

SB 35 Statewide Determination Summary

Cities and Counties Subject to SB 35 Streamlining Provisions

When Proposed Developments Include ≥ 50% Affordability

When jurisdictions have insufficient progress toward their Lower income RHNA (Very Low and Low income), these jurisdictions are subject to SB 35 (Chapter 366, Statutes of 2017) streamlining for proposed developments with at least 50% affordability. If the jurisdiction also has insufficient progress toward their Above Moderate income RHNA, then they are subject to the more inclusive streamlining for developments with at least 10% affordability.

The following list includes the 178 jurisdictions that are not subject to SB 35 streamlining for proposed developments with ≥ 10% affordability, but are subject to SB 35 streamlining for proposed developments with ≥ 50% affordability.

JURISDICTION
106 NEWPORT BEACH
107 NORWALK
108 OAKDALE
109 OAKLAND
110 OAKLEY
111 ORANGE COUNTY
112 ORINDA
113 PALM SPRINGS
114 PALO ALTO
115 PASADENA
116 PERRIS
117 PETALUMA
118 PIEDMONT
119 PITTSBURG
120 PLACENTIA
121 PLACER COUNTY
122 PLACERVILLE
123 PLEASANTON
124 PLUMAS COUNTY
125 PORT HUENEME
126 PORTOLA VALLEY
127 RANCHO CORDOVA
128 RANCHO CUCAMONGA
129 RANCHO MIRAGE
130 RANCHO PALOS VERDES
131 RANCHO ST. MARGARITA
132 REDWOOD CITY
133 ROCKLIN
134 ROHNERT PARK
135 ROSEVILLE
136 SAINT HELENA
137 SAN BUENAVENTURA
138 SAN CARLOS
139 SAN CLEMENTE
140 SAN DIEGO
141 SAN FRANCISCO
142 SAN JOAQUIN COUNTY

JURISDICTION
143 SAN JOSE
144 SAN JUAN CAPISTRANO
145 SAN LUIS OBISPO CO.
146 SAN MARCOS
147 SAN MARINO
148 SAN MATEO
149 SAN RAMON
150 SANTA ANA
151 SANTA BARBARA COUNTY
152 SANTA CLARA
153 SANTA CRUZ
154 SANTA FE SPRINGS
155 SIERRA MADRE
156 SOLANO COUNTY
157 SOUTH PASADENA
158 SOUTH SAN FRANCISCO
159 STANISLAUS COUNTY
160 STANTON
161 SUNNYVALE
162 SUTTER CREEK
163 TEMECULA
164 THOUSAND OAKS
165 TIBURON
166 TRUCKEE
167 TUSTIN
168 VACAVILLE
169 VISALIA
170 VISTA
171 WALNUT
172 WALNUT CREEK
173 WASCO
174 WATSONVILLE
175 WEST COVINA
176 WILDOMAR
177 WINDSOR
178 WINTERS
179 YOUNTVILLE

LEGAL STRATEGIES TO COMBAT NIMBYISM IN SITING

SCANPH

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HAA AND SB 35

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Housing Accountability Act

- Government Code Sec. 65589.5
- Affects **all** residential projects
- Very protective of affordable projects (20% low income)

SB 35

- Government Code Sec. 65913.4
- “Streamlining” for **some** residential projects

HAA INTENT LANGUAGE

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“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled.”

HAA Limitations on Local Actions

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- If housing development project complies with “**objective**” general plan, zoning, & subdivision standards, the City can only **reduce density** or **deny** if it finds:
 - ▣ A specific adverse impact to public health & safety;
AND
 - ▣ The impact can’t be mitigated in any other way.
- Considered to comply if get **density bonus**

What Is An “Objective” Standard?

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- **NO definition in the HAA or in any case**
 - Examples: Height, setbacks, lot coverage, % open space, density, FAR, etc.
- **Standards found NOT to be objective:**
 - “Physical suitability of the site” (*Honchariw*)
 - “Reflect the look and feel of the community”
 - “Special care shall be taken to avoid obstructing views to the surrounding hills”
 - “Produce high quality authentic design”

Must Tell Applicants if Not Consistent

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- **Time to comply:**
 - ▣ 150 or fewer units: within 30 days of completeness
 - ▣ More than 150 units: within 60 days of completeness
- **A jurisdiction must:**
 - ▣ Provide written list of any inconsistencies with any “plan, program, policy, ordinance, standard, requirement or similar provision”;
 - ▣ Explain why the project inconsistent; or
 - ▣ “Deemed consistent.”

