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# Streamlined Housing Laws and New Housing Legislation

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# Presenters



**Amara Morrison**

- Practice focuses on Land Use, Real Estate, Public Agency, Transportation Agencies and Environmental
- Vermont Law School, J.D and Masters of Environmental Law; *magna cum laude*



**Patricia Curtin**

- Practice focuses on Land Use, Real Estate and Public Agency
- McGeorge School of Law, University of the Pacific, Sacramento; J.D.

# Today's Program

- SB 35 - Gov. Code sect. 65913.4
- SB 330 - Housing Crisis Act of 2019
- SB 9 – California Housing Opportunity and More Efficient (“HOME”) Act.
- SB 10 – Local Control for Increased Housing Density



# The Problem

- The housing crisis is real
- The pandemic exacerbated California's housing affordability crisis. From **March 2020 to March 2021**, housing prices increased 24% in the state
- Climate crisis and wildfires may also exacerbate housing availability
- Labor shortage

# Hurdles in Securing Project Approvals

- Extraordinary amount of time to process applications
- Public opposition
- CEQA and other legal challenges
- Referendums and Initiatives



# SB 35

## (Government Code § 65913.4)

- Adopted in 2017 and been amended twice
- Creates a ministerial review and approval process to streamline certain qualifying affordable housing projects
- Targets jurisdictions that have not yet made sufficient progress towards their allocation of regional housing needs
- Department of Housing and Community Development (HCD) guidelines

“The Legislature finds and declares that there exists a severe shortage of affordable housing, especially for persons and families of low and moderate income, and that there is an immediate need to encourage the development of new housing, not only through the provision of financial assistance, but also through changes in law.”

# Key Aspects of SB 35

- Project approval is streamlined and ministerial (not subject to discretionary review or approval)
- If project qualifies, approval in 90 or 180 days or less
- Extremely limited public review opportunities
- Exempt from CEQA because CEQA only applies to “discretionary” actions

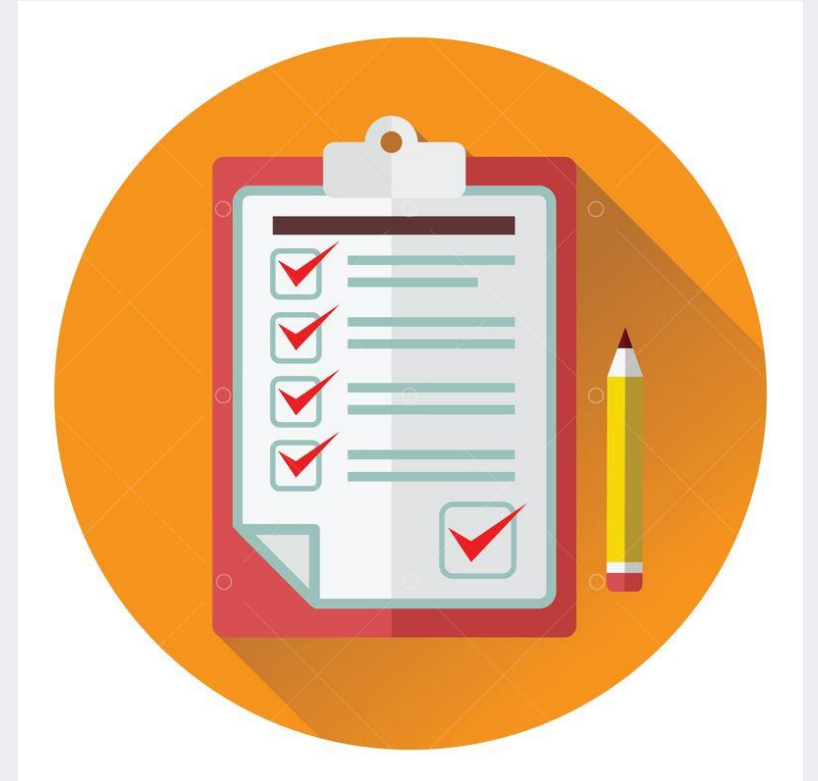


# Is the Project Eligible?

- Project must be located in a jurisdiction that HCD has determined has issued less than its share of building permits to meet its regional housing needs, by income category within a “reporting period.” (HCD website)
- 29 jurisdictions that meet their RHNA numbers
- Above moderate housing (298 jurisdictions failing)
- Below moderate housing (low and very low) (2133 jurisdictions failing)

