval, or construction of housing, which may include local financial incentives for housing, reduced parking requirements for sites that are zoned for residential development, the adoption of zoning allowing for use by right for residential and mixed-use development and numerous other policies. AB 529 expands that definition to include the facilitation of the conversion or redevelopment of commercial properties into housing, including through the adoption of an adaptive reuse ordinance. Additionally, AB 529 requires HCD to create a working group that identifies challenges and opportunities to help support adaptive reuse projects, which may include proposing amendments to state building standards.

Housing Replacement

AB 1218 (Lowenthal): Expansion of Prohibitions on Demolition of Protected Units.

The Housing Crisis Act of 2019, among other things, prohibits certain cities or counties from approving a housing development project (as defined) that will require the demolition of occupied or vacant protected units, unless specified conditions are met, including replacement of the protected units. AB 1218 expands this prohibition to the approval of non-residential projects (i.e., commercial projects) that (i) will require the demolition of occupied or vacant protected units, or (ii) are located on a site where protected units were demolished in the previous five years, unless the project will replace all existing protected units and protected units demolished on or after January 1, 2020. AB 1218 requires that the development project must ensure that the replacement housing is developed prior to or

concurrently with the development project and may: (i) replace protected units offsite within the same jurisdiction as the project site, and (ii) contract with another entity to develop the required replacement housing. Industrial projects that meet the following requirements are not subject to the replacement obligations: the project must be entirely in a zone that does not allow residential uses and the existing residential units must be nonconforming uses.

Please contact any of the authors of this Client Alert if you would like further information on these bills.

COX CASTLE

News & Publications

Governor Signs Long-Awaited Affordable Housing on Faith and Higher Education Lands Act of 2023

10.19.23 | Client Alert

After several legislative fits-and-starts over the past few years, the California Legislature finally came to consensus on Senate Bill 4 (SB 4), which many had referred to as the "Yes In God's Backyard" or "YIGBY" bill, and the Governor signed SB 4 on October 11, 2023. SB 4 requires ministerial approval (approval without discretionary permits or review under the California Environmental Quality Act) of certain development applications for 100 percent affordable housing on land owned by an independent institution of higher education or a religious institution. In effect, SB 4 streamlines the building process for faith-based institutions and certain colleges by providing a process that allows them to build qualifying housing projects regardless of zoning restrictions if certain requirements are satisfied.

To be eligible for streamlining under SB 4, the developer, project, and site must meet numerous criteria.

Developer. Although the land must be owned by a religious institution or independent institution of higher education, the applicant must be a "qualified developer," which includes:

- Local public agencies such as cities, counties, housing authorities, and other public entities authorized to develop or operate affordable housing;
- A nonprofit corporation, a limited partnership in which a managing general partner is a nonprofit corporation, or a limited liability company in which a managing member is a nonprofit corporation which, at the time the application is submitted, owns or manages

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Land Use

property that has a welfare exemption under the state tax code;

- A developer that contracts with a nonprofit corporation that has received a welfare exemption under the state tax code for properties intended to be sold to low-income families with a zero-interest rate loan; or
- A developer that the religious institution or independent institution of education has contracted with before to construct housing or other improvements to real property.

Project. In addition to being developed by a qualified developer, the project must meet the following criteria:

- Affordability. 100 percent of the units, exclusive of the manager unit(s), must be affordable to lower-income households, except that up to 20 percent of the units can be affordable to moderate-income households and 5 percent of units can be for staff of the institution owning the land.
- Use. In addition to residential uses, the following ancillary uses are permitted:
  - In a single-family residential zone, childcare centers and facilities operated by community-based organizations for the provision of recreational, social, or educational services for use by the residents of the development and members of the local community in which the development is located; and
  - In all other zones, the development may include commercial uses that are permitted without a conditional use permit or planned unit development permit;

Further, any religious institutional use, or any use that was previously existing and legally permitted by the city or county on the site, can remain or be accommodated in the project if the following criteria are met:

  - The total square footage of nonresidential space on the site does not exceed the amount previously existing or permitted in a conditional use permit;
  - The total parking requirement for nonresidential space on the site does not exceed the lesser of the amount existing or of the amount required by a conditional use permit; and
  - The uses abide by the same operational conditions as contained in an applicable conditional use permit.
- Density and Height. The following density and height standards apply to SB 4 projects:
  - If the project is in a zone that allows residential uses, including in single-family residential zones, the allowed density is the density appropriate to accommodate housing for lower income households under Housing Element Law and the height limit is one story above the maximum height otherwise applicable to the parcel.
  - If the local government allows for greater residential density on the project site or on an adjoining parcel, than stated above, the greater density or building height applies.
  - A project in a zone that allows residential uses is also eligible for a density bonus, incentives, or concessions, or waivers or reductions of development standards and parking ratios, pursuant to the State Density Bonus Law.
  - If the project is in a zone that does not allow residential uses, the project is allowed a density of 40 units per acre and a height of one story above the maximum height otherwise applicable to the parcel, except that if local standards allow for greater residential density or heights on the project site or adjacent parcels, the greater standard applies.

- Parking. Except if the project site is within one-half mile of transit or there is a car share vehicle within one block of the site or state or local law allows less, the project must provide off-street parking of up to one space per unit (unless applicable state or local law provides for a lower standard).
- Other Development Standards. The project must comply with the local jurisdiction's objective standards not in conflict with SB 4. Notably, if the project is consistent with all objective subdivision standards, an application for a subdivision map also is exempt from the California Environmental Quality Act.
- Replacement Units. If the project would demolish existing residential units or is located on a site where residential units have been demolished in the last five years, then the project must meet the replacement unit requirements in Government Code section 66300, subdivision (d).
- Prevailing Wage. SB4 requires prevailing wages for projects over 10 units and requires specified labor standards on projects over 50 units. Specifically, for projects over 50 units, SB 4 incorporates the identical prevailing wage and other labor standards as AB 2011. (See our client alert on AB 2011, available here.)
- Safety Features. The developer of an SB4 project must conduct any hazardous materials remediation necessary to reach a level of insignificance and include MERV 13 filters in the regularly occupied areas of buildings within 500 feet of a freeway.
- Tribal Consultation. For a vacant site, the developer of an SB4 project must conduct tribal consultation and mitigate any potential adverse impacts to tribal cultural resources (if the project would adversely affect tribal cultural resources and the effect cannot be mitigated, then the project cannot use SB 4).

Site. The site must be a legal parcel and meet the following criteria:

- Owned by the institution on or before January 1, 2024;
- In a city that includes some portion of either an urbanized area or urban cluster, or, for unincorporated areas, wholly within the boundaries of an urbanized area or urban cluster;
- Adjoin parcels developed with urban uses on at least 75 percent of its perimeter; and
- Not be any of the following:
  - Located on a parcel meeting any of the criteria in Government Code Section 65913.4, subdivision (a)(6)(B) through (a)(6)(K);
  - Located on a parcel where any of the following apply:
    - The development would require the demolition of deed-restricted affordable housing, housing subject to local rent or price control, or housing that has been occupied by tenants within the past 10 years;
    - The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section;
    - The development would require the demolition of a historic structure that was placed on a national, state, or local historic register; or
    - 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.

- Adjoined to a site where more than one-third of the square footage on that site is dedicated to light industrial use;
- Located within 1,200 feet of a site that is used for heavy industry or the most recent permitted use was a heavy industrial use; or
- Located within 1,600 feet of a site that has a Title V industrial use or where the most recent permitted use was a Title V industrial use, except that for a site where multifamily housing is not an existing permitted use, the housing units on the development site cannot be located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

SB 4 also includes requirements for a local agency's action on an SB 4 application. Among other requirements, a local agency must timely inform an applicant in writing, with an explanation, if a project conflicts with any objective planning standards. If an agency fails to timely issue such documentation, the project is deemed to satisfy the required objective planning standards. A local agency can conduct design review of an SB 4 project, but such review must be focused on assessing compliance with the criteria for streamlined, ministerial review of projects and objective design standards in place when the application was submitted. Additionally, such design review must be conducted quickly—within 90 days for projects with 150 or fewer units and 180 days for projects with more than 150 units. Finally, SB 4 imports certain requirements from Government Code section 65913.4, including provisions regarding the life of approvals, project modifications, subsequent permits, and necessary public improvements.

The law sunsets on January 1, 2036.

Developers should be aware that there are several constraints to the use of SB 4. For example, independent institutions of higher education for purposes of SB 4 do not include public higher educational institutions like the California State University, University of California, and California Community College systems, which educate most college students graduating from California high schools.[1] In addition, even with a streamlined entitlement process there are significant barriers to scaling the development of affordable housing on these sites.[2] One notable study found that roughly 171,000 acres of land throughout the state would be eligible for development under SB 4, but development on that land could be hampered by the complexity of obtaining financing for affordable housing and the lack of technical expertise in developing housing.[3]

Perhaps more importantly, the lengthy requirements for both a project site and the project itself likely will limit the utility of SB 4. In particular, the requirement to pay prevailing wage may be burdensome for non-profit institutions that may not have large budgets for housing projects. Only time will tell whether SB 4 is a useful tool in the fight to increase housing production or just another well-intentioned but convoluted law that ultimately fails to produce a meaningful amount of affordable housing.

Please feel free to contact any of the authors if this client alert if you would like further information on how to navigate SB4's opportunities and constraints.

[1] Public Policy Institute of California, *Geography of College Enrollment in California* (Sept. 21, 2021). Available at https://www.ppic.org/blog/geography-of-college-enrollment-in-california/. Housing on public university property is addressed by SB 886, another bill sponsored by Senator Wiener and signed into law this legislative session.

[2] Terner Center for Housing Innovation, *The Housing Potential for Land Owned by Faith-Based Organizations and Colleges*, Website Summary (Aug. 30, 2023). Available at https://ternercenter.berkeley.edu/blog/faith-based-and-college-land-housing/.

[3] Terner Center for Housing Innovation, *The Housing Potential for Land Owned by Faith-Based Organizations and Colleges* (Aug. 30, 2023), pp. 10–11. Available at https://ternercenter.berkeley.edu/wp-content/uploads/2023/08/Faith-Based-and-College-Lands-Housing-2023-.pdf.

DISCLAIMER: *This document is intended solely as a technical overview of required processes for reviewing housing developments proposed under SB 35. 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 STEP-BY-STEP FOR LOCAL GOVERNMENTS
(GOV. CODE 65913.4)
Effective January 1, 2024

1) Receipt of Notice of Intent.

a) City 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 65941.1[1] as it existed on January 1, 2020.[2]

> **NOTE**: The city 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 city is not required to review a preliminary application for completeness, if it is being submitted as a notice of intent for SB 35 review, the city should review the preliminary application to determine if it contains all of the items listed in Section 65941.1. If not, the city should advise the applicant that items are missing, and the preliminary application will not be considered to have been submitted until those items are provided.

2) Required Actions before an SB 35 Application May Be Submitted.

a) Tribal Consultation. Prior to accepting an SB 35 application, the city must consult with Native American tribes based on the submitted notice of intent.

i) The city must contact the Native American Heritage Commission to identify tribes traditionally and culturally affiliated with the area.

ii) Within 30 days of receiving the notice of intent, the city must invite the identified tribes to participate in a formal scoping consultation. The notice must include the following information:
   (1) Description of the proposed development;
   (2) Location of the proposed development; and
   (3) Invitation to engage in a scoping consultation.

iii) 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.

[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.

iv) If any tribe accepts the invitation, the city 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 and each tribe that accepted the invitation. A tribe can approve or deny participation of development proponent and consultants and may rescind its approval at any time. (Section 65913.4(b) describes the principles applicable to the scoping consultation.)

v) Result of scoping consultation:
   (1) The project is eligible for SB 35 application process if:
      (a) Parties agree that no potential tribal cultural resource would be affected; or
      (b) A potential tribal cultural resource could be affected, and an enforceable agreement is documented between the tribe and city on methods, measures, and conditions for tribal cultural resource treatment. The city must ensure that the agreement is included in the conditions of approval.
      (c) A tribe accepted the invitation but failed to engage in the scoping consultation after repeated documented attempts by the city to engage the tribe.
   (2) The project is not eligible for SB 35 application process if a potential tribal cultural resource could be affected and the tribes and city 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.

vi) If the project is not eligible for SB 35 review, the city 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.

vii) Once the scoping consultation begins, there is no time limit for approval. If agreement cannot be reached between the city and the tribes, no SB 35 application may be submitted.

b) Public Meeting.

i) 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" (available here: https://www.treasurer.ca.gov/ctcac/opportunity.asp), the city 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.

ii) The meeting must be held at a regular meeting of the City Council or 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.

iii) If the city fails to hold the hearing within 45 days, the applicant must hold the public hearing.

iv) 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.

3) Submittal and Review of SB 35 Application.

a) 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 agency's last discretionary approval, such as design or site plan approval. If a subdivision is included, subdivision application materials must also be submitted.

b) Review for Completeness. Review for completeness must be completed within 30 days of submittal. If the city does not respond within 30 days, the application is "deemed complete." (Section 65943).

c) Review for Consistency.

i) Review for consistency with SB 35 requirements and City objective standards (as defined in Section 65913.4) must be completed by the planning director or equivalent position within the following time lime limits;
   (1) 150 or fewer units: within 60 days of **submittal**
   (2) More than 150 units: within 90 days of **submittal**
   These time limits are not extended even if the application is incomplete.

ii) The city cannot apply any standards that are imposed only on projects using SB 35. CEQA does not apply to a qualifying project.

iii) The city must provide written documentation to the applicant within these timeframes detailing which objective SB 35 requirements and city 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.

iv) 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, the city should determine if the bonus, concessions, waivers, and parking reductions can be granted.

v) Applicants often do not submit a complete application. Where applicable, the city then may indicate that it cannot determine if the project meets an objective standard because insufficient information has been submitted. A problem may arise if the applicant submits additional information between the receipt of an incomplete letter and the deadline to determine consistency, leaving little time to examine the revised plans. Agencies may wish to indicate on their application forms that the city will review the original application, and any new submittal is considered a new application for purposes of the time limits.

vi) Comments from all city departments that are required to approve the development and evaluate compliance with objective standards must be provided within the time limits listed above.

vii) However, agencies 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. Agencies 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.

viii) If the city does not respond within the timelines, the project is "deemed consistent" with objective standards.

ix) If the planning director or equivalent position determines that the project is consistent, the city must approve the development.

x) 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 should deny the application but allow the applicant to either reapply or apply under ordinary discretionary review, as applicable.

d) Optional Design Review.

i) 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:
   (1) 150 or fewer units: within 90 days of **submittal**
   (2) More than 150 units: within 180 days of **submittal**

ii) Design review approval cannot "inhibit, chill, or preclude" ministerial SB 35 approval. This step is usually undertaken after 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.

iii) In addition, this added time can also be used to develop conditions of approval.

e) Approval of Project.

i) 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.

ii) 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.

iii) The approval shall not expire if at least 50% of the units are affordable to households making 80% of annual median income or less and includes a public investment beyond tax credits.

iv) 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 may grant a one-year extension if the owner has made "significant progress" toward getting construction ready.

4) Post-Approval Modifications and Permits.

a) Modifications to Original Project.

i) After the project has been approved, the applicant may request modifications before the issuance of the final building permit required for construction.

ii) If the modification is consistent with the objective planning standards in effect when the original application was submitted, the city shall approve the modification unless one of the exceptions in (iv) below applies.

iii) 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.

iv) Objective standards adopted after the original project approval are applied if at least one of the following is true:
   (1) the modification would increase the number of units or square footage of construction by at least 15%, not including underground space;
   (2) 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

(3) 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.

b) Postentitlement Permits.

i) 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 the preliminary application was submitted, unless the applicant agrees to any change in standards. Review of these permits is subject to the time limits in Section 65913.3.

ii) If public improvements are required on city-owned property, the city may not use its discretion to inhibit, chill, or preclude the development.

TERNER CENTER FOR HOUSING INNOVATION
UC BERKELEY

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Streamlining Multifamily Housing Production in California: Progress Implementing SB 35

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Executive Summary

Senate Bill (SB) 35 was enacted in 2018 to make it easier to build multifamily infill development in jurisdictions that are not meeting their housing production goals. SB 35 allows eligible housing developments to go through a simplified entitlement process—including bypassing review under the California Environmental Quality Act (CEQA)—so long as projects meet local objective zoning and design standards, provide a minimum percentage of affordable units, and follow certain labor provisions. SB 35 was designed to remove barriers to housing development for eligible projects, but the bill's effectiveness depends on local implementation. The law is set to 'sunset,' or expire, in 2026. SB 423, introduced by Senator Wiener in 2023, proposes to extend and amend the ministerial approval process initiated under SB 35, leading to questions of how streamlining has worked in practice.[1]

This report presents findings on how SB 35 has been used since its enactment and recommendations to inform its ongoing implementation. We analyzed data from jurisdictions' 2018–2021 Annual Progress Reports on housing development activity using SB 35 streamlining, cleaned and verified with external sources. We also interviewed 38 planners, developers, and other stakeholders to understand how SB 35 has been used in its first five years. Our findings include:

- The majority of jurisdictions in California are subject to SB 35. In June 2022, 501 of California's 539 jurisdictions were subject to some level of streamlining, covering 95 percent of the state's population.
- Between 2018 and 2021, 156 projects were approved for SB 35 streamlining or had a pending application, comprising over 18,000 new housing units. Most SB 35 projects are in the Bay Area and Los Angeles County, but use of SB 35 increased in other parts of the state after the first couple years of its implementation.
- Most SB 35 projects are 100 percent affordable developments, in which all units are designated for households with lower incomes. Interviewees said SB 35's prevailing wage requirement means the law works best for 100 percent affordable projects, which typically have public funding that already require paying prevailing wages.
- SB 35 has made the approval process for new multifamily infill development faster and more certain and has become a default approach for many affordable housing developers. SB 35 can also accelerate funding timelines for affordable projects because funding sources often require land use approvals prior to applying.
- Interviewees described SB 35 being used most often where local governments support housing production, but SB 35 has also been used to overcome local resistance to new housing. Although SB 35 removes local discretion from the approval process, developers have continued to engage local communities and sometimes accommodate jurisdictions' design requests for SB 35 projects.

