

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT  
DIVISION OF HOUSING POLICY DEVELOPMENT**

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March 11, 2019

Daniel Golub, Associate  
Holland & Knight LLP  
50 California Street, Suite 2899  
San Francisco, CA 94111

**RE: City of Los Altos SB 35 Application Technical Assistance**

Dear Daniel Golb:

This letter is in response to your March 6, 2019 request for technical assistance regarding the requirements of Government Code § 65913.4 (SB 35, Chapter 366, Statutes of 2017) also known as the “Streamlined Ministerial Approval Process”. The Department of Housing and Community Development (HCD) is informed that Rhoades Planning Group submitted an SB 35 application to the City of Los Altos on behalf of 40 Main Street Offices, LLC on November 8, 2018 for a 15-unit project of which 10 percent of the units are affordable to lower-income households.

SB 35 was part of a 15-bill housing package aimed at addressing the state’s housing shortage and high housing costs. Specifically, it requires the availability of a Streamlined Ministerial Approval Process for developments in localities that have not yet made sufficient progress towards their allocation of the regional housing need. Government Code § 65913.4(l) states it is the policy of the state that section 65913.4 be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply. Approval of projects such as 40 Main Street fulfill this legislative intent.

Pursuant to Government Code § 65913.4(j), HCD, among other things, is responsible for reviewing, adopting, amending, and repealing guidelines to implement uniform standards or criteria that supplement or clarify the terms, reference, or standards set forth under Government Code § 65913.4. To that end, HCD released a series of Frequently Asked Questions in 2018 to facilitate implementation of the law. On November 29, 2018, HCD released guidelines pursuant to Government Code § 65913.4(j) which became effective January 1, 2019.

The following are HCD's responses to questions (*in italics*) posed in your March 6, 2019 request.

- 1) *In light of SB 35's requirement that a locality provide "the development proponent written documentation of which standard or standards the development conflicts with, and an explanation for the reason or reasons the development conflicts with that standard or standard," Government Code § 65913.4(b)(1); see also Guidelines, § 301(a)(3), can a locality deny an SB 35 application by issuing a written statement which claims that the project conflicts with an objective zoning standard, but does not cite the section or sections of the zoning ordinance containing the standard that the project supposedly violates?*

No. Pursuant to Government Code § 65913.4(b)(1), if a local government determines that a proposed development conflicts with any of the objective planning standards, it must provide the development proponent written documentation of which standard or standards the development conflicts with. This would include a specific reference to what the specific objective standard is and a citation to where it can be found. Without this citation, the specific standard is not verifiable and thus would not meet the definition of objective standard pursuant to Government Code § 65913.4 (a)(5).

- 2) *Can a locality deny a SB 35 application by stating, without citing any code section, that a project does not provide "adequate access/egress to the proposed off-street parking," or by referring to notes written by staff members which state that effects on parking spaces are not "acceptable" and that parking circulation is "inadequate"?*

No. Pursuant to Government Code § 65913.4 (a)(5) "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Terms like "adequate", "acceptable", and "inadequate" imply a subjective determination if they are not accompanied with reference to the specific requirement not met.

- 3) *If the locality does not provide any written communication to the applicant citing any specific code section that the project violates within the applicable 60- or 90-day timeline from the date the application is submitted, is the project deemed to satisfy the objective standards?*

Yes. Pursuant to Government Code § 65913.4(b)(2), if the local government fails to provide the required documentation pursuant to Government Code § 65913.4(b)(1), the development shall be deemed to satisfy the objective planning standards.

- 4) *Can a locality deny an SB 35 application on the grounds that the SB 35 application did not include the application material that the locality requires for complete discretionary Design Review and Use Permit applications?*

No. Pursuant to Government Code § 65913.4 (a)(5) the only objective standards that can apply to the project are those external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal. Discretionary design review would not apply. Specifically, Government Code § 65913.4 (c) states design review or public oversight shall be objective and be strictly focused on assessing compliance with criteria required for streamlined projects. Design review or public oversight can not in any way inhibit, chill, or preclude the streamlined ministerial approval process.

In addition, the Streamlined Ministerial Permit process is a ministerial process. The requirement to apply for use permits, which are by definition discretionary, would also not apply. As stated in the Department's FAQs, Government Code § 65913.4 specifically exempts developments from the conditional use permit process and they must be approved through a streamlined, ministerial approval process if they satisfy the objective planning standards. Pursuant to the Streamlined Ministerial Approval Guidelines, the locality's process and application requirements shall not in any way inhibit, chill, or preclude the ministerial approval process, which must be strictly focused on assessing compliance with the criteria required for streamlined projects.

HCD appreciates the opportunity to provide comments. If you have any questions, please contact me at (916) 263-7425.

Sincerely,

Melinda Coy  
Senior Policy Specialist