# SB 35 Streamlining Checklist

- 2/3 of the units must be residential
- Urban area
- Percentage must be affordable
- Must comply with “objective standards”
- Subject to prevailing wage
- Must engage in Tribal Consultation



# Public Hearings?

- Not required because a ministerial process
- Can permit “design review or public oversight”
  - Can be conducted by Planning Commission or equivalent board responsible for approval of development projects, including the city council.
  - Must be “objective and strictly focus on assessing compliance with criteria required for streamlined projects, as well as any reasonable objective design standards” in effect before application submitted.
  - Cannot in any way “inhibit, chill, or preclude the ministerial approval” allowed by SB 35.

# Ruegg & Ellsworth v. City of Berkeley

- Housing project at Spenger's Grotto Parking Lot
- First published appellate decision regarding SB35
- City denial upheld by trial court, reversed on appeal
- Two main issues: historic "structure" and applicability to charter cities



# Senate Bill 330 – Summary



- Added the Housing Crisis Act of 2019 to the Planning and Zoning Laws (Gov't Code §66300)
- Amended the Housing Accountability Act – NIMBY Law (Gov't Code §65589.5) and Permit Streamlining Act (Gov't Code §65920 et seq.)
- Purpose is to provide more housing and reduce the time in processing housing applications

# Senate Bill 330 Highlights

- New, earlier path to obtain vested rights by filing an “SB 330 Preliminary Application”
- Limits public hearings to five on all housing projects
- Precludes local governments (and the electorate exercising its initiative or referendum power) from enacting policies that reduce density or place a limitation on housing
- Only allows local agencies to apply only objective, written development rules and policies.

# Project Qualifications

- What projects qualify?
- “Housing Development Project” defined at Gov. Code §65589.5(h)(2) which includes projects consisting of:
  - Residential units
  - Mixed-use with at least two-thirds of square footage for residential
  - Transitional (i.e., temporary housing homeless) or Supportive Housing (i.e., hospice care homes, drug rehabilitation homes)

# Preliminary Application



- New creation of state law, requiring 17 items to be submitted before, or in conjunction with, a land use application (“preliminary application”).
- Jurisdiction may have a preliminary application form; if not, can use form on California Department of Housing and Community Development (HCD) website.



# Purpose in Filing a Preliminary Application



- Creates new vested right – deemed complete upon submission of a preliminary application
- Earlier than common law (time of construction)
- Earlier than vesting tentative map (at time map application is deemed complete)
- Earlier than development agreement (time of agreement approval)

# SB 330 Preliminary Application Form - HCD



## HOUSING CRISIS ACT of 2019 – SB 330

### PRELIMINARY APPLICATION FORM

#### PURPOSE

This form serves as the preliminary application for housing development projects seeking vesting rights pursuant to SB 330, the Housing Crisis Act of 2019.

#### GENERAL INFORMATION

An applicant for a housing development project that includes (1) residential units (2) a mix of commercial and residential uses with two-thirds of the project's square footage used for residential purposes; or (3) transitional or supportive housing, shall be deemed to have submitted a preliminary application upon provision of all of the information listed in this Preliminary Application form and payment of the permit processing fee to the agency from which approval for the project is being sought.

After submitting this Preliminary Application to the local agency, an applicant has 180 days to submit a full application or the Preliminary Application will expire.

#### Submittal Date Stamp\*1,2:

\*1Submittal of all the information listed and payment of the permit processing fee freezes fees and development standards as of this date, unless exceptions per Government Code § 65889.5(o) are triggered.

\*2Note: Record keeping pertaining to which standards and fees apply at date of submittal is imperative, as penalties may apply for imposing incorrect standards

#### SITE INFORMATION

1. **PROJECT LOCATION** - The specific location, including parcel numbers, a legal description, and site address, if applicable.