- Interviewees described a learning curve for implementing SB 35, including clarification—or in some cases, creation—of objective design standards. Use of the law became easier and more common over time as jurisdictions and developers learned to navigate it. Interviewees also expressed desire for clearer guidance on some ongoing implementation issues, including tribal consultation to determine whether SB 35 projects impact tribes' cultural resources.

The report concludes with recommendations for improving SB 35's applicability and implementation. First, ongoing evaluation of SB 35's impacts will require continued improvements to data collection and reporting. Second, additional statutory amendments and guidance from the California Department of Housing and Community Development could further clarify interpretation of the law and increase its effectiveness, including more robust tools to help local planners and developers assess sites' eligibility for SB 35 streamlining. Third, policymakers should continue assessing whether and how the benefits of SB 35 streamlining could work better for projects with a mix of affordable and market-rate units.

Introduction

The State of California has passed a wave of new laws meant to facilitate housing production in recent years.[2] Among them, Senate Bill (SB) 35 was enacted in 2018 to streamline multifamily infill development in jurisdictions that are not meeting state housing production goals.[3] SB 35 allows eligible proposed housing developments to go through a ministerial (aka "by-right") rather than discretionary entitlement process—including bypassing review under the California Environmental Quality Act (CEQA)—so long as projects meet local objective zoning and design standards, provide a minimum percentage of affordable units, and follow certain labor provisions. The law is set to 'sunset,' or expire, in 2026. On February 13, 2023, Senator Wiener introduced SB 423 to extend and amend the operation of the ministerial approval process.[4]

SB 35 was designed to remove barriers to housing development for eligible projects, but the bill's effectiveness depends on local implementation. Previous research has shown that SB 35 decreased approval timeframes for qualified developments in Berkeley, Oakland, the City and County of Los Angeles, and San Francisco.[5] Building on and complementing that research, we analyzed data on housing production across the state and interviewed 38 planners, developers, and other stakeholders to understand how SB 35 has been used in its first five years. We find that between 2018 and 2021, 156 projects were approved or pending for SB 35 streamlining, totaling over 18,000 units. We also find that 62 percent of projects approved or under review for SB 35 streamlining are 100 percent affordable for low-income households (i.e., all units in the projects are designated for households with incomes below 80 percent of Area Median Income [AMI]).

Interviewees highlighted many benefits to using SB 35, including greater certainty in the outcome and an expedited approval process. Affordable housing developers repeatedly stated that SB 35 has become their default option for new development. The law is most commonly used in jurisdictions that already support new housing development and have sufficient planning staff capacity to implement it, though SB 35 has helped overcome resistance from local governments in some high-profile instances. Interviewees also identified areas for refinement in

future legislation and/or guidance from the California Department of Housing and Community Development (HCD) that would further clarify where, when, and how SB 35 can be implemented. In addition to recommendations for improving the law, interviewees expressed hope that streamlining measures will continue to be available in the years to come.

This report presents these findings and recommendations for SB 35's further implementation. The next section describes the law in more detail. Then, we present data on projects being developed with SB 35, as well as findings from the interviews on the nuances of local implementation and the relative strengths and challenges of invoking SB 35 for different projects. The final section concludes by laying out opportunities for improvement and areas for further research.

Background

State Senator Scott Wiener authored SB 35 in 2017, in the wake of an unsuccessful attempt by Governor Jerry Brown to advance a similar legislative concept through 2016 state budget negotiations. SB 35 was signed into law by Governor Brown as part of the 2017 Housing Package, a set of 15 housing bills designed to comprehensively address California's housing crisis. SB 35 is one of over 100 new laws adopted since 2017 that have been designed to increase housing production in California.[6,7]

SB 35 works in tandem with the state's land use planning and Housing Element laws. The state sets regional housing production targets, which are then allocated to cities, towns, and counties by regional governmental bodies through the Regional Housing Needs Allocation (RHNA) process. Local governments are required to create plans via their adopted Housing Elements that detail how they will meet their RHNA production targets. In jurisdictions that have not met their RHNA targets, SB 35 allows for *ministerial* approval of code compliant multifamily infill housing projects, rather than having them go through local *discretionary* approvals. Specifically, SB 35 is a procedural reform: it affects how local governments review and approve residential development; the law does not make changes to local zoning, or modify other density and use provisions that limit where and what type of multifamily housing can be built. Under discretionary review, local governments may deny or condition projects on a case-by case-basis, even if they conform to local planning regulations, like zoning codes and general plans.[8] Discretionary review processes vary across jurisdictions, and can be lengthy and unpredictable. Entitlement delays can drive up the cost of development, resulting in higher housing costs.[9] By giving developers an opportunity to bypass discretionary review, SB 35 offers a tool to expedite housing approvals in jurisdictions that have not permitted enough housing.

For projects applying and eligible for SB 35 streamlining, local governments instead can only evaluate projects against existing and *objective* planning standards and laws. Objective standards are those that "involve no personal or subjective judgment by public official" and are both measurable and verifiable, leaving no gray area for interpretation.[10] For example, design requirements that call for 'consistency with neighborhood character' are subjective and not applicable to SB 35 projects. Because environmental impact review under CEQA is only triggered by local discretionary review, SB 35 projects are not subject to CEQA. Local govern-

ments are also required to adhere to expedited timelines for review and approval of entitlement applications: 90 days for smaller projects containing 150 housing units or less and 180 days for larger developments.

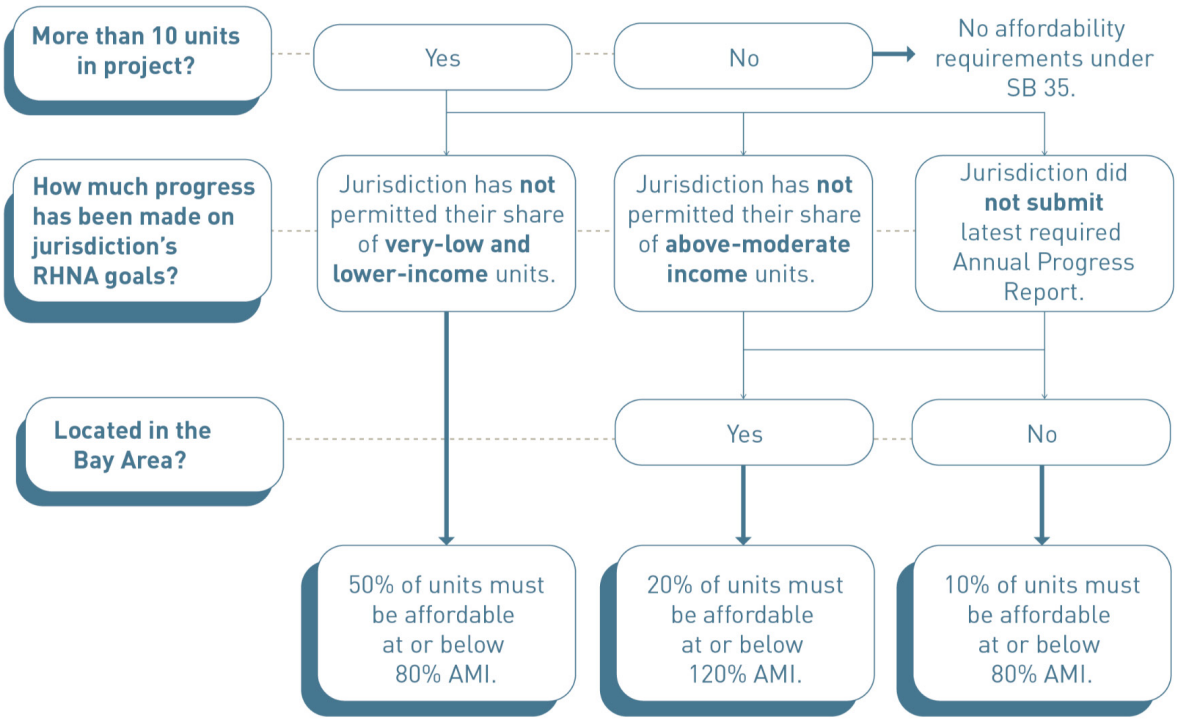
HCD is authorized under SB 35 to determine implementation guidelines. Those guidelines determine the applicability of SB 35 in each of California's 539 jurisdictions (cities and unincorporated areas of counties, including charters) using permit data from each jurisdiction's Annual Progress Reports (APR) to measure their housing development activity and progress towards meeting their RHNA goals.

HCD classifies jurisdictions into one of three categories:

1. Jurisdictions on-track to meet their RHNA goals are not subject to SB 35 streamlining.
2. Jurisdictions not on-track to meet their RHNA goals for above moderate-income units, and jurisdictions that have not submitted their latest required APR, are subject to streamlining for projects with at least 10 percent affordable units.
3. Jurisdictions that have permitted their share of above moderate-income units but are not on-track to meet their RHNA goals for very low- or low-income units are subject to SB 35 streamlining for projects with at least 50 percent affordable units.

The specific affordability requirements for a given project are set by a jurisdiction's SB 35 determination and the project's total number of units, with different requirements for the nine-county Bay Area than for the rest of the state (Figure 1).[11]

Figure 1. Affordability Requirements Under SB 35



Source: Based on HCD's Updated Streamlined Ministerial Approval Process Guidelines (2021).

Because very few cities have met their RHNA targets, most of California's cities and counties have been subject to SB 35. HCD's SB 35 determinations in June 2022 show that 501 of California's 539 jurisdictions were subject to some level of streamlining, covering 95 percent of the state's population: 238 were subject to streamlining for projects with at least 50 percent affordable units, and 263 were subject to streamlining for projects with at least ten percent affordable units.[12] Only five jurisdictions have never been subject to SB 35 through 2022.[13] Jurisdictional determinations for SB 35 have shifted over time as their housing production increases or decreases relative to their RHNA goals, or as they submit missing APR data to HCD: 202 localities saw their determination change at least once between 2018 and 2022 and 34 experienced at least two changes (see Appendix A). Most changes in determinations led jurisdictions to become subject to streamlining for projects with at least 50 percent affordable units instead of 10 percent affordable units.

SB 35 only applies to *infill* sites, where 75 percent of the site's perimeter touches parcels with urbanized uses. The site cannot be in an environmentally sensitive area, such as a coastal zone, high fire hazard severity zone, earthquake fault zone, or hazardous waste site unless certain conditions are met. Projects cannot demolish housing that has been occupied by tenants within the past ten years or historic structures.

SB 35 projects are also subject to labor provisions—payment of *prevailing wage* and/or use of a *skilled and trained* workforce during construction—based on the number of units and characteristics of both the jurisdiction and the project.[14] Prevailing wage generally refers to a state-set and regionally specific minimum rate for each trade. Under SB 35, any project with more than ten units, regardless of funding sources, is required to pay prevailing wages. Depending on the jurisdiction's population and the size of the project, mixed-income SB 35 developments may also be required to use a skilled and trained workforce during construction, meaning that 60 percent of workers must have graduated from a state-approved and generally union-run apprenticeship program.[15,16] Local, state, and federal funding programs often also include prevailing wage and/or skilled and trained workforce provisions, meaning that most affordable housing projects are already subject to one or both requirements.

The requirements and guidelines for SB 35's implementation have evolved over time. HCD developed initial guidelines for SB 35's implementation in late 2018, informed by common questions and challenges that arose during the first year of local government implementation. Several subsequent revisions addressed new and ongoing issues that jurisdictions and developers faced when applying the law—such as loopholes through which local governments have tried to maintain discretion over streamlined projects—and several changes through subsequent legislation (see Appendix B).[17] For example, Assembly Bill (AB) 168 introduced requirements for jurisdictions' planning departments to consult with Native American tribes on SB 35 projects' potential impacts on tribal cultural resources. New legislation, SB 423, is currently being considered that would extend availability of SB 35 streamlining through 2035, expand eligibility, adjust the trigger for use of a skilled and trained workforce, and modify several aspects of local government review and approval for SB 35 projects.

Methods

To measure the amount, type, and location of new housing being developed through SB 35, we analyzed the 2018–2021 APR data reported by each jurisdiction and published by HCD.[18] APR data for 2022 were not yet available at the time of our analysis. The APR data include the number of proposed new housing units, completed entitlements, issued building permits, and issued certificates of occupancy by income category. Jurisdictions are also required to report whether developments applied for SB 35 streamlining, and if that application was approved, is pending, or was denied.

Preliminary analysis of APR data revealed many projects were erroneously marked as applying for SB 35 streamlining. For example, jurisdictions often reported SB 35 applications for developments that are categorically ineligible for SB 35 (i.e., detached, single-family homes) or for projects using alternative methods of streamlining. To ensure the APR data reflect SB 35 use as accurately as possible, we filtered the data to projects meeting SB 35 criteria (multifamily projects meeting each jurisdiction's affordability requirements), then verified the SB 35 applications for a sample of the projects using local public documents, correspondence with local planners, and media reports. We did not correct inconsistencies we observed in the affordability breakdown of units reported by project. The technical appendix (Appendix A) describes this data verification process as well as the completeness and limitations of the APR data in more detail. The resulting database of SB 35 projects is available on the Terner Center's website.

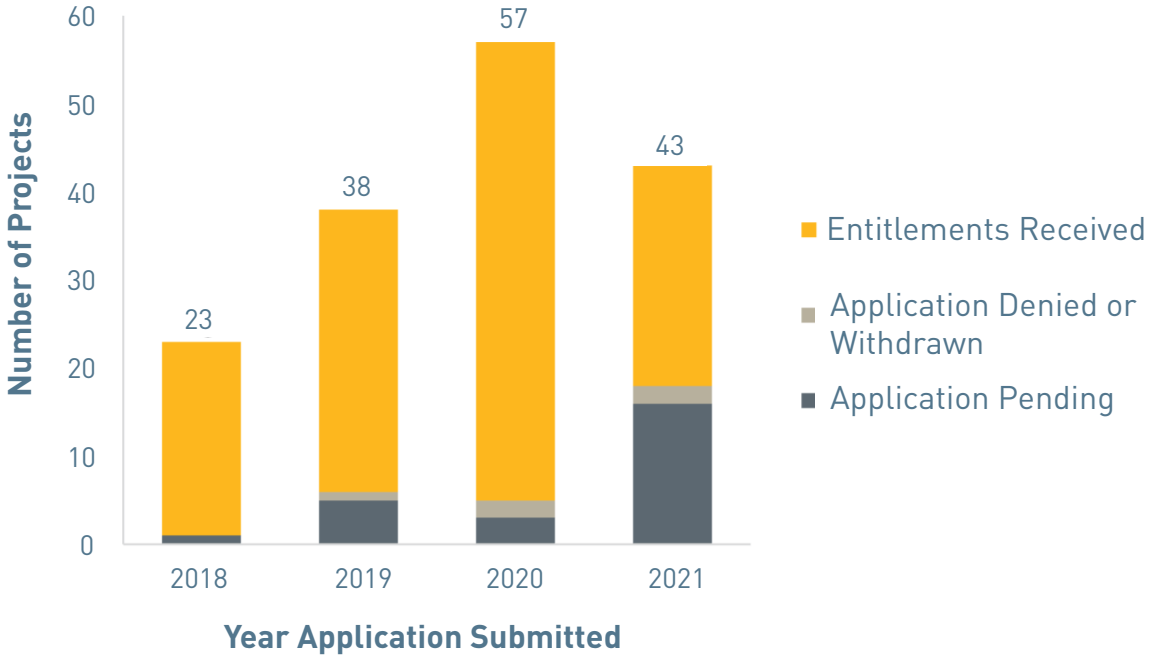
We conducted semi-structured interviews with 29 stakeholders, including local planning staff, developers, land use attorneys, and staff from HCD. These interviewees included staff from 11 jurisdictions, selected for geographic diversity and variation in the number of SB 35 applications they had received. Interviewees also included staff from eight housing developers that used SB 35 for projects with a diverse set of characteristics, including affordability levels, tenure, and project size. In addition to these interviews, our findings draw on a roundtable discussion with nine staff members from seven affordable housing developers who have used SB 35.

Findings

Between 2018 and 2021, 156 projects were approved for SB 35 streamlining or had a pending application, comprising over 18,000 new housing units.

