



August 5, 2020

California Department of Housing and Community Development
Attn. Ms. Melinda Coy, Housing Policy Specialist
Via email

Re: Support for Updated Streamlined Ministerial Approval Process (SB 35) Guidelines

We write in support of the Department's latest version of the SB 35 Guidelines. SB 35 is an ambitious statute that, if implemented according to the intent of the State Legislature, could make a meaningful impact on the state's housing crisis. Unfortunately, we now know from experience that anti-housing cities will do all they can to resist its reach. In fact, just recently, the Santa Clara County Superior Court found the City of Los Altos acted in bad faith when denying an application. While the courts are one avenue for giving direction and meaning to the statute, the Department's latest version of the Guidelines will do more to help with SB 35's broad implementation. In particular, we support the following and encourage the Department to adopt the Guidelines in their current form:

- We commend the Department for keeping the definition of "public transit" that was in the last draft despite many comments from local jurisdictions seeking a much narrower definition [Section 102(t)]; the proposed definition tracks with statute both in letter and spirit;
- Confirm that subsequent approvals include additional common approvals (encroachment permits, tree removals, sign programs) [Section 102(AA)];
- Retain the original language prohibiting local governments from requiring compliance with standards over which they exercise discretion on whether to impose them [Section 300(b)(2)];
- Further clarification on how approved projects may be modified – this is part of the normal process and it is critical that there is enough flexibility for projects to continue to evolve without being subject to new standards [Section 301(c)];
- Confirm that a design review or public oversight process is optional [Sections 301(a)(2) and (b)(3)];
- Density bonus determinations are subject to the same SB 35 timeframes [Section 301(b)(4)];
- Confirm that projects with multiple buildings may have multiple covenants; the complex financing of larger projects would not allow for a single covenant covering multiple buildings with multiple investors/lenders [Section 402(b)(2)];

We support these changes, but would request a few minor modifications, to wit:

- We recommend changing the word "may" to "shall" in the introduction to Section 301(c) regarding modifications. The purpose of SB 35 is to give certainty to applicants by requiring that local jurisdictions approve qualifying projects. That approach should apply when changes are sought as well.



- Projects submitted before January 1, 2019 should be able to take advantage of the modification process set out in the Guidelines. While that is likely the intent already, we support clarifying that in the Applicability section.
- In 402(f), we support that the Department recognizes that the distribution requirement may pose a problem when seeking tax credit financing. However, such funding programs typically do not have a formal requirement that affordable units are consolidated, but rather it is more of a practical necessity. This could be clarified by the following simple change: "unless otherwise required ~~by~~ for state or local funding programs."
- In 301(c)(2), if a local agency is able to make modifications due to changed construction codes, we recommend two changes. First, the timing for such a modification request should be prior to submittal of an application. This is consistent with how changes in construction codes are typically applied, which also makes sense as applicants need certainty when submitting for permits – requiring changes after an application has been submitted would be very expensive. Second, many local jurisdictions are using construction codes to implement policy decisions, not health and safety issues, such as so-called "Reach Codes." These codes can have far reaching implications for projects, including impacts to project design. Rather than reference the "local agency's objective uniform construction codes," we recommend that it reference the California Building Standards Code (Title 24 of the California Code of Regulations), which is the statewide code.

We believe the changes and clarifications to the Guidelines the Department is proposing will help to give confidence to developers that the statute provides not only a streamlined entitlement, but a reliable and workable one. We appreciate very much the latest update and encourage adoption of the Guidelines with the minor modifications identified above.

Sincerely,

Michael Lane
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