Street Address \_\_\_\_\_ Unit/Space Number \_\_\_\_\_

Legal Description (Lot, Block, Tract) \_\_\_\_\_ Attached? YES  NO

Assessor Parcel Number(s) \_\_\_\_\_

2. **EXISTING USES** - The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

3. **SITE PLAN** - A site plan showing the building(s) location on the property and approximate square footage of each building that is to be occupied.

Attached? YES  NO

#### a. RESIDENTIAL DWELLING UNIT COUNT:

Please indicate the number of dwelling units proposed, including a breakdown of levels by affordability, set by each income category.

	Number of Units
Market Rate	
Managers Unit(s) – Market Rate	
Extremely Low Income	
Very Low Income	
Low Income	
Moderate Income	
Total No. of Units	
Total No. of Affordable Units	
Total No. of Density Bonus Units	

Other notes on units:

6. **FLOOR AREA** - Provide the proposed floor area and square footage of residential and nonresidential development, by building (attach relevant information by building and totals here):

	Residential	Nonresidential	Total
<b>Floor Area (Zoning)</b>			
<b>Square Footage of Construction</b>			

7. **PARKING** - The proposed number of parking spaces:

# SB 330 Preliminary Application Form - HCD



9. **SUBDIVISION** – Will the project proponent seek any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a vesting or tentative map, or a condominium map?

YES  NO

If "YES," please describe:

10. **POLLUTANTS** – Are there any proposed point sources of air or water pollutants?

YES  NO

If "YES," please describe:

11. **EXISTING SITE CONDITIONS** – Provide the number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied. Provide attachment, if needed.

	Occupied Residential Units	Unoccupied Residential Units	Total Residential Units
Existing			
To Be Demolished			

12. **ADDITIONAL SITE CONDITIONS** –

iv. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?

YES  NO

v. A delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2?

YES  NO

vi. A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?

YES  NO

If "YES" to any, please describe:

b. Does the project site contain historic and/or cultural resources?

YES  NO

If "YES," please describe:

d. Does the project site contain any recorded public easement, such as easements for storm drains, water lines, and other public rights of way?

YES  NO

If "YES," please describe:

e. Does the project site contain a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code? Provide an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

YES  NO

If "YES," please describe and depict in attached site map:

13. **COASTAL ZONE** - For housing development projects proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

a. Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

YES  NO

b. Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

YES  NO

# SB 330 Preliminary Application Form - HCD



**Property Owner of Record**  Same as applicant  Different from applicant

Name (if different from applicant) \_\_\_\_\_

Address \_\_\_\_\_ Unit/Space Number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**Optional: Agent/Representative Name** \_\_\_\_\_

Company/Firm \_\_\_\_\_

Address \_\_\_\_\_ Unit/Space Number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**Optional: Other** (Specify Architect, Engineer, CEQA Consultant, etc.) \_\_\_\_\_

Name \_\_\_\_\_

Company/Firm \_\_\_\_\_

Address \_\_\_\_\_ Unit/Space Number \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

**PROPERTY OWNER AFFIDAVIT**

Before the application can be accepted, the owner of each property involved must provide a signature to verify the Preliminary Application is being filed with their knowledge. Staff will confirm ownership based on the records of the City Engineer or County Assessor. In the case of partnerships, corporations, LLCs or trusts, the agent for service of process or an officer of the ownership entity so authorized may sign as stipulated below.