We found that 161 projects pursued SB 35 streamlining between 2018 and 2021 (Figure 2), encompassing 18,819 proposed new housing units. As of 2021, 133 of those projects had been deemed eligible for streamlining and another 23 were still under review. These 156 projects together encompass 18,215 proposed new housing units. The APR data show very few projects that have pursued SB 35 have been denied streamlining, though some projects had to apply more than once before being found eligible. Given the low rate of project denials, it is likely that many of the remaining project applications still under review at the time of the 2021 APR submission have since been approved.

Figure 2. Proposed SB 35 Projects by the Year of Application and Approval Status as of 2021



Source: Terner Center analysis of Annual Progress Report Data, 2018–2021.
Notes: The chart includes all 161 proposed SB 35 projects, including those that were denied or withdrawn.

SB 35 has made the approval process for new multifamily infill development faster and more certain, becoming a default approach for many affordable housing developers.

Developers typically found that SB 35's strongest advantages aligned well with the intent of the law: expedite the development process for code-compliant projects that provide much-needed affordable housing. SB 35's strict timelines for local government review and approval, CEQA exemption, and removal of discretionary review help to speed up the entitlement process, generally leading to time and cost savings. Caleb Roope, Chief Executive Officer of the Pacific Companies, estimated that using SB 35 saves about a year during the entitlement process, because the law "really hems local government into a specific process that isn't negotiable and can't be abused as easily—it's pretty rigid and there are specific timelines. They pretty much have to comply with the guardrails of the law."[19] Amanda Locke from AMG & Associates, Inc., similarly explained that "some jurisdictions will throw the book at you in terms of development standards to try and overwhelm you with all these conditions and standards you have to meet, many of which are typically applicable at the building permit phase" but "SB 35 draws a clear box around what a city can specifically request during the entitlement process."[20]

Other interviewees suggested that the greatest advantage of SB 35 is the increased clarity and certainty of project approval, even for projects that would

not require lengthy approval processes without SB 35. Ben Rosen, Director of Real Estate Development for Weingart Center, described SB 35 eligible parcels becoming "almost like a firm search criteria" when considering sites for new construction projects: "Not just because of the time, but also because it provides for ministerial approvals, which is a key factor."[21] These benefits of SB 35 partly derive from its CEQA exemption, which saves the time and cost of environmental impact analysis and eliminates the risk of CEQA lawsuits.

Exemption from parking requirements is another major benefit to SB 35. Elsa Rodriguez, a principal planner for Los Angeles County, said "SB 35 has the most lenient parking exemptions that I've seen," except for Assembly Bill (AB) 2097 (2022), which removes minimum parking requirements within half a mile of public transit under most conditions.[22] She explained that without SB 35, projects that cannot provide parking "then have to apply for another discretionary parking permit." By avoiding these additional discretionary steps, SB 35 saves substantial time and effort for project approval: "Anything going to a hearing in my department, you're looking at least a year. It's that kind of stuff where I think SB 35 is really valuable."[23]

SB 35 is one of a handful of streamlining options available for different types of affordable housing or infill development. While developers frequently said that the choice of which type of streamlining to pursue is project dependent, affordable housing developer staff from Mercy Housing, Affirmed Housing, Abode Communities, Resources for Community Development (RCD), and the Weingart Center each said that SB 35 is typically their default choice. Affirmed Housing's Rob Wilkins attributed their preference for SB 35 to the law's robust parking exemptions. RCD's Courtney Pal highlighted the relative strengths of SB 35's expedited approval timelines, estimating that entitlement takes about half the time under SB 35 than it does with the Class 32 CEQA exemption, which exempts qualified infill developments from CEQA review.

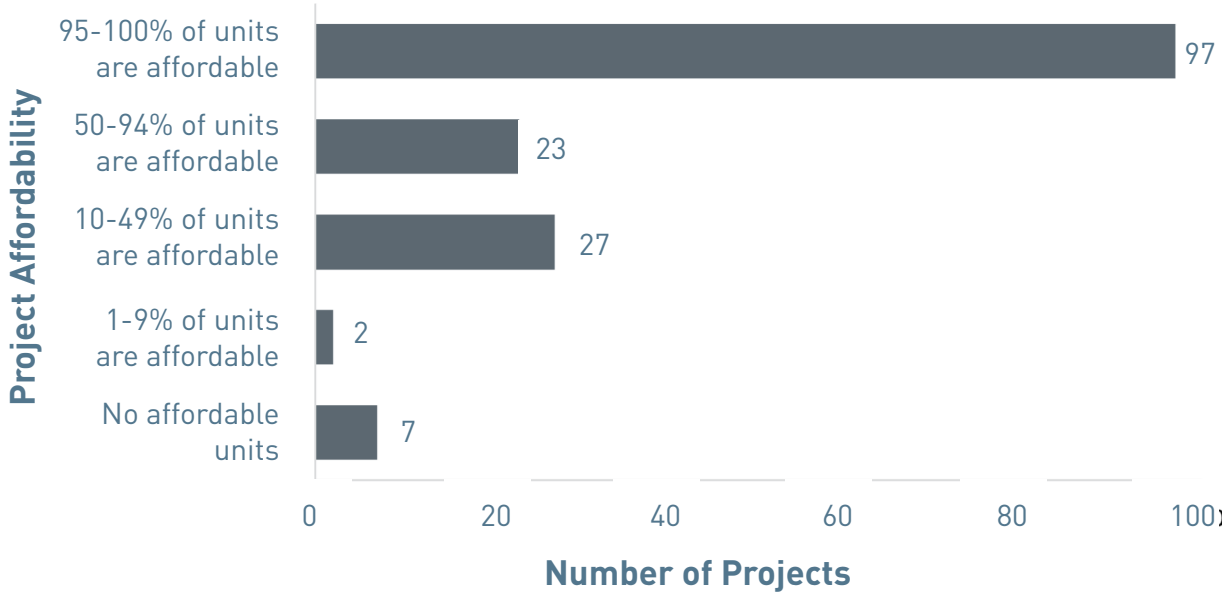
Most SB 35 projects are 100 percent affordable developments.

Although SB 35 allows streamlining on mixed-income projects, APR data show that 97 of 156 approved or pending SB 35 projects (62 percent) are 100 percent affordable for lower-income households, meaning that all units are targeted to households with incomes below 80 percent of AMI (Figure 3).[24] One-third of projects are mixed-income properties with a combination of affordable and market-rate units, while very few were entirely market-rate (only 7 of 156). While projects with ten or fewer units are not required to provide affordable units and are exempt from SB 35's labor provisions, only 14 projects were 10 or fewer units (Figure 4).

A greater share of projects might be 100 percent affordable than APR data suggest. We observed several projects specifying mixed-income units in the APR data that are listed as 100 percent affordable in other places, such as local government websites. These discrepancies may reflect reporting errors or the fact that a project's affordability is not locked in until the developer has assembled the financing, which typically happens after entitlement.

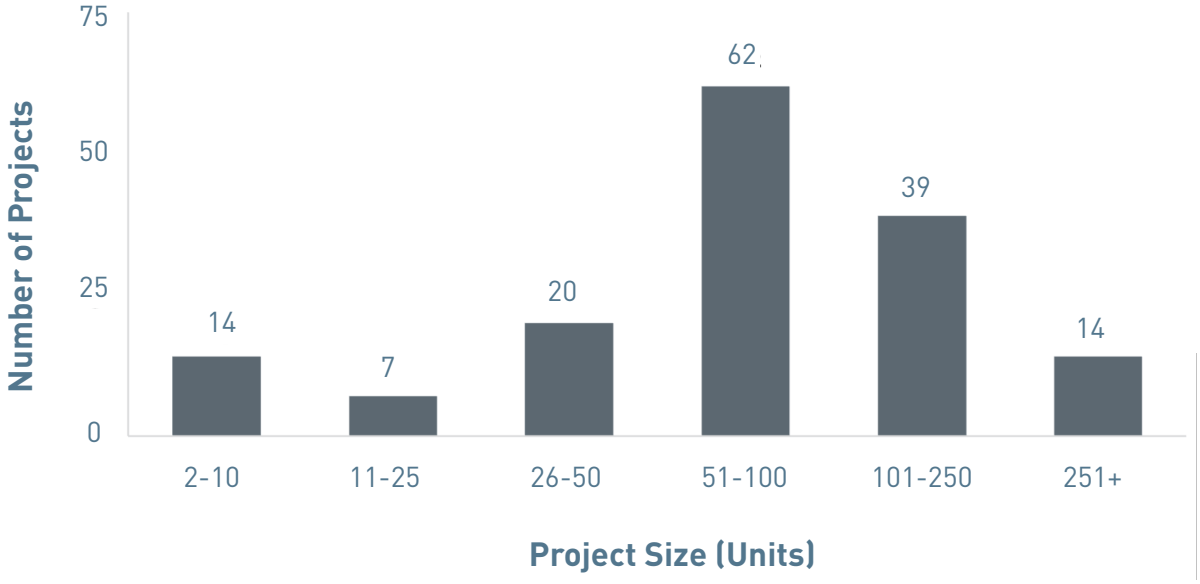
Most of the units in the 156 approved or pending SB 35 projects are designated for low-income households. About 13,000 units are designated for low-income households earning 80 percent of AMI

Figure 3. Number of SB 35 Projects by the Share of Affordable Units



Source: Terner Center analysis of Annual Progress Report Data, 2018–2021. Note: Universe represents 156 projects (those approved for streamlining or still under review) and does not include projects that were denied for streamlining or whose applications were withdrawn. For the purpose of this analysis, we consider projects in the 95–100 percent affordable range as 100 percent affordable, understanding that a small number of market-rate units are earmarked for property managers or other on-site staff.

Figure 4. Number of SB 35 Projects by Project Size



Source: Terner Center analysis of Annual Progress Report Data, 2018–2021.
Note: Universe represents 156 projects (those approved for streamlining or still under review) and does not include projects that were denied for streamlining or whose applications were withdrawn.

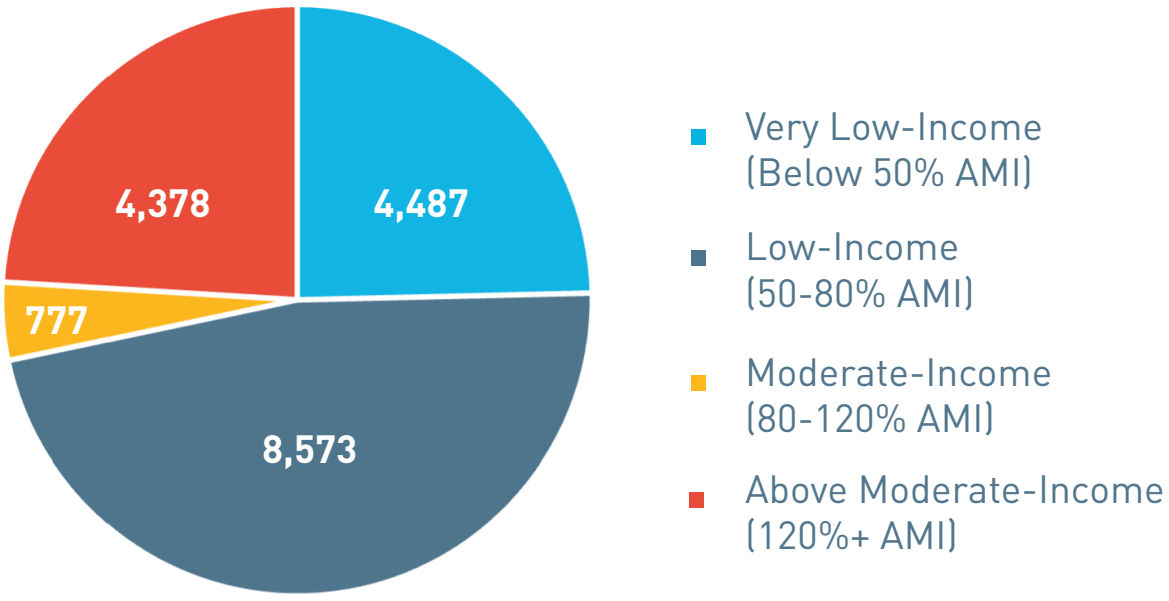
or below. About 4,500 units are for very low-income households (below 50 percent of AMI) and about 8,600 are for low-income households (between 50 and 80 percent of AMI) (Figure 5). While a relatively small number of units are for moderate-income households (between 80 percent and 120 percent of AMI), about 4,400 units—nearly a quarter of all SB 35 units—are for above moderate-income households (at least 120 percent of AMI).

Most SB 35 projects are in the Bay Area and Los Angeles County, but use of SB 35 increased in other parts of the state after the first couple years of its implementation.

SB 35 projects are concentrated in the Bay Area and Los Angeles County. Of the 156 SB 35 projects, 63 are in the five-county Bay Area, followed by 59 in Los Angeles County (Figure 6). Only 34 projects, about 22 percent of all SB 35 projects, are outside of these two regions. However, the use of SB 35 increased in other parts of the state after the first couple years of its implementation, growing from 11 percent of applications in 2018–2019 (six of 53 projects) to 27 percent in 2020–2021 (28 of 103 projects).

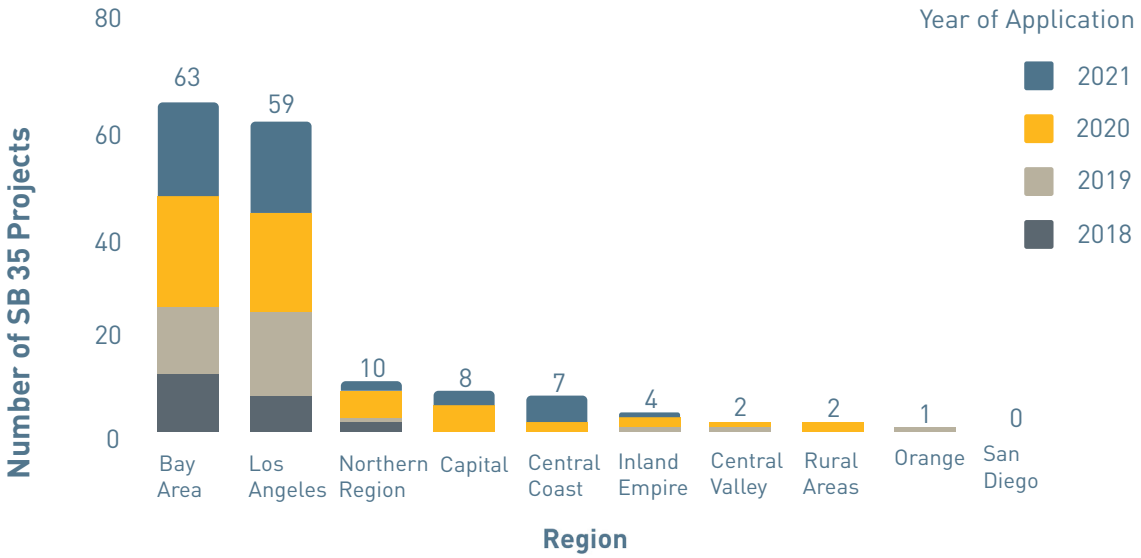
The Bay Area's concentration of SB 35 projects is more pronounced when compared to its share of overall multifamily housing development. Figure 7 shows that 61 percent of units in SB 35 projects are in the Bay Area, almost three times the region's share of all units in multifamily projects (21 percent) and the region's share of affordable units in multifamily projects (21 percent) proposed during the same time frame. Although Los Angeles County includes nearly as many SB 35 projects as the Bay Area, the region's share of SB 35 units (23 percent) is lower than its share of all units in proposed multifamily projects (39 percent), and lower than its share of

Figure 5. Number of Units in SB 35 Projects by Affordability Level



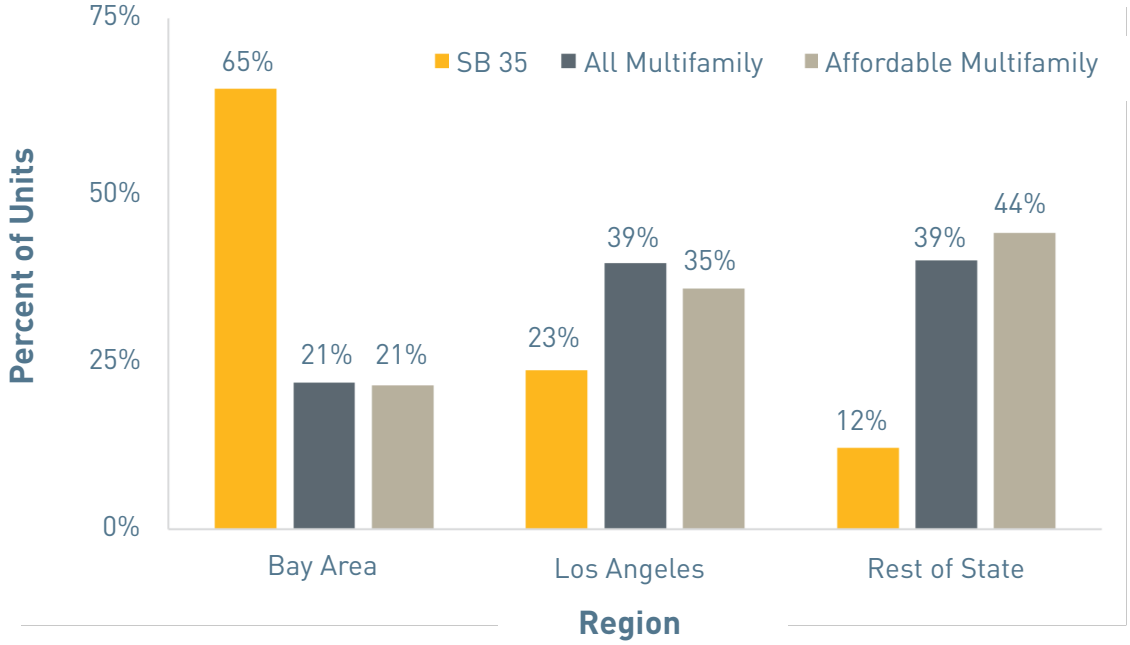
Source: Terner Center analysis of Annual Progress Report Data, 2018–2021. Note: Universe represents 156 projects (those approved for streamlining or still under review) and does not include projects that were denied for streamlining or whose applications were withdrawn.