More Limits on Affordable Projects

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- Must make additional findings to deny, reduce density, or add condition making project infeasible
 - ▣ Project doesn't comply with zoning AND land use element
 - ▣ Public health & safety impact
 - ▣ Inadequate water or sewer
 - ▣ Proposed on land zoned for agriculture or resource preservation
- Burden of proof is on the local agency; much less deference to local decisions

Major HAA Limitations

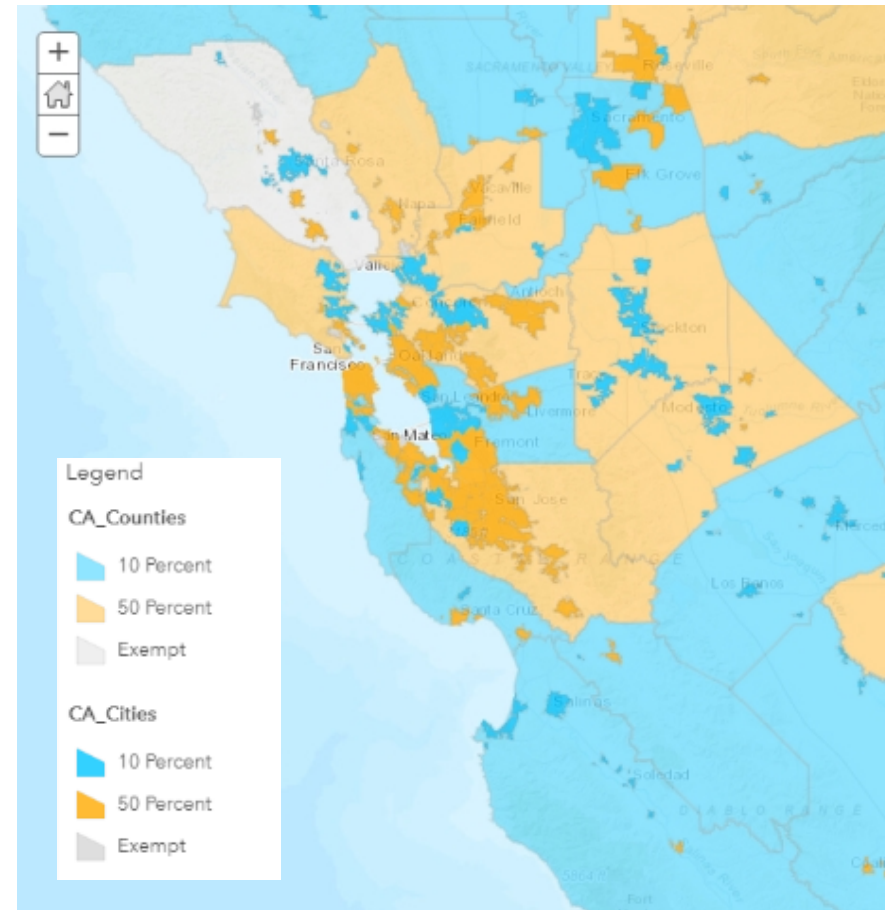
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- **CEQA still applies**
 - *Schellinger Bros. v. City of Sebastopol* (2009): must complete CEQA before can invoke HAA
- **Can probably still apply subjective Coastal Act standards**
 - *Kalnel Gardens LLC v. City of LA* (2016)

SB 35 Eligible Projects

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- Must meet affordable housing requirements
- **Projects with 10 or more units must pay prevailing wages**
- Must use “skilled and trained workforce” for larger projects
 - ▣ Threshold varies by location
 - ▣ 100% affordable projects exempt



SB 35 Conditions

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- Site must not have contained housing occupied by tenants within last 10 years
- Site must not be in the **coastal zone**, agricultural land, wetlands, former mobilehome park, or habitat for protected species
- Exempt from CEQA review
- Must comply with all **objective** standards

CEQA, or the California Environmental Quality Act, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible.