- **Ownership Disclosure.** If the property is owned by a partnership, corporation, LLC or trust, a disclosure identifying the agent for service or process or an officer of the ownership entity must be submitted. The disclosure must list the names and addresses of the principal owners (25 percent interest or greater). The signatory must appear in this list of names. A letter of authorization, as described below, may be submitted provided the signatory of the letter is included in the Ownership Disclosure. Include a copy of the current partnership agreement, corporate articles, or trust document as applicable.
- **Letter of Authorization (LOA).** A LOA from a property owner granting someone else permission to sign the Preliminary Application form may be provided if the property is owned by a partnership, corporation, LLC or trust, or in rare circumstances when an individual property owner is unable to sign the Preliminary Application form. To be considered for acceptance, the LOA must indicate the name of the person being authorized to file, their relationship to the owner or project, the site address, a general description of the type of application being filed and must also include the language in items 1-3 below. In the case of partnerships, corporations, LLCs or trusts, the LOA must be signed by the authorized signatory as shown on the Ownership Disclosure or in the case of private ownership by the property owner. Proof of Ownership for the signatory of the LOA must be submitted with said letter.
- **Grant Deed.** Provide Copy of the Grant Deed if the ownership of the property does not match local records. The Deed must correspond exactly with the ownership listed on the application.
- **Multiple Owners.** If the property is owned by more than one individual (e.g., John and Jane Doe, or Mary Smith and Mark Jones) signatures are required of all owners.

1. I hereby certify that I am the owner of record of the herein previously described property located in \_\_\_\_\_ which is involved in this Preliminary Application, or have been empowered to sign as the owner on behalf of a partnership, corporation, LLC, or trust as evidenced by the documents attached hereto.

# Application Process

- Agency not required to respond to preliminary application; purpose in filing is to vest into rules in effect at time application submitted
- Applicant required to file “final application” within 180 days from filing preliminary application; if fails to do so “vesting nature” expires
- Final application is the materials required for the land use entitlement being sought (i.e., development plan, tentative map)

# Application Process cont'd

Amended Permit Streamlining Act to limit an agency's ability to comment on a development application

- Agency has 30 days to review final application and identify any missing materials or deem application complete
- Applicant has 90 days to submit information requested
- Agency has 30 days to review additional information; cannot ask for new information
- If application is still incomplete, agency must identify appeal process and make decision within 60 days

# Application Process cont'd

Amended Housing Accountability Act to limit an agency's ability to not approve housing projects:

- If project complies with objective planning standards in place at time of the preliminary application is submitted, it may not be denied, or approved at a lower density unless the project would have a specific, adverse impact upon public health and safety. Gov. Code §65589.5(j)(1)
- “Specific adverse impact” – a significant, quantifiable, direct, and unavoidable impact based on objective, written public or safety standards that existed on date application was deemed complete. Gov. Code §65589.5(j)(1)(A)
- “Objective” – involves no personal or subjective judgement and being uniformly verifiable by an external and uniform benchmark or criterion available and known to the applicant, proponent and public official. Gov. Code §65589.5(h)(8)

# Limited to 5 Public Hearings for Housing Projects

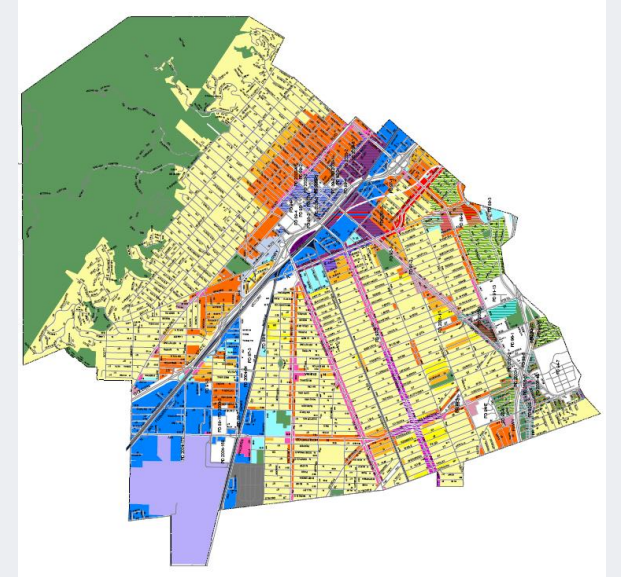
- No more than five public “hearings” after housing project deemed complete under the Permit Streamlining Act (“PSA”) (Gov. Code §65905.5)
  - Project must be consistent with objective general plan and zoning standards
  - If project is consistent with general plan, but inconsistent with zoning, there is still consistency and a rezoning cannot be required.
  - “Hearings” is construed broadly: includes continued hearings and workshops conducted by any public body; does not include hearings on legislative actions or appeals of legislative actions