Figure 6. Number of SB 35 Projects by Region and Year of Application, 2018–2021



Source: Annual Progress Reports, 2018–2021. California Department of Housing and Community Development. Notes: The regions are collections of one or more counties, based on those defined by the California Tax Credit Allocation Committee. The five-county Bay Area includes Alameda, Contra Costa, San Francisco, Santa Clara, and San Mateo counties. Los Angeles includes Los Angeles County and all cities within it.

Figure 7. SB 35 Units Compared to Units in Multifamily Developments, 2018–2021



Source: Annual Progress Reports, 2018–2021. California Department of Housing and Community Development. Notes: Multifamily developments include projects with at least two units that are not single-family homes, accessory dwelling units, or mobile homes. 'All multifamily' includes units at any affordability level. 'Affordable multifamily' includes units for households with incomes below 80 percent of AMI.

affordable units in proposed multifamily projects (35 percent).

Compared to other parts of the state, SB 35 projects in the Bay Area are also larger. Most SB 35 projects (51 percent) in the Bay Area have over 100 units, compared to 24 percent of SB 35 projects in Los Angeles and 21 percent of projects elsewhere (Table 1). The share of SB 35 projects with all affordable units is the same in the Bay Area and other regions of the state (68 percent) but lower in Los Angeles (53 percent).

The higher share of 100 percent affordable projects in the Bay Area compared to Los Angeles may partly reflect more Bay Area jurisdictions having a higher affordability threshold for SB 35 projects. In the Bay Area, most SB 35 projects (49 of 63 projects) are in jurisdictions requiring at least 50 percent affordable units. In Los Angeles, most SB 35 projects (35 of 59 projects) are in jurisdictions requiring at least 10 percent affordable units. Statewide, SB 35 projects tend to be 100 percent affordable more often in jurisdictions subject to the 50 percent affordability threshold than in jurisdictions subject to the 10 percent affordability threshold.

Geography also contributes to the differences in the number and type of SB 35 projects between places. The amount of land for potential infill development is greater in urban than rural areas, and varies by the type of terrain in the jurisdiction. For example, a planner for the County of Santa Barbara described much of the local land being ineligible for SB 35 because it's coastal, adjacent to agriculture, or at high fire risk.[25]

SB 35 projects are also sometimes shaped by local implementation of the law, including when planners steer particular types of projects toward SB 35. For example, planners in Los Angeles County described recommending SB 35 for proj-

Table 1. Size and Affordability of SB 35 Projects

	Bay Area	Los Angeles	Rest of State	Total
Total Projects	63	59	34	156
Total Units	11,076	4,259	2,880	18,215
Share of Projects by Number of Units				
2–10 units	2%	20%	3%	9%
11–50 units	8%	17%	35%	17%
51–100 units	40%	39%	41%	40%
101+ units	51%	24%	21%	34%
Share of Projects by Percent Affordable Units				
None	0%	8%	6%	4%
1%–9%	0%	3%	0%	1%
10%–49%	10%	25%	18%	17%
50%–94%	22%	10%	9%	15%
95%–100%	68%	53%	68%	62%

Source: Annual Progress Reports, 2018–2021.

ects with ten or fewer units, which do not require developers to pay prevailing wages. They also said they encouraged the use of SB 35 in specific situations, like exempting hotel/motel conversions from needing a conditional use permit and from local parking requirements.[26] This specificity was not common among interviewees, however. Most planners we interviewed described either recommending SB 35 to any project meeting the criteria or working with developers based on the specific circumstances of their projects.

Interviewees said 100 percent affordable projects—which typically have public funding that already requires paying prevailing wages—work best for SB 35's labor provisions and affordability requirements.

To be eligible for SB 35 streamlining, projects with more than ten units must commit to paying prevailing wages. Many affordable housing developments are already subject to this requirement if they are using public funding, like HCD's Multifamily Housing Program or Proposition HHH in Los Angeles. For developments not already required to pay prevailing wages, interviewees frequently characterized SB 35's requirement to do so as a deterrent. Interviewees said projects are more difficult to make financially feasible (or "pencil") when paying prevailing wages, and developers often consider whether the benefits of streamlining outweigh the higher labor costs. A couple developers we interviewed initially entitled projects using SB 35, but returned to the traditional entitlement process for financial reasons. For example, Maracor Development is reprocessing the Ashbury, a 183-unit mixed-income development in Concord, without SB 35 because the combination of rising interest rates and construction costs made paying prevailing wages infeasible.[27]

SB 35's prevailing wage requirement can be more challenging for projects in relatively lower-cost areas of the state. In Antioch, developers must pay the prevailing wage rate assigned to the larger San Francisco Bay Area, despite having market-rate rents that are much lower than San Francisco or San José.[28] Dan Zack, a land use and development consultant and former planner for the city of Fresno, similarly highlighted that the advantages of SB 35's streamlining are more limited in Fresno, where rents are lower relative to the coast, but the cost of prevailing wages is not proportionately lower.[29]

In addition to prevailing wage, mixed-income SB 35 projects also include a skilled and trained workforce requirement, depending on the project's size and jurisdiction's population. Interviewees similarly highlighted the challenges with this labor provision, not only because of the associated costs, but because of the shortage of workers who meet the definition of skilled and trained.[30] Identifying the specific number of SB 35 projects to date that have been subject to this requirement is challenging because of the complexity of the rule, and because its interpretation has been contested.[31] Based on analysis of APR data and external sources, we were able to identify and confirm at least three projects using skilled and trained labor under SB 35, though more are possible and likely. We found that the applicability of this rule was rare, in part because the majority of projects pursued so far have been 100 percent affordable and therefore exempt from this labor provision.

SB 35 can also accelerate funding timelines for affordable projects.

Developers must typically have their land use approvals in place before applying for financing, including for the Low-Income Housing Tax Credit (LIHTC), so a faster entitlement process can mean getting funding in place earlier. Among the 149 approved or pending SB 35 projects with affordable units, we matched 66 to LIHTC awards between 2018 and 2022 (see Appendix A for details). Interviewees described being able to apply for LIHTC in earlier rounds than they would have without SB 35, ultimately speeding up development timelines. Interviewees also described being able to apply for funding more quickly through several other programs, including the federal Community Development Block Grant (CDBG) and California's Veterans Housing and Homelessness Prevention (VHHP) programs (also see the profile for 11010 Santa Monica Blvd).

HCD prioritizes SB 35 projects in their Multifamily Finance Super Notice of Funding Availability (NOFA), which covers four affordable housing funding programs including VHHP, by granting applicants with a pending SB 35 application the same number of points as applicants that have already obtained their entitlements.[32] Local governments can also revise their funding processes to prioritize SB 35 projects. For example, San Francisco's Affordable Housing NOFA for Site Acquisition requires applicants to demonstrate that the project is eligible for entitlements through SB 35 or some other streamlining initiative.[33] Ramie Dare, Director of Real Estate Development with nonprofit affordable housing developer Mercy Housing California, said "being able to get ready for the funding round that's been announced or that is anticipated, is incredibly important," and for The Kelsey Civic Center, an all-affordable 112-unit development in San Francisco approved through SB 35, "it saved us two years."[34]

Interviewees described a learning curve for implementing SB 35, including clarification—or in some cases, creation—of objective design standards. Use of the law became easier and more common over time as jurisdictions and developers learned to navigate it.

The growing number of SB 35 projects over time (Figure 2) reflects the learning curve for understanding the law's requirements and creating local processes and forms for implementing it. Local governments often created their processes in response to their first SB 35 application, which they needed to complete quickly to comply with the law's required timelines. Both planners and developers also needed to keep up with SB 35's evolving amendments (see Appendix B) and implementation guidelines.

Interviewees described significant technical sophistication needed to determine whether any given site or project is eligible for SB 35. Several local planners described challenges sorting through the correct statutory definitions, maps, and other references to assess whether sites are ineligible for SB 35 because they are within a coastal zone, on prime farmland or farmland of statewide importance, or on a hazardous waste site. For example, Ruth Cueto, Supervising Planner in San José's Department of Planning, Building and Code Enforcement, described a dispute with a developer over the definition of a hazardous waste site. While the Department of Toxic Substances Control eventu-

ally clarified the correct reference, Cueto noted that the guidelines could be more explicit about which definitions to use and where to locate them.[35]

SB 35 projects have also sometimes needed complex determinations about whether the projects satisfy the law's prohibition against demolition of rental housing occupied in the previous 10 years. For example, the Jordan Court project in Berkeley, a 100 percent affordable 35-unit development for low-income seniors, replaced rent-free housing for seminarians and other parishioners of the All Souls Episcopal Parish that owned the property. To establish the project's eligibility for SB 35, the developer needed a determination letter from Berkeley's Rent Stabilization Board that these housing units did not qualify as tenant-occupied housing.[36] Even for more common housing types, proving consistency with SB 35's demolition restriction is an onerous process without reliable rental property history information. Abby Goldware Potluri, Vice President of Housing Development for MidPen Housing, said that the rule was sufficiently challenging that they opted not to pursue SB 35 on a site that would have required them to demolish a single housing unit, because it was unclear whether the unit had ever been officially leased to a tenant.[37]

Despite these challenges, interviewees repeatedly described SB 35 processes as smoother and clearer after jurisdictions' first applications. Ann Silverberg, with Related California, said, "San Francisco, as an example, really does have their systems in place. We were one of the early SB 35 projects to go through, and everybody was figuring it out at the time… but it's obviously much more clear now."[38] Similarly, Rob Wilkins, with affordable housing developer Affirmed Housing, described having one of the first SB 35 applications in San José and needing to go through point-by-point exchanges with a city attorney to establish the projects' eligibility. However, by the time their "second project was submitted for SB 35 approval, the city had implemented a specific SB 35 application and checklist, and met the mandated streamlined review timeline stated in the law."[39]

Although interviewees said all jurisdictions experienced a learning curve to understand and implement SB 35, developers described larger cities as having more capacity to find their footing quickly. In smaller jurisdictions, interviewees described SB 35 working well when planners worked proactively with developers, including "educating the council" and local community about the law.[40] In contrast, interviewees pointed to capacity constraints in other jurisdictions that made using SB 35 more challenging. Interviewees repeatedly noted that smaller jurisdictions often employ only a few planners who have limited time to devote to understanding SB 35 and creating a local process for it. Collaboration between jurisdictions can help overcome some of these capacity constraints, and interviewees described local governments that were unfamiliar with SB 35 receiving template documents and other assistance from more experienced cities.

Implementing SB 35 also required clarification or creation of objective design standards in some jurisdictions. With limited or without objective design standards, jurisdictions have little to no control over the design of SB 35 projects. Melinda Coy, Proactive Accountability Chief at HCD, said that SB 35 was "a wake up call" for local governments that didn't

have objective standards. Coy said that few jurisdictions had adopted objective standards early in SB 35's implementation, and a large part of HCD's role in implementation involved emphasizing to local governments that their subjective standards could not be applied to SB 35 eligible projects.[41] Both planners and developers described objective standards as beneficial, but planners also noted the significant capacity needed to create them. Nolan Bobroff, Housing Coordinator for Mammoth Lakes, estimated that their efforts to create objective design standards will "take longer than a year to implement." But he also believes these objective standards "will benefit all projects, not just SB 35. Because then it really gives the development world a true sense as to what we expect design projects to look like, and they're not just guessing."[42] Given how recently many jurisdictions have created or expanded their objective planning standards, it remains to be seen whether these are clear and flexible enough to enable financially feasible new developments.

Some local governments have struggled with how SB 35 interacts with local incentive programs or codes that require discretionary review, public hearings, or appeals. For example, while guidance has been issued to explain how cities should process projects seeking to use both SB 35 and the state density bonus law, the law is not similarly clear on the use of local incentive programs in combination with SB 35.[43] Some jurisdictions have waived public hearings in these cases. For instance, the local density bonus program in the town of Mammoth Lakes, which typically triggers discretionary review, explicitly exempts SB 35 projects from the required use permit review and public hearing, allowing projects to benefit from both the increased density and ministerial review process.[44] HCD guidelines specify that established public oversight processes may be conducted for projects applying for SB 35 streamlining, though input received during these hearings cannot be used to impose conditions on or deny a project. A planner for the City of Los Angeles said that greater clarity on whether hearings are required could help support local implementation, noting that "cities tend to gravitate towards a more conservative approach unless it's spelled out by the state."[45]

Some jurisdictions require pre-applications to help ensure SB 35 applications can be processed in the requisite timeframes. However, pre-application requirements vary widely and can introduce ambiguity into SB 35 requirements and overall timelines.

Some jurisdictions require pre-application steps as part of their entitlement processes, including, for example, development review meetings with staff across relevant city departments and pre-zoning reviews to assess project consistency with local planning requirements. While HCD guidelines describe two sequential steps for SB 35 projects—the notice of intent to submit an SB 35 application, which triggers the tribal consultation process, and the formal SB 35 application submission, which must be reviewed and approved within statutorily required timeframes—the law does not explicitly address how (or if) localities should modify pre-application steps for SB 35 projects.

Interviewees raised concerns related to local interpretation of SB 35's process for review and approval. Coy at HCD highlighted the central challenge of

figuring out what local governments can require developers to submit in an application, and at what stage in the process.[46] A planner for the City of Los Angeles said that the city is still "grappling with upfront processes that are significant and take place before you can even apply for SB 35."[47] The City of Los Angeles's filing instructions detail a ten-step process for SB 35 projects, several of which precede the notice of intent and main SB 35 application. For example, applicants must undergo consultation with the Affordable Housing Services Section, complete a Preliminary Zoning Assessment to assess whether the project meets city zoning and land use standards, and obtain a Replacement Unit Determination to assess whether the project complies with SB 35's restriction on demolition. Ministerial review under SB 35 in Los Angeles is also more complicated than the city's local by-right approval process for code-compliant development, which applies to projects with fewer than 50 units and allows developers to bypass planning review and apply directly for a building permit from the Department of Building and Safety.[48] A real estate attorney questioned whether these pre-application steps in Los Angeles should actually fall under the formal and expedited timeline for SB 35 application review and said that for his clients in many cities, "the timeframes they were promised under SB 35 have not been realized."[49]

Interviewees from local planning departments provided several reasons for detailed pre-application processes or longer-than-expected timelines, including receiving incomplete applications from developers, uncertainty over which pieces of review belong in the notice of intent versus the formal application, and staffing challenges associated with completing reviews on SB 35's expedited timelines. In Santa Rosa and Los Angeles County, pre-application steps include interdepartmental consultation meetings with city or county staff. These meetings are meant to identify potential issues and missing information upfront so as to prevent delays resulting from incomplete SB 35 applications, but getting on the agenda and completing consultation can take anywhere from a few weeks to a few months. Planners in Burbank and Santa Rosa also identified some overlap and redundancy between the notice of intent and formal application stage that could be addressed to help reduce application review burdens and achieve faster timelines.

SB 35 has been used to overcome local resistance to new housing development, but interviewees described SB 35 being used most often where local governments support its implementation.

In several high-profile cases, SB 35 has helped overcome resistance to new housing development, particularly affordable housing, from local governments and/or residents. For example, the Woodmark Apartments in Sebastopol was held up by local opposition from both the public and the city's design review board for about 18 months before eventually applying for and being approved through SB 35 streamlining (see the profile for the Woodmark Apartments). SB 35 has also been used to locate affordable housing in high-income neighborhoods, like the 11010 Santa Monica Boulevard (SMB) project in Los Angeles, which provides permanent supportive housing for seniors and veterans exiting homelessness. Rosen with the Weingart Center, the developer and operator for 11010 SMB, noted that

the project is "a little bit unique" because "it's been challenging to site permanent supportive housing in some of the more upper-income areas of Los Angeles."[50] SB 35 only enables these developments where the underlying zoning already allows for it, however. In jurisdictions where the base zoning (i.e., the allowable density, uses, and other requirements placed on parcels of land) places restrictions on where multifamily housing can be built, SB 35's applicability is limited.