SB 35 Processing Requirements

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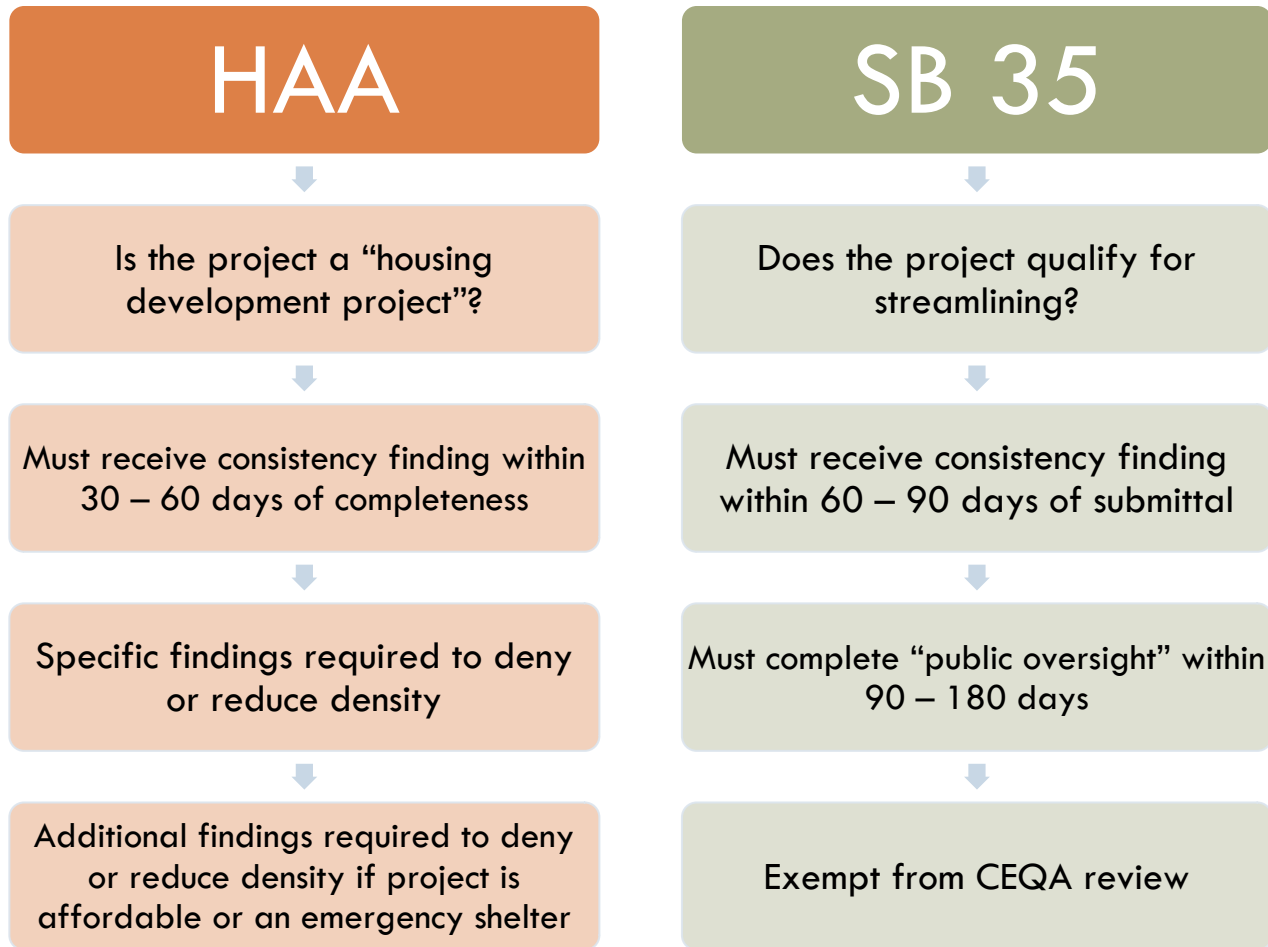
- Within 60 to 90 days of **submittal**:
 - ▣ Provide list of all inconsistencies with ‘objective’ zoning and design review standards in effect at submittal or project “deemed consistent”

- Within 90 to 180 days of **submittal**:
 - ▣ Complete any design review or “public oversight” of a housing development

 - ▣ Prohibited from in any way “inhibiting, chilling or precluding” the ministerial approval of a project

Putting it all together . . .

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A Possible New Tool: AB 2162

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- Supportive housing a ‘use by right’ in multifamily and mixed use zones
 - ▣ No CEQA unless a subdivision
 - ▣ Must be 100% lower income housing
 - ▣ 25% supportive or 12 units, whichever is greater
- Subject to objective standards that apply to multifamily development in the zone
- If population lower than 200,000 and fewer than 1,500 homeless persons, limited to 50 units