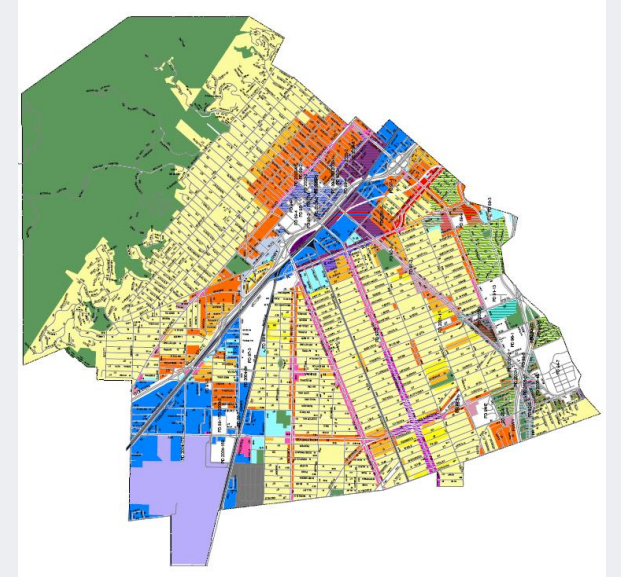
# New Provisions from the Housing Crisis Act of 2019

- Applies to affected cities and counties – urbanized areas (Gov. Code §66300)
  - In an urbanized area or urban cluster, as determined by Dept. of Housing and Community Development
  - Includes charter cities, but not cities with a population of 5,000 or less that are not in urbanized area
  - 445 of 482 cities, portions of 22 counties; Bay Area is an urbanized area.
- If housing is an allowed use, agency is prohibited from:
  - Downzoning, or making changes to a general plan or specific plan that decrease housing opportunities from that allowed on January 1, 2018 unless the agency increases housing opportunities elsewhere in its jurisdiction – referred to as “no net loss in residential capacity”



# New Provisions from the Housing Crisis Act of 2019 cont'd

- Imposing moratoriums or similar restrictions on housing projects unless necessary to protect against imminent threat to health and safety to those specific residents
- Imposing of design standards that are not objective
- The Housing Crisis Act does NOT apply to projects in a “very high fire hazard severity zone” – an area designated as such by state fire marshal that are not areas the state is financially responsible for serving



# Miscellaneous Provisions of SB 330

- Agency must determine if project site is a historic site (includes archeological, paleontological or tribal cultural resources) at time application deemed complete under PSA; determination remains valid through process, precluding arguments during application process that site contains resources
- Limits agency discretion in determining consistency with general plan and zoning standards
  - New standard – shall be consistent if it "allows (not requires) a reasonable person to conclude".
  - No longer allows deference to agency in making determinations of consistency
- Subjects agency to penalties and fines if requires applicant to comply with subsequent enacted land use rules (\$10,000/unit - \$50,000/unit in fines)

# SB 9 – California Housing Opportunity and More Efficient (“HOME”) Act

- Ministerial approval in creating two parcels with up to four homes spread on original parcel. Ministerial approval means no CEQA
- Allows single-family home lot to be split into two lots
- Exceptions: must be in urbanized area; property not used for rental in past 3 years; property does not have an existing ADU; new lot must be >1,200 sq. ft and at least 40% of property being divided; modification of existing home may not require demo of more than 25% of exterior wall; no significant adverse impact on physical environment and no feasible method to mitigate
- Cannot be used in historic districts, fire hazard zones or in habitat areas for protected species
- Original landowner must live in one of the units for three years

## SB 10 – Local Control for Increased Housing Density



- Provides a CEQA exemption to allows local agencies to adopt an ordinance to allow up to 10 dwelling units on any *parcel* within a transit-rich area or urban infill site
- Subsequent project approval on upzoned site could require environmental review

# QUESTIONS



THANK YOU!

## STAY IN TOUCH

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