Interviewees more commonly described the law working best when local governments and developers work together. Echoing similar comments from other developers, Courtney Pal with nonprofit developer Resources for Community Development said, "SB 35 has really been most helpful in jurisdictions that are already friendly to housing and already really supportive."[51] In these jurisdictions, developers said SB 35 provides "a tool that we work with the cities to move projects along at a faster rate than they would otherwise."[52] Rather than SB 35 allowing developers to circumvent the jurisdiction's control, the law helps jurisdictions support developers and gives local governments "a little bit of cover because [they] don't ultimately have the ability to say no."[53] Bobroff, the planner in Mammoth Lakes, explained that, "if there is any kind of local opposition, it's easy to stand up and say, 'The state's mandating that we implement this. It's really out of our control as to whether this project gets built or not.'"[54]

In contrast, jurisdictions opposed to SB 35 projects have attempted to implement the law in ways that inject discretion back into the process. For example, the city council in Burbank designated itself the design review board for SB 35 applications, and unanimously rejected the application for the Pickwick Gardens Townhomes, a 96-unit condominium development. The staff report written by Burbank's Department of Community Development found the project consistent with the city's objective standards and SB 35's eligibility requirements and recommended approval.[55] However, the city council denied the project, citing inconsistency between the General Plan and the underlying zoning, requirements for discretionary review of residential development in the commercially zoned area, and concerns over the project's compatibility with the city's complete streets plan.[56] The denial resulted in a Notice of Violation from HCD and two lawsuits: one pursued by the developer and another by YIMBY Law. After a settlement was reached between the city and the developer, a slightly modified project with 92 units instead of 96 was approved under SB 35. Developers also described instances where cities told them they would not provide necessary local funding for their project if they used SB 35 or other streamlining measures. However, interviewees also noted that, "we're starting to see jurisdictions become more familiar with the legislation and, in some cases, realize it can be helpful and even provide cover."[57]

Some jurisdictions have created alternative streamlining options that may be more advantageous than SB 35.

SB 35 is used less often in jurisdictions with alternative streamlining options. For example, planners for Los Angeles County said SB 35 has been used less often since the county's 2020 ordinance for by-right ministerial approval of multifamily projects in commercial zones. They described "very little" triggering discretionary review as part of the ordinance, and approval

taking a similar amount of time with or without SB 35.[58] Similarly, a planner for the City of San Diego highlighted that the city has existing pathways for streamlined development approval, which may explain San Diego's lack of SB 35 applications: "Developers have a number of programs with ministerial approvals that may be faster and don't require them to comply with the technical qualifications for SB 35."[59] In each of these cases, interviewees noted that these alternative options do not include SB 35's additional requirements like prevailing wages or tribal consultations.

These alternative streamlining options do not necessarily mean that SB 35 has not indirectly supported more housing development, however. A planner in the City of Los Angeles, described Mayor Karen Bass's Executive Directive 1 (ED 1) as an alternative to SB 35 for shelter and 100 percent affordable projects. ED 1 provides eligible projects with expedited processing, clearances, and approvals at all stages of the City Planning project review process, and reduced filing fees. An interviewee noted that ED 1 directly builds on SB 35's streamlining provisions, but without SB 35's tribal consultation or labor requirements: "she basically made discretionary projects ministerial, like SB 35 did. So in a lot of ways the language followed that template, and the process."[60] The interviewee said ED1 has streamlined thousands of affordable housing units so far.

Alternative streamlining options aren't limited to large, coastal cities. Zack, the former planner for Fresno, highlighted that "Fresno and the Central Valley are a totally different universe from the big coastal metros. There is some NIMBYism, but it doesn't drive the process in the same way it does in wealthier regions. In addition, Fresno has already enacted local streamlining that in many ways meets or exceeds the streamlining of SB 35, but without requirements that increase the cost of construction." Developers will also soon have new opportunities for local by-right development: under AB 1397 (2017), local governments are required to rezone for by-right development any site that they have re-identified in their housing inventories as available for low-income housing between their 5th and 6th cycle Housing Elements.

Although SB 35 removes local discretion from the approval process, developers have continued to engage local communities and sometimes accommodate jurisdictions' design requests for SB 35 projects.

Review by the public or a local oversight body is essentially a perfunctory process for SB 35 projects, because they cannot condition or negotiate over the terms of the development. Ministerial approval is a large shift for some jurisdictions and communities. "Many members of the community don't understand the state laws that pass, and the planning department has to explain it to them, which is tough," said one planner we interviewed. "There was once a process by which they had input, and now it's been taken away."[61]

While projects can no longer be rejected or conditioned based on community input, interviewees noted that affordable housing developers typically do conduct community outreach and engagement for SB 35 projects before or during the entitlement process. Like other affordable housing developers we interviewed, Potluri from MidPen Housing described community engagement events for their SB 35 projects: "it's really about just being

upfront and educating, that we're there because we're going to be neighbors. We're going to be in this community for the next 55-plus years. And we want to make sure that this makes sense for the place that we're building in." She further explained that community input can influence their SB 35 projects, "if it's constructive feedback, we want to take it. In the case of the project in Petaluma, we had two really great community meetings where we iterated a little bit on the design, and we incorporated some of that feedback before we submitted the SB 35 application."[62] (Also see the profile of the Cannery at Railroad Square.) Developers also highlighted that SB 35 has allowed them to think differently and more holistically about how they engage communities. Jenny Collins, Assistant Project Manager with the John Stewart Company, said "SB 35 removes that level of uncertainty and the potential for CEQA lawsuits by neighbors in the entitlement process. It doesn't remove our desire to be good neighbors."[63]

Continued community engagement on SB 35 projects is critical, particularly for projects in historically disadvantaged neighborhoods where communities have lacked meaningful participation in planning decisions. In San José, planner Ruth Cueto recalled having difficult conversations with community members regarding the city's first SB 35 project, which was located in a predominantly immigrant, Spanish-speaking community and lower-income neighborhood: "They felt like they weren't heard. And here is an opportunity where you typically have a hearing, you have this public process. And that's not how it works anymore."[64] Though Cueto said that the developer in this case did facilitate a community engagement process, it is not a given that every developer will solicit and incorporate meaningful input from concerned communities. In response to these concerns, SB 423 proposes to require local governments to hold a public hearing for any SB 35 project located outside of a higher-income census tract.[65]

In addition to community engagement, affordable housing developers we interviewed described the importance of working collaboratively with local governments to maintain positive relationships. They emphasized that local governments maintain discretion over scarce local funding, and that these resources are necessary for both financial feasibility and competitiveness for larger state funding sources, such as LIHTC. Developers also noted that their relationships with local governments extend prior to and beyond any given SB 35 project, underscoring the importance of working with local governments as collaborative partners.

Interviewees consistently described more guidance and capacity being needed for effective tribal consultation on whether SB 35 projects might impact tribes' cultural resources.

AB 168, passed in 2020, requires local governments to engage in a scoping consultation with any California Native American tribe that is traditionally and culturally affiliated with the area for proposed SB 35 developments. This amendment to SB 35 is meant to reinstate the tribal consultation that typically occurs in the CEQA process. Following AB 168, the tribal consultation process is triggered when a jurisdiction receives a notice of intent to submit an SB 35 application from a developer. The jurisdiction must

notify the relevant tribes about the proposed development within 30 days, tribes have 30 days to accept an invitation for consultation, and jurisdictions have 30 days to initiate the consultation. The duration of the consultation itself is not time limited.[66]

Interviewees supported the tribal consultation, and developers described the consultations as feasible and constructive. For example, MidPen Housing's Abby Goldware Potluri described a project "where we did the consultation, and it was a really good process. … We learned more about the history of the site there. And it did drive us to do more testing and some more due diligence on what could potentially be there, based on that tribal consultation."[67]

Even so, interviewees noted that the tribal consultation introduced uncertainty into the overall SB 35 process that additional guidance could help resolve. Developers like Potluri noted the consultation "not only adds another step and more time, but we've found there is uncertainty on the amount of time."[68] Tribes might respond or not, and the consultation could lead to further evaluation and monitoring. The process also differs between jurisdictions. In some jurisdictions, the tribal consultation is concurrent with other pre-application processes, while in others the steps are sequential. Pal, with Resources for Community Development, also noted that this process initially involves solely the jurisdiction and tribes, leaving the developer out of the loop on the potential timeline and substance of the consultation: "as a developer, we just have very little ability to influence that process. And so just creating more clear timelines for the consultation would go a long way to just move the process along."[69]

Recommendations

Interviewees raised some common challenges and areas for improvement that could increase use of the law and its effectiveness. Based on these findings, we highlight key areas where SB 35 implementation can be further strengthened as well as areas for additional research.

Improve data collection and continue to monitor and evaluate the use of SB 35 streamlining across the state.

The quality and completeness of APR data—the only statewide source of data on SB 35 usage—is critical to assess SB 35 usage and evaluate its effectiveness. However, the data currently contain significant errors and incomplete information. In recent years, HCD has taken steps to improve data collection on housing production and oversight of state programs, including its 10-year housing data strategy.[70] Recent legislation, like AB 2653 (2022), which allows the state to request corrections to and reject APRs that do not meet state guidelines, may improve the state's ability to ensure higher data quality from local governments. Many jurisdictions could also benefit from additional support to ensure comprehensive and accurate data reporting to HCD. These efforts would strengthen the base of evidence from which to evaluate how SB 35 is working, and to understand progress toward meeting the state's housing needs as accurately as possible.

Ongoing research and evaluation are also needed to better understand the types of neighborhoods in which SB 35 has been used and where SB 35 can be applied, given that the law can only be used in areas where local zoning supports multifamily development. Affordable housing devel-

opers raised questions about how SB 35 could be strengthened to address segregation and long-standing inequities in access to housing in higher resource areas. Additional research that brings together SB 35's geographic criteria and local zoning information could explore whether the law works to facilitate development in higher resourced neighborhoods.

Future research could also continue to examine the law's effect on development timelines. While prior research and most developers we interviewed highlighted the time savings they experienced as a result of SB 35, interviewees also raised concerns about lengthy pre-application processes and tribal consultations.[71] Additional monitoring and evaluation could help stakeholders understand the extent of time savings attributable to SB 35 in different geographies and as implementation has progressed—now that jurisdictions are more familiar with the law—and can help uncover the extent to which pre-application steps add time back into the process.

Interviewees also emphasized that SB 35 addresses only one part of the long and expensive housing development process in California. While they acknowledged the value of SB 35 streamlining and research to understand its effectiveness, they also expressed a desire for research that helps connect the dots: How can streamlining project approvals extend to streamlining building permits, or coordinating varied sources of funding? SB 35 is one part of the state's ongoing suite of legislation to facilitate housing production, and ongoing refinements like SB 423 and other new state housing laws can further reduce the time and cost for developing new housing from start to finish.

Support local implementation of SB 35 through additional guidance from HCD and statutory amendments to clarify interpretation of the law and increase its effectiveness.

Interviewees expressed desire for additional support from the state as well as changes to the statute itself that could help clarify implementation and increase effectiveness. This greater clarity would reduce the effort needed from local governments to implement the law, which interviewees raised as a challenge, particularly for planning departments with limited staff capacity. For example, planners in Santa Barbara County believed SB 35 could work better in their jurisdiction with more upfront support and guidance from the state, "as the public sector is responsible for implementing and applying [SB 35], we need help. We can't hire enough people to work here… keeping up with all the new state housing laws is a resource issue. There's got to be more stuff done up front to help us make this vision happen."[72]

Some key areas for more support include: understanding and identifying SB 35's environmental exclusion areas; developing SB 35 checklists, applications, and guiding documents; and providing more direction and transparency around how local governments must review and approve SB 35 projects. HCD could incorporate additional data needed to evaluate SB 35 project eligibility into the online Site Check tool for determining parcels' eligibility for CEQA exemptions, and direct local planners to it.[73] This resource could allow local planning departments to focus limited staff capacity on evaluating projects against local objective planning standards and meeting the statutory requirements for review and approval, and decrease the learning curve

for jurisdictions that have yet to process an SB 35 application. A few interviewees also discussed adapting or borrowing SB 35 application materials from jurisdictions that had already developed them; HCD could consider developing a more formal system for collecting and sharing application templates and lessons learned from implementation across the state.

Although HCD provides guidelines and technical assistance, local governments' interpretations of the law varied, often in the context of local planning regulations and interactions with other local incentives and processes. The more prescriptive that the state can be with respect to the role of public oversight and hearings, acceptable application requirements, and timelines for review, the more local governments can apply SB 35 with certainty and within the broader intent of the law.

Interviewees consistently described the need for additional guidance and capacity for effective tribal consultation about SB 35 projects. Interviewees suggested conducting tribal consultation concurrently with pre-application processes rather than sequentially, or identifying a menu of common agreements that developers can offer upfront to tribes at the beginning of the consultation process. Additional insight and research is needed—including tribes' perspectives—to identify best practices for tribal consultation within SB 35.

Affordable housing developers also consistently identified SB 35's restriction on the demolition of units rented within the last ten years as an area for further refinement, particularly as it relates to the replacement of a small number of units with a much larger number of affordable units in a fully subsidized development. In the absence of reliable rental history data, verifying that a unit has not housed tenants is not always possible. Interviewees suggested that adopting unit replacement and tenant rights provisions—such as those included in the Housing Crisis Act of 2019—would better address displacement concerns in infill areas than SB 35's existing demolition restriction.[74]

Consider re-calibrating the law's requirements to encourage greater usability of SB 35 for mixed-income housing developments.

We find that SB 35 is an effective entitlement streamlining tool for 100 percent subsidized affordable housing developments, but analysis of the APR data shows that relatively few mixed-income projects have used the law, particularly among projects that would be required to employ a skilled and trained workforce. Interviewees suggested that the skilled and trained workforce requirement is challenging to meet given the current shortage of residential construction workers in California, the majority of whom do not meet the definition of skilled and trained.

SB 423 aims to address this barrier by exempting mixed-income projects from the requirement to use skilled and trained labor in instances where a contractor is unable to locate enough skilled and trained workers for the project.[75] Developers of these projects would still be required to pay workers the prevailing wage for their trade and provide health care benefits. These reforms may allow SB 35 to work for more mixed-income projects and may provide residential construction workers with additional opportunities to work prevailing wage jobs.

Over the long-term, there is also a need for California to increase its residential construction workforce and to align its housing production and labor force development goals. Policies that require competitive wages and benefits, along with improved working conditions, are key for worker recruitment and retention efforts, and provide important public benefits for laborers.[76,77] Recent bills like AB 2011 attempt to thread the needle between pro-housing and labor policies, for example, by expanding access to apprenticeship programs to build the skilled and trained workforce. Ongoing research is needed to track and evaluate whether and how policies like SB 35 and AB 2011 are advancing both housing supply and labor workforce goals.

Conclusion

Over the last five years, SB 35 has become a key mechanism to streamline the approval of affordable housing. While the law's applicability and utility vary across jurisdictions, affordable housing developers—particularly those operating in Los Angeles and the Bay Area—reported that SB 35 decreases entitlement timelines and increases certainty by preventing lengthy and unpredictable discretionary review processes. Use of SB 35 has also increased outside of Los Angeles and the Bay Area over time, highlighting the potential for more widespread use across the state. Ramie Dare with Mercy Housing California described the law's extension as critical: "It'll be catastrophic if it's not extended… thinking about going back to the process of going one year or sometimes 18 months for approvals, and how hard that is on everybody, and the staff load required to actually manage all of that—I just don't think that exists."[78]

Interviewees highlighted many important benefits from SB 35 streamlining for entitling projects, but entitlements are only one part of the development process. SB 35 does not impact the timing of review of applications for building permits. Obtaining streamlining does not necessarily ensure that a project can secure the funding it needs to build and operate entitled housing projects. More needs to be done to reduce the costs and time required to develop new housing in California, to ensure that new housing reflects population needs in terms of affordability, product type, and location, and to align policies that further the state's fair housing, labor, and climate goals.

Project Profiles : 11010 Santa Monica Blvd (SMB), City of Los Angeles

Developer: Weingart Center

Year Applied for SB 35: 2020

Progress: Opened for residents in March 2023

Number of Units: 50 affordable units for seniors and veterans experiencing homelessness, and one unit for a property manager

Photo Credit: RMA Photography Inc.

The Weingart Center used SB 35 streamlining to develop 11010 Santa Monica Boulevard (SMB), which provides 50 units of permanent supportive housing (PSH) for seniors (ages 55+) and veterans who are exiting homelessness. The project was approved in about four months, which Ben Rosen, Director of Real Estate Development for the Weingart Center, said "was definitely faster than a normal process. Because the city had this deadline, and they took it seriously."[79]

SB 35's accelerated approval process also helped 11010 SMB obtain the necessary funding more quickly than it would have otherwise. Like many PSH projects, 11010 SMB layered together several different kinds of funding sources, including the City of Los Angeles's Proposition HHH, Low-Income Housing Tax Credits, and housing vouchers from the Veterans Affairs Supportive Housing (VASH) program and the Housing Authority of the City of Los Angeles (HACLA). SB 35 helped the developer "to apply for funding faster, because you have to have the entitlements to apply for most of the funding. ... we made it right into a state NOFA for the [Veterans Homelessness and Housing Prevention program] just in the nick of time, because we were able to get this expedited processing."[80]

The project also illustrates the importance of the developer and the local jurisdiction having the capacity needed to navigate the law, particularly early in its implementation. The developer noted that although the City of Los Angeles "hadn't quite had time to digest and fully implement the legislation," the approval process was still much faster than normal.[81] This quick process partly depended on the City of Los Angeles having the capacity to implement SB 35, including a planner dedicated to this project. A planner for the City of Los Angeles, said "it was the only thing I worked on for a few weeks... it was a really successful project."[82] The developer's capacity and resources to navigate SB 35 also mattered. The planner said, "the applicant was very organized and definitely had all of their ducks in a row before we started the project. ... And I think part of their success was that they hired a good architect and a good land use consultant."[83]

11010 SMB was a complex project, but the developer and jurisdiction figured out how to use SB 35 to quickly add to the city's supply of PSH for people experiencing homelessness. Rosen said the Weingart Center now strongly prioritizes SB 35 eligibility or similar potential streamlining for any new construction projects.

Project Profiles : The Cannery at Railroad Square, Santa Rosa

Developer: The John Stewart Company

Year Applied for SB 35: 2020

Progress: Construction began in January 2023

Number of Units: 129 affordable units for households with incomes below 80 percent of AMI, with 25 percent of these units reserved for people exiting homelessness

Photo Credit: Saida + Sullivan Design Partners

The Cannery is a 100 percent affordable transit-oriented development in Santa Rosa. The project is located in a preservation district and incorporates historical structures as well as a publicly accessible promenade into its design. SB 35's greatest benefit for The Cannery was the expedited design review and approval timeline, and the increased transparency and certainty the law brought to the project, which has gone through multiple iterations and financial setbacks since the site was purchased. After more than two decades of planning and development, construction is underway.

The John Stewart Company first purchased the site in 1999. The area was previously home to a fruit packing site adjacent to a former rail yard, and required environmental clean up that took several years to complete. Since the mid-2000s, the project has been conceptualized multiple times, first as market-rate for-sale units, then as a smaller 93-unit senior housing project, and now in its final iteration as a 100 percent affordable project with set-asides for people experiencing homelessness. An earlier version of the project had been approved and entitled in 2013 before being voted down by the City Council after losing $5.5 million in funding with the elimination of California's redevelopment agencies. The project is now being built with several types of funding, including California Housing Accelerator funds, Community Development Block Grant disaster relief funds, an HCD Infill Infrastructure Grant, project-based vouchers, and a Freddie Mac Targeted Affordable Housing Loan.

Mimi Sullivan, Principal and co-founder of Saida + Sullivan Design Partners, said that the design review process under SB 35 was "phenomenally faster" than the city's normal process.[84] Sullivan and Donald Lusty, Director of Development at the John Stewart Company, also highlighted the importance of having buy-in and cooperation from the jurisdiction's planning department for SB 35 projects. The City had adopted objective design standards in 2019, shortly after SB 35 was enacted, that were very detailed but clear, helping the project avoid costly and time-consuming redesigns. The project was also assigned a supportive planner who helped the development team navigate use of the law.

Project Profiles : The Woodmark Apartments, Sebastopol

Developer: The Pacific Companies

Year Applied for SB 35: 2022

Progress: Building permits issued in April 2023

Number of Units: 84 affordable units for households with incomes between 30 and 60 percent of AMI, 48 of which are reserved for current or retired agricultural workers

Photo Credit: The Pacific Companies

SB 35 has been used to overcome local government and public opposition to new development, including for The Woodmark Apartments, an 84-unit 100 percent affordable housing development in Sebastopol. The developer originally pursued the project using the city's traditional entitlement process in 2019 and then pivoted to SB 35 in 2022. The project is being funded with 9 percent Low-Income Housing Tax Credits and USDA Section 514 financing, which provides rental assistance for units set aside for agricultural workers.

Caleb Roope, President and CEO of the Pacific Companies, said that they decided to withdraw their original entitlement application to resubmit under SB 35 because of a combination of neighborhood opposition and a lengthy and opaque discretionary review process. After spending 18 months working to get the project approved under the normal channels, the developer was at risk of losing their tax credits, which had been awarded in 2020.

While the project was ultimately approved using SB 35, Roope said that the city still opposed the project, first claiming it was ineligible for SB 35 because the site formerly held two single-family homes (the developer was able to prove they had never been rented). It also used the tribal consultation process to delay approval. "We had to threaten to go political and notify the papers that the city was working to block farmworker housing," Roope said. Once the agreement for a cultural resource monitor was signed and the project approved, city staff became more cooperative and were helpful moving the project through the remaining administrative processes.

Certain elements of SB 35 were challenging for Woodmark Apartments. For example, proving that the former single-family structures on site had never been rented was difficult given the lack of historical rent data. The developer had to change the budget to pay prevailing wages, which is required by SB 35 but was not required by the project's financing sources. Despite these challenges, Roope said that the project would likely be still stuck in the entitlement process or in court without SB 35. The project was issued building permits in April 2023 and is currently under construction.

Appendix A: Technical Appendix

Cleaning and Verification of Annual Progress Report Data on SB 35 Usage

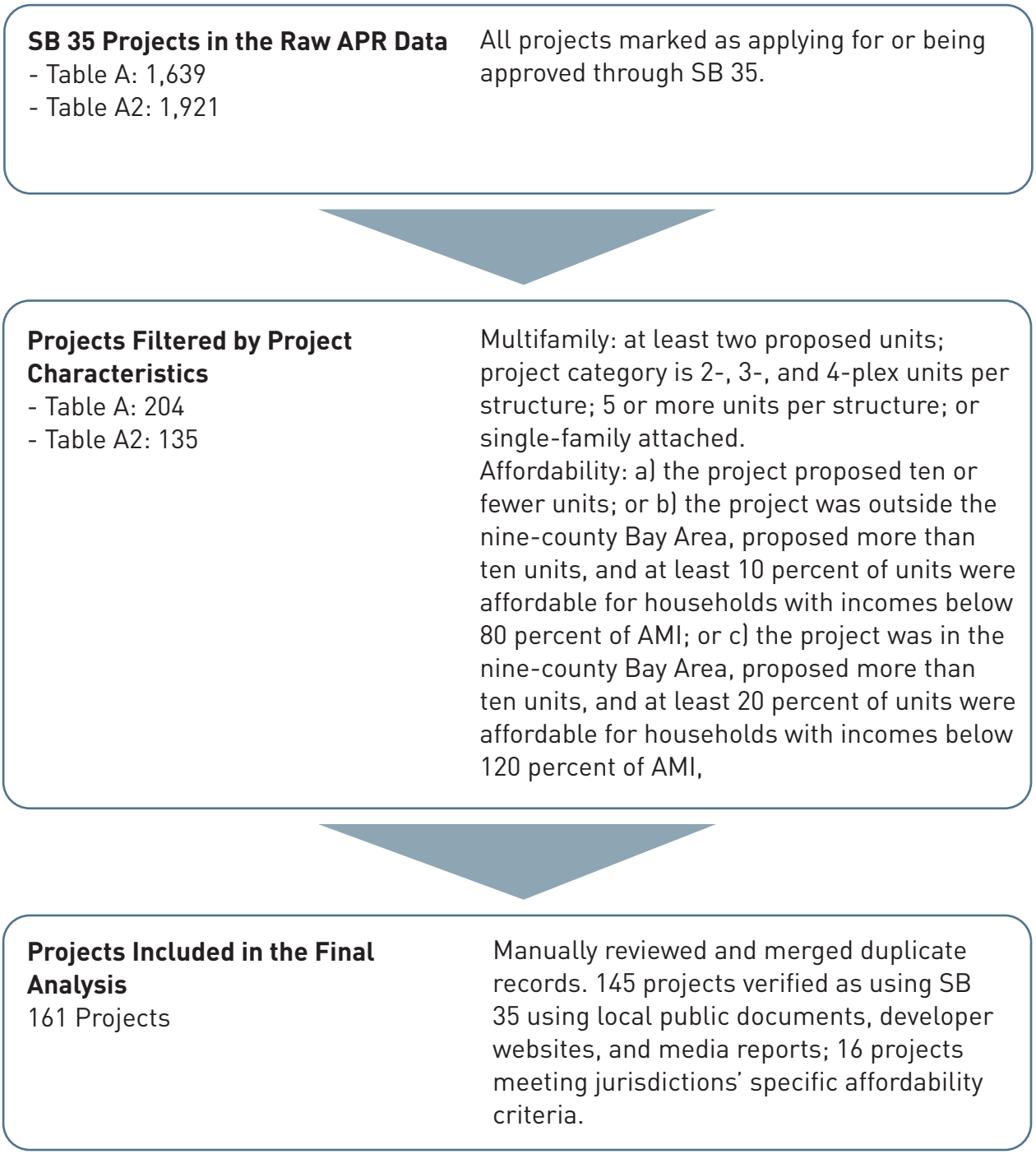
To measure the amount, type, and location of new housing being developed through SB 35, we analyzed data from jurisdictions' 2018–2021 Annual Progress Reports (APR). Every jurisdiction is required to submit an APR on its housing development activity and progress towards its Regional Housing Needs Allocation (RHNA) production targets to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research (OPR). HCD compiles and publishes jurisdictions' APR data, but the data are self-reported by jurisdictions.

We analyzed two data tables from the APRs: Table A (Housing Development Applications Submitted) includes data on housing development applications that jurisdictions deemed were complete. Table A2 (Annual Building Activity Report Summary) includes data on all new housing units and developments that have received an entitlement, a building permit, and/or a certificate of occupancy. Both tables include information on the number of total housing units in each development and the number of housing units at different levels of affordability.

Both tables also include information on SB 35 activity. Table A requires a jurisdiction to report whether the housing development application was submitted pursuant to SB 35. Table A2 requires a jurisdiction to report whether the project was approved using SB 35. HCD cautions that jurisdictions may not accurately self-report SB 35 activity. For example, most projects in the APR data marked as using SB 35 are categorically ineligible, including single-family detached units and accessory dwelling units, or projects with more than 10 total units but without affordable units. Jurisdictions sometimes marked projects as using SB 35 when they were using an alternative type of local or state streamlining (as verified through external sources). A few jurisdictions erroneously marked every housing development application as being submitted pursuant to SB 35.

We took several steps to ensure the APR data reflect SB 35 use as accurately as possible. These steps yielded 161 unique projects, 145 of which were verified as using SB 35 with external sources. First, we limited the APR data to projects marked as using SB 35 in Table A or A2 and that likely meet SB 35 criteria. We retained multifamily projects, filtering out projects with only one proposed unit or single-family detached projects, mobile homes, and accessory dwelling units. We also filtered the data to projects that could meet SB 35's affordability requirements. Because affordability requirements differ between jurisdictions and years, this filtering included multiple criteria (Appendix Figure 1).

Appendix Figure 1. Process for Identifying and Verifying SB 35 Projects in the 2018–2021 APR Data



Finally, we verified the use of SB 35 for a sample of projects using external sources, including local public documents, developer websites, and media reports. In cases where we were unable to locate external sources confirming use of SB 35 for any project within a particular jurisdiction, we contacted the relevant planning department directly via email or phone for verification. We were able to verify the use of SB 35 for 145 projects. We retained an additional 16 projects whose characteristics in the APR data meet local SB 35 criteria (i.e., the specific affordability criteria for the project's jurisdiction and number of units) that we did not verify with external sources.

To match approved and proposed SB 35 projects to 2018–2022 Low-Income Housing Tax Credit (LIHTC) awards, we used ArcGIS to geocode SB 35 projects and LIHTC projects using addresses from the APR data and the LIHTC award list, respectively. We then spatially joined SB 35 projects to the nearest LIHTC project and verified matches using project names, addresses, and/or assessor parcel numbers.

The APR data have other limitations that our filtering and verification did not or could not address. First, our analysis does not include projects applying for or approved through SB 35 that were not marked as such in the APR data. We may also be missing records of projects approved via SB 35 in jurisdictions that did not submit their APR.

Second, our analysis does not assess projects' progress past the entitlement stage because we could not fully match projects' applications in Table A to building permits and certificates of occupancy in Table A2. We matched records between tables using the assessor parcel number field, then manually reviewed and corrected unsuccessful matches. Of the 161 projects in our analysis, we identified 88 in both Tables A and A2, 57 in Table A only, and 16 in Table A2 only. When verifying projects' SB 35 use with external sources, we identified projects that started construction or were completed by 2021, but were not identified as having received building permits or certificates of occupancy in the APR data. We also identified instances where a project's entitlement was flagged as having used SB 35, but subsequent entries for the project (i.e., the issuance of building permits or certificates of occupancy) did not. Incomplete matches may result from jurisdictions inconsistently marking projects as using SB 35 across the different stages of permitting and approval, from nuances in local approval and entitlement processes, or data entry errors.

Third, some projects' total numbers of units and affordability changed between being reported in the APR data and our verification with external sources. We found several projects that the APR data recorded as having a mix of affordable and above moderate-income units, but public documents showed them being 100 percent affordable projects. These discrepancies may result from changes in projects' funding sources, some of which developers obtain after receiving land use approvals. Affordable housing financing often requires specific affordability and target populations, prompting changes in projects' unit compositions.

Completeness of the Annual Progress Report Data

SB 35 creates an incentive for jurisdictions to submit their APR data—jurisdictions that do not submit these data are subject to SB 35 streamlining for projects with at least 10 percent affordable units. HCD's SB 35 determination data for 2022 show that 490 of California's 539 jurisdictions successfully submitted APR data for 2021. Thirty-six jurisdictions did not submit data, and 13 jurisdictions submitted data that HCD recorded as "not successful" due to missing information or errors. Of the 36 jurisdictions that did not submit APR data, HCD recorded only three as being on-track to be exempt from SB 35 streamlining prior to the missing APR data: Costa Mesa, San Marino, and West Hollywood.[85]

Most jurisdictions are represented in the APR data, and the number of jurisdictions in the data has increased over time. The number of jurisdictions included in either Table A or Table A2 of the APR data was 485 in 2018, 498 in 2019, 495 in 2020, and 499 in 2021. Jurisdictions not in these data tended to be small. Of the 40 jurisdictions not appearing in APR data in 2021, all but five had populations smaller than 50,000 in the 2020 Census, and 30 had populations smaller than 25,000. Some jurisdictions not appearing in the APR data may have no housing activity to report. Sixteen of the 40 jurisdictions not in Tables A or A2 in 2021 were marked as successfully submitting APRs in HUD's SB 35 determination data for 2022, suggesting there are no housing developments missed in these places. However, it is possible that our analysis misses SB 35 projects in the jurisdictions that did not submit complete APR data.

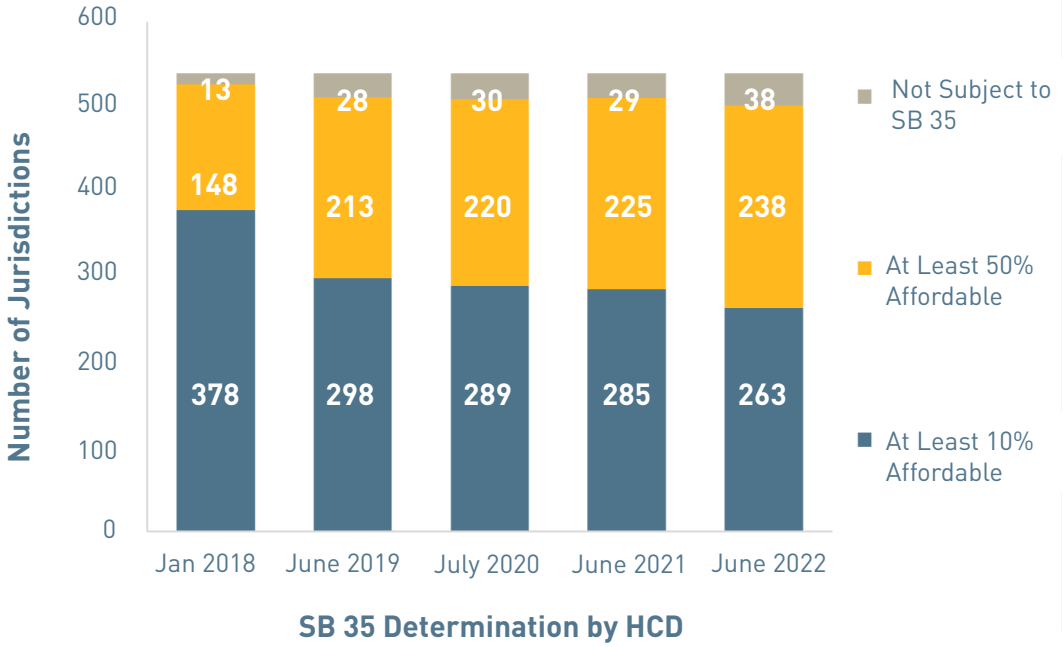
Finally, we analyzed and verified the 2018–2021 APR data prior to the publication of the 2022 APR data. As of April 25, 2023, the 2022 APR data included only 383 jurisdictions. Given the incompleteness of these data and limited time for verifying SB 35 use with external sources, we omit the 2022 data from our analysis.

Jurisdictions Subject to SB 35

Since the enactment of SB 35 in 2018, the law's streamlining has applied to most of California. In June 2022, HCD determined that 501 of California's 539 jurisdictions were subject to streamlining: 238 were subject to streamlining for projects with at least 50 percent affordability and 263 were subject to streamlining for projects with at least 10 percent affordability. Based on 2020 Census data, 95 percent of California's population lived in places subject to SB 35 streamlining in 2022. Only five jurisdictions were never subject to SB 35 between 2018 and 2022: Beverly Hills, Carpinteria, Corte Madera, Foster City, and unincorporated Sonoma County.

The number of jurisdictions exempt from SB 35 streamlining has grown from 13 in 2018 to 38 in 2022 (Appendix Figure 2). As jurisdictions have made progress toward their RHNA goals and/or submitted their APR data, many became subject to streamlining for projects with 50 percent instead of 10 percent affordable units.

Appendix Figure 2. Numbers of Jurisdictions Subject to SB 35 Streamlining Over Time



Source: HCD's SB 35 Statewide Determination Summaries

Appendix B: Subsequent Legislation Amending Government Code 65913.4

Appendix Table 1. Subsequent Legislation Amending SB 35

Bill	Summary of changes made to Government Code 65913.4 (SB 35)
SB 765 (2018)	Provides several clarifications to the initial legislation, including: 1) that the developer has to commit to the affordability restriction/covenant prior to approval for streamlining; 2) that HCD must determine eligibility for streamlining based on the number of very low- and low-income housing permits issued; 3) explicitly stating that CEQA does not apply; and 4) specifying that developments must also be consistent with the jurisdiction's objective subdivision standards.
AB 1485 (2019)	Modifies the affordability standards for projects located in the nine county Bay Area, allowing for moderate-income projects to be eligible for SB 35 streamlining. AB 1485 also makes other clarifications, including specifying that a development is consistent with objective planning standards if there is "substantial evidence", clarifying the timeline on which project approvals expire, and specifying that square footage includes underground spaces.
AB 101 (2019)	Requires jurisdictions to include information about a project's density bonuses and floor space in the jurisdiction's calculation of square footage for the purposes of determining with the existing SB 35 requirement that the project uses at least ⅔ of the square footage for residential use.
AB 168 (2020)	Establishes requirements for the local government to engage in a scoping consultation regarding any proposed SB 35 development with any California Native American tribe that is traditionally and culturally affiliated with the area.
AB 831 (2020)	Provides several clarifications to SB 35, including the limits of local government discretion in implementing projects approved for streamlining.
AB 1174 (2021)	Provides additional clarifications to SB 35 specific to project modifications, including that the "shot clock" on starting construction is paused when the project proponent submits an application for an entitlement modification.
AB 2668 (2022)	Provides additional clarifications to SB 35, including: 1) specifying that units added through density bonus are not included in the calculation of whether a project includes ten percent of units affordable under 80 percent AMI; and 2) requires jurisdictions to provide written documentation of a project's conflict with reasonable objective design standards.
SB 6 (2022)	Allows parcels subject to approval under SB 35 (unused commercial properties) to be eligible for SB 35 streamlining.

ENDNOTES

1. Government Code § 65913.4.

2. Fulton, B., et. al. (2023). "New Pathways to Encourage Housing Production: A Review of California's Recent Housing Legislation." Terner Center for Housing Innovation, UC Berkeley. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/california-housing-laws/.

3. Chapter 366, Statutes of 2017 created the Streamlined Ministerial Approval Process (SMAP), which is often referred to by its bill name, Senate Bill (SB) 35, or Government Code § 65913.4. Throughout this report we refer to the SMAP by the bill name SB 35.

4. Government Code § 65913.4. See more: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB423.

5. O'Neill, M., & Wang, I. (2023). "How Can Procedural Reform Support Fair Share Housing Production? Assessing the Effects of California's Senate Bill 35." NYU Furman Center. Retrieved from: https://furmancenter.org/files/How_Can_Procedural_Reform_Support_Fair_Share_Housing_Production_508.pdf.

6. Fulton, B., et. al. (2023). "New Pathways to Encourage Housing Production: A Review of California's Recent Housing Legislation." Terner Center for Housing Innovation, UC Berkeley. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/california-housing-laws/.

7. In addition to SB 35, several other laws have been passed to help streamline local entitlement processes and ensure that projects that meet a locality's objective standards are not unnecessarily denied or delayed. For example, AB 1397 (2017) requires by-right rezoning and a minimum of 20 percent affordability for lower income households for any site that a local government wants to re-identify from a prior Housing Element in their housing inventory as available to accommodate their lower income RHNA targets. AB 2162 (2018) provides a ministerial approval pathway for supportive housing, and AB 2011 (2022) does the same for affordable and mixed-income housing in commercial zones. Homekey (passed via AB 83 in 2020) offers a CEQA exemption and streamlining for the acquisition and conversion of hotels and motels into permanent supportive housing. SB 330 (2019) requires qualified projects be evaluated against objective standards and also limits the number of governmental hearings that can be conducted to evaluate a particular development.

8. O'Neill, M., Biber, E., & Marantz, N. (2023). "Measuring Local Policy to Advance Fair Housing and Climate Goals Through a Comprehensive Assessment of Land Use Entitlements." Pepperdine Law Review, 50, no.3: 505–556. Retrieved from: https://digitalcommons.pepperdine.edu/plr/vol50/iss3/2/.

9. Reid, C. (2020). "The Costs of Affordable Housing Production: Insights from California's 9 percent Low-Income Housing Tax Credit Program." Terner Center for Housing Innovation, UC Berkeley. Retrieved from: https://ternercenter.berkeley.edu/

research-and-policy/development-costs-lihtc-9-percent-california/.

10. California Department of Housing and Community Development. (2021). Approaches and Considerations for Objective Design Standards. Retrieved from: https://hcdcagov.app.box.com/s/baznxdyweq6a8txcrb22li0gogqodzz6.

11. Projects containing ten units or fewer are not subject to affordability provisions under SB 35. AB 1485 (2019) modified the affordability provisions for projects located in the nine-county Bay Area, allowing moderate-income projects to be eligible for streamlining.

12. Based on 2020 Census data, about 55 percent of California's population lived in places subject to 10 percent affordability under SB 35, and about 40 percent lived in places that can streamline projects with at least 50 percent affordability.

13. Five jurisdictions have never been subject to SB 35 streamlining between 2018 and 2022: Beverly Hills, Carpinteria, Corte Madera, Foster City, and unincorporated Sonoma County.

14. Prevailing wage generally refers to a state-set and regionally specific minimum rate for each trade that roughly matches up with what unionized workers earn. In California, developments funded in part or whole by public funds are considered a "public work" and are required to pay workers the general prevailing rate of per diem wages applicable to the trade or craft of the work. The definition of a public work can be found in Chapter 1 (commencing with section 1720) of Part 7 of Division 2 of the Labor Code. See more: https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=1.

15. Mixed-income developments generally refer to projects including both market-rate and affordable units. Under SB 35, the skilled and trained workforce requirement does not apply to projects where 100 percent of units are subsidized affordable housing, meaning that units are price or rent restricted at levels affordable to households with very low- or lower incomes, as defined in Health and Safety Code § 50079.5 and 50105.

16. The definition of "skilled and trained" is provided in Chapter 2.9 (commencing with section 2600) of Part 1 of Division 2 of the Public Contract Code.

17. California Department of Housing and Community Development. (2021). Updated Streamlined Ministerial Approval Process: Government Code Section 65913.4 Guidelines. Retrieved from: https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf.

18. California Department of Housing and Community Development. (2023). Annual Progress Reports. Retrieved from: https://www.hcd.ca.gov/planning-and-community-development/annual-progress-reports.

19. Interview with Caleb Roope, Pacific West Communities, May 11, 2023.

20. Interview with Amanda Locke, AMG & Associates, May 11, 2023.

21. Interview with Ben Rosen, Weingart Center, March 23, 2023.

22. SB 35's parking exemptions may be less important for certain projects following the passage of AB 2097 (2022); however, SB 35 uses a broader definition of public transit ("a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge a set fare, run on fixed routes, and are available to the public") than AB 2097 ("a major transit stop", as defined in Public Resources Code § 21155), which may continue to be advantageous for certain developments, depending on their location.

23. Interview with Elsa Rodriguez, Los Angeles County, March 9, 2023.

24. We classified projects as including 100 percent affordable units if all units except for those reserved for on-site managers (measured as at least 95 percent of all units in the development) are designated as affordable to households with lower incomes.

25. Interview with Travis Seawards and Shannon Reese, planners for Santa Barbara County, April 17, 2023.

26. Interview with Elsa Rodriguez, planner for Los Angeles County, March 8, 2023.

27. Interview with Brad Dickason, Maracor Development, March 20, 2023.

28. Interview with Kevin Scudero, planner for Antioch, March 15, 2023.

29. Interview with Dan Zack, Zack Urban Solutions, March 14, 2022.

30. Raetz, H., et al. (2020). "The Hard Costs of Construction: Recent Trends in Labor and Materials Costs for Apartment Buildings in California." Terner Center for Housing Innovation, UC Berkeley. Retrieved from: https://ternercenter.berkeley.edu/wp-content/uploads/2020/08/Hard_Construction_Costs_March_2020.pdf.

31. Christopher, B. (2023, May 8). "A Bay Area homebuilder planned a project with union rules. Can it work anywhere else?" CalMatters. Retrieved from: http://calmatters.org/housing/2023/05/california-housing-development/.

32. California Department of Housing and Community Development. (2023). Multifamily Finance Super NOFA Application , Universal Scoring Criteria IV.E.2.a.i. Retrieved from: https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/supernofa/2023-super-nofa-application.xlsm.

33. Mayor's Office of Housing and Community Development of the City and County of San Francisco. (2023). Notice of Funding Availability: Site Acquisition and Predevelopment Financing for New Affordable Rental Housing. Retrieved from: https://sf.gov/sites/default/files/2023-01/2023%20Affordable%20Housing%20NOFA%20for%20Site%20Acquisition%20FINAL.pdf

34. Developer Roundtable with Ramie Dare, Mercy Housing California, April 10, 2023.

35. Interview with Ruth Cueto, planner for San José, March 16, 2023.

36. Finkel, J. (2022). "Religious Tenets & Low-Income Tenants: Lessons Learned from Jordan Court." Terner Center for Housing Innovation, UC Berkeley. Retrieved from: https://ternercenter.berkeley.edu/research-and-policy/religious-tenets-low-income-tenants-berkeley-california/.

37. Developer roundtable with Abby Goldware Potluri, MidPen Housing, April 10, 2023.

38. Developer roundtable with Ann Silverberg, Related California, April 10, 2023.

39. Developer roundtable with Rob Wilkins, Affirmed Housing, April 10, 2023.

40. Developer roundtable with Sara Tsay, Abode Communities, April 10, 2023.

41. Interview with Melinda Coy, California Department of Housing and Community Development, April 21, 2023.

42. Interview with Nolan Bobroff, planner for Mammoth Lakes, March 8, 2023.

43. AB 2668 (2022) clarifies that the minimum number of affordable units that a development must dedicate to housing affordable to households making either 80 percent below or 120 percent below AMI is to be calculated before calculating any density bonus. HCD guidelines also provide further detail on how to utilize SB 35 in combination with a density bonus.

44. Interview with Nolan Bobroff, planner for Mammoth Lakes, March 8, 2023.

45. Interview with a planner for the City of Los Angeles, March 24, 2023.

46. Interview with Melinda Coy, California Department of Housing and Community Development, April 21, 2023.

47. Interview with a planner for the City of Los Angeles, March 24, 2023.

48. O'Neill, M., & Wang, I. (2023). "How Can Procedural Reform Support Fair Share Housing Production? Assessing the Effects of California's Senate Bill 35." NYU Furman Center. Retrieved from: https://furmancenter.org/files/How_Can_Procedural_Reform_Support_Fair_Share_Housing_Production_508.pdf.

49. Interview with a real estate attorney, March 20, 2023.

50. Interview with Ben Rosen, the Weingart Center, March 23, 2023.

51. Developer roundtable with Courtney Pal, Resources for Community Development, April 10, 2023.

52. Developer roundtable with Alex Rogala, MidPen Housing, April 10, 2023.

53. Developer roundtable with Jon McCall, Bridge Housing, April 10, 2023.

54. Interview with Nolan Bobroff, planner for Mammoth Lakes, March 8, 2023.

55. City of Burbank Department of Community Development. (2022). Staff Report:

April 10, 2023.

70. The California Department of Housing and Community Development. (2022). Data Strategy: An Appendix to the Statewide Housing Plan. Retrieved from: https://www.hcd.ca.gov/docs/data-strategy.pdf.

71. O'Neill, M., & Wang, I. (2023). "How Can Procedural Reform Support Fair Share Housing Production? Assessing the Effects of California's Senate Bill 35." NYU Furman Center. Retrieved from: https://furmancenter.org/files/How_Can_Procedural_Reform_Support_Fair_Share_Housing_Production_508.pdf.

72. Interview with Travis Seawards and Shannon Reese, planners for Santa Barbara County, April 17, 2023.

73. Governor's Office of Planning and Research. (2023). Site Check. Retrieved from: https://sitecheck.opr.ca.gov/.

74. Senate Bill 330: Housing Crisis Act of 2019. (Chapter 654, 2019). California State Legislature. Retrieved from: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330.

75. Specifically, SB 423 requires use of a skilled and trained workforce for any project that has floors used for human occupancy that are located more than 85 feet above the grade plane, unless the prime contractor fails to receive at least three responsive bids that attest to satisfying the skilled and trained workforce requirements, or all contractors, subcontractors and craft unions performing work on the development are subject to a multi-craft project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the development and provides for enforcement of that obligation through an arbitration procedure, as specified.

Assembly Committee on Housing and Community Development. (2023). SB 423 Analysis. Retrieved from: https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240SB423#.

76. Littlehale, S. (2019). "Rebuilding California: The Golden State's Housing Workforce Reckoning." Smart Cities Prevail. Retrieved from: https://www.smartcitiesprevail.org/wp-content/uploads/2019/01/SCP_HousingReport.0118_2.pdf.

77. A recent study found that between 2015 and 2019, almost half of families of construction workers in California were enrolled in a safety net program at an annual cost of over $3 billion, compared to about a third of all workers in the state.

Jacobs, K., & Huang, K. (2021). "The Public Cost of Low-Wage Jobs in California's Construction Industry." UC Berkeley Labor Center. Retrieved from: https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-californias-construction-industry/.

78. Developer roundtable with Ramie Dare, Mercy Housing California, April 10, 2023.

79. Interview with Ben Rosen, the Weingart Center, March 23, 2023.

80. Ibid.

81. Ibid.

82. Interview with a planner for the City of Los Angeles, March 24, 2023.

83. Ibid.

84. Interview with Mimi Sullivan, Saida + Sullivan Design Partners, and Donald Lusty, John Stewart Company, March 21, 2023.

85. California Department of Housing and Community Development. (2023). Statutory Determinations for Limiting Jurisdictions' Abilities to Restrict Development. Retrieved from: https://www.hcd.ca.gov/planning-and-community-development/statutory-determinations

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The Terner Center formulates bold strategies to house families from all walks of life in vibrant, sustainable, and affordable homes and communities. Our focus is on generating constructive, practical strategies for public policy makers and innovative tools for private sector partners to achieve better results for families and communities.

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News & Publications

Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing (Part III)

11.28.23 | Client Alert

Authored by Senator Scott Wiener, and signed into law on October 11 by Governor Newsom, Senate Bill ("SB") 423 amends Senator Wiener's 2017 landmark housing bill SB 35. In **Part I** of this Client Alert, we reported on SB 423's revisions regarding the circumstances triggering SB 35 streamlining and the criteria for project eligibility. In **Part II** of this Client Alert, we summarized SB 423's revisions to SB 35's labor requirements. In this final installment, we provide a summary of SB 423's more procedural and technical revisions.

- **Local Approval Authority**. SB 35 currently requires a local government to determine whether a project is consistent with applicable objective standards. SB 423 clarifies that this determination must be made by "a local government's **planning director or equivalent** position," notwithstanding any local law. The bill also clarifies that "**all departments** of the local government" that are required to issue an approval of the development prior to the granting of an entitlement" must comply with the requirements of SB 35 within the time periods provided.
- **Elimination of Public Oversight Meetings**. SB 35 currently permits local agencies subject to SB 35 streamlining to conduct "design review or public oversight" of a development within specified time frames. SB 423 eliminates references to "public oversight," but retains references to design review.
- **Limit on Required Studies**. SB 423 adds a new prohibition restricting local governments from requiring any of the following

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items prior to approving an SB 35 development:

- Studies, information, or other materials that do not pertain directly to determining whether the development is consistent with the objective planning standards applicable to the development.
- Compliance with any standards necessary to receive a post entitlement permit.

- **Unit Counts**. SB 423 adds new guidance for determining the total number of units in a development for purposes of SB 35, clarifying that a development project includes both of the following:
  - "All projects developed on a site, regardless of when those developments occur."
  - "All projects developed on sites adjacent to a site developed pursuant to this chapter if, after January 1, 2023, the adjacent site had been subdivided from the site developed pursuant to this chapter."

- **Public Meeting Requirement for Properties Designated in the CTCAC/HCD Opportunity Map**:
  - SB 423 adds additional public meeting requirements for "developments that are proposed in a census tract that is designated either as a moderate resource area, low resource area, or an area of high segregation and poverty on the most recent 'CTCAC/HCD Opportunity Map' published by the California Tax Credit Allocation Committee and the Department of Housing and Community Development."
    - The jurisdiction must hold a public meeting within 45 days after receiving a notice of intent pursuant to SB 35 and before the development proponent submits an application for the proposed development to provide an opportunity for the public and the local government to comment on the development.
    - The development proponent must attest in writing that it attended the meeting and reviewed the testimony and comments.
    - If the local government fails to hold the public meeting, the development proponent must hold a public meeting.
  - UC Berkeley provides a mapping tool that allows the public to view which properties are mapped. A significant number of properties (both in coastal, urban, and inland areas) fall within the categories of moderate resource area, low resource area, or an area of high segregation and poverty, and as a result this additional public meeting requirement will apply broadly to eligible SB 35 projects.

Prior CCN Alerts on SB 35:

- Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing **- Part I**
- Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing **- Part II**
- The Legislature Gives the SB 35 Streamlined and Ministerial Approval Process a Boost
- SB 35 Works, Increasing Affordable Housing Production

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News & Publications

Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing (Part I)

11.17.23 | Client Alert

Authored by Senator Scott Wiener and signed into law on October 11 by Governor Newsom, Senate Bill ("SB") 423 amends Senator Wiener's 2017 landmark housing bill SB 35. These amendments include a 10-year extension of SB 35 (extending the sunset date to January 1, 2036), an expansion of the scope and geographic reach of SB 35's ministerial review process, and modification of SB 35's labor and affordability requirements. The bill takes effect on January 1, 2024; however, some of the amendments in the bill do not become operative until later, while others have a limited duration.

As background, SB 35 added Section 65913.4 to the California Government Code[1] and provides that eligible multi-family housing development projects located on infill sites in jurisdictions that have not met their Regional Needs Housing Allocation ("RHNA") targets may qualify for a streamlined, ministerial approval process—allowing applicants to avoid uncertainties associated with local discretionary review and application of the California Environmental Quality Act ("CEQA"). We anticipate that SB 423 will expand the applicability of SB 35 to additional housing development projects.

California YIMBY, the California Housing Consortium, the California Conference of Carpenters, the Inner City Law Center, and the Local Initiative Support Corporation sponsored SB 423. While the State Building and Construction Trades Council initially opposed the bill, the trades dropped their opposition in June after the addition of increased labor protections to the bill. The California League of Cities

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opposed the bill.

SB 423 includes a Legislative finding that ensuring access to affordable housing is a matter of statewide concern and is not a municipal affair, and, therefore, the amendments to Government Code Section 65913.4 apply to all cities, including charter cities.

Due to the comprehensive nature of the SB 423's amendments to SB 35, we are presenting this update in a **three-part series**. In this first installment, we summarize SB 423's revisions regarding the circumstances triggering SB 35 streamlining and the criteria for project eligibility. **Part II** will summarize SB 423's revisions to SB 35's labor requirements. **Part III** will provide a summary of SB 423's more procedural and technical revisions.

- **Expands Application of SB 35 to Jurisdictions Lacking Compliant Housing Elements**. SB 35 currently applies to jurisdictions that have not issued sufficient building permits to meet their RHNA share by income category for the applicable reporting period. SB 423 expands these criteria to additionally apply SB 35 to jurisdictions that lack complaint Housing Elements as follows:
  - For the **Sixth Cycle** (current) or earlier Housing Element cycles, localities that have not yet adopted a Housing Element that the California Department of Housing and Community Development ("HCD") has found to be in substantial compliance with Housing Element Law. These jurisdictions will remain eligible until they obtain a substantial compliance determination from HCD.
  - For the **Seventh Cycle** or later Housing Element cycles, localities that do not adopt a Housing Element that HCD finds to be in substantial compliance with Housing Element Law by the statutory deadline. These jurisdictions will remain eligible until HCD's determination for the next reporting period.
  - The **HCD 2023 SB 35 Statewide Determination Summary**, showing which jurisdictions are currently subject to SB 35 streamlining, is available here.
  - The **HCD Housing Element Review Report**, showing the status of HCD's review of each jurisdiction's Housing Element, can be accessed here.
- **Increases Affordability Requirements**:
  - In jurisdictions that are subject to SB 35 streamlining as a result of failure to submit a production report or failure to issue building permits for sufficient *above moderate-income units* to meet their share of RHNA, SB 35 streamlining currently applies to eligible projects that dedicate (i) 10 percent of units to housing affordable to households making at or below 80 percent of area median income ("AMI"), or (ii) in nine-county San Francisco Bay Area ("Bay Area"), 20 percent of units to housing affordable to households making below 120 percent of AMI with the average income at or below 100 percent of AMI.
  - **Rental Projects**: SB 423 imposes deeper affordability requirements for eligible "for-rent projects" to qualify for SB 35 streamlining. In jurisdictions that are subject to SB 35 streamlining as a result of failure to adopt a substantially compliant Housing Element as determined by HCD, failure to submit a production report, or failure to issue building permits for sufficient *above moderate-income units* to meet their share of RHNA, SB 423 provides that SB 35 streamlining applies to eligible projects that dedicate 10 percent of units to housing affordable to households making at or below **50 percent** of AMI.

- *For both rental and for-sale projects, where the local inclusionary housing ordinance requires a greater percentage, in certain circumstances, the local ordinance applies. SB 423, however, establishes that if a local requirement for affordable housing requires units that are restricted to households with incomes higher than the applicable income limits required by SB 35, then units that meet the applicable income limits required by SB 35 are deemed to satisfy those local requirements for higher income units.*

- **Optional Bay Area Criteria**: SB 423 also increases the affordability requirements under the optional criteria for Bay Area developments (either rental or for-sale), requiring the developments to dedicate 20 percent of units to housing affordable to households making at or below **100 percent** of AMI with the average income at or below **80 percent** of AMI.
  - *If the local inclusionary ordinance requires more than 20 percent at or below 100 percent of AMI or requires a deeper level of affordability than an average of 100 percent of AMI, the local requirement will apply.*
- **Accelerates Application of SB 35 in San Francisco**. Under current law, a locality that has issued fewer building permits than required to satisfy its RHNA share by income category for a reporting period is subject to SB 35 streamlining until the next reporting period. A "reporting period" is either the first half or the last half of the eight-year Housing Element cycle. For the City and County of San Francisco only, SB 423 shortens the reporting period to one year. Because San Francisco is unlikely to meet its above-market rate RHNA production targets in the first year of the Sixth Cycle, San Francisco likely will become an eligible SB 35 jurisdiction for projects including 10 or 20 percent affordable units (as provided above) after the first Sixth Cycle reporting period (rather than after the first half of the 6th Cycle).
- **Extends SB 35 to Some Properties in the Coastal Zone Starting in January 2025**. Currently, SB 35 does not apply to sites in the Coastal Zone. SB 423 expands the reach of SB 35 to qualifying developments in the Coastal Zone starting on January 1, 2025. In the original draft in the Legislature, the bill would have applied broadly within the Coastal Zone. Following Coastal Commission opposition, however, the Legislature amended the bill to limit the circumstances under which SB 35 applies within the Coastal Zone. Requirements for SB 35 eligibility in the Coastal Zone added by SB 423 include:
  - The development *must be* located on a property in an area of the Coastal Zone that is subject to a certified land use plan (LUP) or a certified local coastal program (LCP).
  - The development *must not* be located on a property that is either (a) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance, or (b) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.
  - The property *must not* be in an area of the Coastal Zone that is vulnerable to five feet of sea level rise, as determined by any of several listed federal, state, and local entities.
  - The development *cannot* be located on or within a 100-foot radius of a wetland, or in a parcel on prime agricultural land, as those terms are defined in the Public Resources Code.
  - The development *must be* located on a parcel zoned for multifamily housing.

Coastal Zone development eligible for SB 35 streamlining must obtain a coastal development permit ("CDP") from the agency with permitting authority. Where there is a certified LCP, that agency generally would be the local agency (unless the site is within the Commission's appellate jurisdiction). Where there is only a certified LUP, that agency would be the Commission. Under SB 423, the permitting agency must approve the CDP if the development is consistent with all objective standards of the LCP or the LUP, as applicable.

SB 423 provides that receipt of any density bonus, concessions/incentives, waivers or reductions of development standards, and parking ratios cannot be used by the permitting agency as a basis to find the development inconsistent with the LCP.

- **Extends SB 35 to a Broader Range of Zoning Districts**. Currently, in order to be eligible for SB 35 streamlining, a site must either have a general plan or zoning designation that allows residential use or residential mixed-use development *or* be zoned for office or retail commercial use *and* meet the requirements of the Middle Class Housing Act (last year's SB 6). SB 423 modifies the eligibility criteria to include sites within any zone where office, retail, or parking are a principally permitted use. This change allows application of SB 35 to a broader range of zoning districts, including some that do not permit residential use.
- **Changes SB 35 Applicability to Properties in Fire Hazard Severity Zones**. Currently, SB 35 does not apply to sites in very high fire hazard severity zones as determined by the Department of Forestry and Fire Protection pursuant to Government Code Section 51178 or in high or very high fire hazard severity zones as indicated on maps of the Department of Forestry and Fire Protection pursuant to Public Resources Code Section 4202, unless the site is excluded from the specified hazard zone by the local agency pursuant to Government Code Section 51179 or has adopted specified fire hazard mitigation measures. SB 423 modifies this exclusion.
  - SB 423 deletes the exclusion of properties within "a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to [Public Resources Code] Section 4202," and replaces it with an exclusion for sites within the state responsibility area, as defined in Public Resources Code Section 4102. State responsibility areas include zones mapped as **moderate fire hazard severity zones**—not just those in high and very high zones, resulting in an expansion of the scope of this exclusion.
  - The bill also deletes the current language in SB 35 providing that the exclusion does not apply to sites excluded from the specified hazard zones by a local agency pursuant to Government Code section 51179.
  - SB 423 modifies the exception to the exclusion for sites that have adopted specified fire hazard mitigation measures by adding a non-exclusive list of statutory standards that can serve as potential fire hazard mitigation measures.
  - The State's Fire Hazard Severity Zone Viewer (available here) identifies areas within the state located within state responsibility areas and local responsibility areas.
- **Makes Cleanup Changes Regarding Subdivision Projects.** In 2019, Assembly Bill ("AB") 1485 included cleanup provisions to clarify that SB 35 applies to projects that involve subdivisions. In connection with revisions to SB 35's labor provisions (to be discussed in Part II of this Client Alert), SB 423 includes an additional cleanup change to delete a remnant provision of SB 35 providing that streamlining is not available unless the subdivision meets certain labor standards.

In addition to extending SB 35 for another decade, SB 423 extends SB 35 to a broader range of properties and expands its reach to more California jurisdictions. As estimated by the Terner Center at U.C. Berkeley, between 2018 and 2021 an estimated 156 projects (comprising over 18,000 housing units) were approved under the provisions of SB 35. With SB 423's revisions, housing developers have the opportunity to construct tens of thousands of additional units under SB 35's streamlined ministerial permit process.

In **Part II of this Client Alert** we will summarize SB 423's revisions to SB 35's labor requirements, specifically how those revisions expand upon the existing prevailing wage requirements.

Please feel free to contact any of the authors of this Client Alert if you would like further information on SB 35's streamlining provisions as amended by SB 423.

Prior CCN Alerts on SB 35:

- The Legislature Gives the SB 35 Streamlined and Ministerial Approval Process a Boost
- SB 35 Works, Increasing Affordable Housing Production

[1] "SB 35" as used herein references Government Code section 65913.4, as amended.

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News & Publications

Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing (Part II)

11.21.23 | Client Alert

Authored by Senator Scott Wiener and signed into law on October 11 by Governor Newsom, Senate Bill ("SB") 423 amends Senator Wiener's 2017 landmark housing bill SB 35. In **Part I** of this Client Alert, we reported on SB 423's revisions regarding the circumstances triggering SB 35 streamlining and the criteria for project eligibility. In this installment, we summarize SB 423's revisions to SB 35's labor requirements. **Part III** will provide a summary of SB 423's more procedural and technical revisions.

- **SB 423 Both Expands and Limits Labor Requirements**
  - SB 423 imposes **additional labor requirements for developments with 50 or more housing units**, which are identical to Assembly Bill ("AB") 2011 provisions adopted last year.
    - A contractor that employs construction craft employees or enters into subcontracts for at least 1,000 hours must either (i) participate in a state-approved apprenticeship program, or (ii) request the dispatch of apprentices from a state-approved apprenticeship program. This change will require contractors and subcontractors generally to notify applicable apprenticeship programs of the existence of the development, request dispatch of apprentices, and employ apprentices in apprenticeable occupations in a ratio of five journeypersons to every apprentice and at reduced apprenticeship wage rates (but does not require non-union contractors or subcontractors to enter into a collective

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bargaining agreement with a union).

- Each contractor that employs construction craft employees must make specified **health care expenditures** for each employee tied to the hourly pro rata cost of a specific Covered California health care plan.
- The development proponent must provide **monthly reports** to the local agency demonstrating compliance with the apprenticeship and health care requirements or be subject to substantial penalties.
- Contractors must maintain and submit to the Labor Commissioner **certified payroll records**, regardless of whether the development is subject to a Project Labor Agreement ("PLA") (so that developments with 50 or more housing units appear subject to a mandatory certified payroll record-keeping requirement).

- **SB 423 revises skilled and trained workforce requirements**, mandating them only for developments over 85 feet, effectively removing them for many residential developments. Because the skilled and trained workforce statutes require a minimum percentage of all workers in an apprenticeable occupation to be graduates or apprentices of an approved program, and because a large majority of apprenticeship programs are union-affiliated, the skilled and trained workforce requirement generally means that contractors or subcontractors employing workers on the project will be signatory with the construction unions. The following essential definitions remain unchanged:
  - A "**skilled and trained workforce**" is one for which all workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in a State or federally approved apprenticeship program.
  - A "**skilled journeyperson**" is one that has either graduated from an approved apprenticeship program or has at least as many hours of on-the-job experience as would be required to graduate from an apprenticeship program for the applicable occupation.
  - SB 423 establishes additional **exceptions to the skilled and trained workforce requirements**.
    - First, if a prime contractor fails to receive at least three bids in a scope of construction work from subcontractors that attest to satisfying the skilled and trained workforce requirements, then the prime contractor may accept new bids and need not require that a skilled and trained workforce be used by the subcontractor for that scope of work.
    - Second, skilled and trained workforce requirements do not apply if all contractors, subcontractors, and craft unions performing work on the development are subject to a multi-craft project labor agreement that requires the payment of prevailing wage and provides for enforcement of that obligation through an arbitration procedure.
    - Third, skilled and trained workforce requirements do not apply where 100 percent of the units, exclusive of a manager's unit or units, are dedicated to lower income households.
  - Where skilled and trained workforce requirements apply, SB 423 requires developers to provide bidding information to labor organizations representing workers in the building and construction trades who may perform work necessary to complete the project and to employer associations representing contractors that may perform work necessary to complete the project and to provide certain contracting information upon request to joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation 8 Act of 1978.

While complicated, the revised labor requirements in SB 423 should generally be easier to satisfy than the existing labor requirements of SB 35, so that developers should find fewer obstacles to taking advantage of SB 35's ministerial approval process.

Prior CCN Alerts on SB 35:

- Governor Signs Legislation Enacting Significant Amendments to SB 35, Increasing Opportunities for Development of Multi-Family Housing **- Part I**
- The Legislature Gives the SB 35 Streamlined and Ministerial Approval Process a Boost
- SB 35 Works, Increasing Affordable Housing Production

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News & Publications

AB 1287 – Legislature Creates an (Additional) Density Bonus for Very Low- and Middle-Income Households

10.27.23 | Client Alert

California has changed the State Density Bonus Law to give developers the option to incorporate significant additional density into eligible bonus projects. AB 1287, which was just signed into law by Governor Newsom, creates a ***new stackable density bonus*** (bonus on top of bonus) specifically designed to facilitate construction of middle-income housing and additional very low-income housing. Importantly, this new law provides the first opportunity to receive a density bonus for ***moderate income rental*** units.

To be eligible for AB 1287's additional bonus, a project must satisfy specific criteria. First, the project must propose to construct sufficient very low-income, low-income, or moderate-income units to achieve a 50% base density bonus (i.e., 15% very low-income, or 24% low-income, or 44% moderate-income). These units are still subject to prior requirements, including that any moderate-income units used to satisfy the base bonus be for-sale. The very low and low-income units can either be for-sale or rental units. Second, after committing to the required minimum base bonus, the applicant has the option to commit to constructing additional very low-income or moderate-income units as part of the project and receive an ***additional*** density bonus at specified percentages. These additional very low-income or moderate-income units may be offered as for sale or rental units – the first time that moderate income units qualifying for a density bonus can be offered for rent. As with the base bonus, the additional bonus is calculated based on a percentage of the project's base density. Thus, this bonus is additive of the initial 50% bonus, meaning a project could obtain a 100% density bonus if providing the required

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percentage of affordable units. The additional bonus percentages are as follows:

To illustrate using a project with a base density of 100 units, if the project proposed to reserve 15% of the base units for very low-income households *plus* 15% for moderate-income households, the project would be entitled to a ***100% density bonus*** (50% from the very low-income units and 50% from the moderate-income units). And, unlike a project that obtains a bonus through only moderate-income units, the additional moderate-income units in a stacked (bonus + bonus) project may *offer the moderate-income units for rent*. (Govt. Code § 65915(v) [additional "rental or for-sale affordable units to very low income households or moderate income households"].)