



# Current Streamlining Practices: Implementing SB 35 and SB 330

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Thursday, March 23, 2023

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# Development Streamlining Services

*Funded and managed by:*

**Southern California Association of Governments  
(SCAG)**



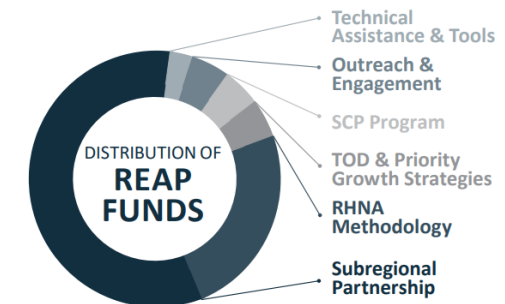
*With grant funding from:*

**State of California Department of Housing and  
Community Development (CA HCD)**



*From a grant through:*

**Regional Early Action Program (REAP)**



# Development Streamlining Materials

The screenshot shows the SCAG website's 'Development Streamlining Efforts' page. At the top, there is a dark teal header with the SCAG logo on the left and navigation links for 'CONNECT SoCal', 'REAP 2.0', 'RDP', and 'TRANSLATE' on the right. Below this is a light teal navigation bar with links for 'ABOUT US', 'MEETINGS', 'OUR WORK', 'DATA & TOOLS', 'GET INVOLVED', and 'NEWS & EVENTS'. The main content area has a dark teal background. On the left is a sidebar with a list of categories: 'OUR WORK', 'Connect SoCal', 'Inclusion, Diversity, Equity & Awareness', 'Programs & Projects', 'Housing', 'Regional Housing Needs Assessment', 'Housing Element Support', 'Regional Early Action Planning', 'Development Streamlining Efforts', 'Housing Policy Leadership Academy', 'Housing Policy Forum Series', 'REAP 2.0', 'Other To Residential Toolkit', and 'Sustainable Communities'. The 'Development Streamlining Efforts' category is expanded, showing a sub-section with a heading, an illustration of a city skyline, and a text block. The text block describes the materials prepared in response to a questionnaire and mentions CEQA. Below the text is a button labeled 'DEVELOPMENT STREAMLINING GUIDANCE MATERIALS' with a plus sign.

<https://scag.ca.gov/streamlining>















# Development Streamlining Materials

## Development Streamlining Materials

Recent changes in State laws to CEQA's environmental review process as well as new State laws to streamline administrative review processes have created new opportunities for jurisdictions with regulatory land use control to streamline and shorten the entitlement process and accelerate the production of much needed housing.

The guidance materials below were developed to provide support and pathways for local jurisdictions and land use practitioners to address these challenges.

### DEVELOPMENT STREAMLINING GUIDANCE MATERIALS

-  What is CEQA Streamlining?
-  Senate Bill 375: CEQA Streamlining
-  CEQA Streamlining Options for Non-Exempt Housing Projects Covered by an Existing EIR: Project Eligibility Review Matrix
-  CEQA Streamlining For Infill Projects and Projects Consistent With Community Plan and Zoning
-  CEQA Categorical Exemptions
-  CEQA Exemptions for Housing Projects: Project Eligibility Review Matrix
-  Transit Priority Project and Transit-Oriented Project CEQA Exemptions
-  CEQA Article 12.5 - Exemptions For Agricultural Affordable and Infill Housing
-  Legislative Summary of AB 2345 - Density Bonus Law
-  Density Bonus Law: What are Incentives, Concessions, and Waivers?
-  Senate Bill 9: Ministerial Approval of Duplexes and Urban Lot Splits
-  Senate Bill 10: Local Rezoning for "Missing Middle" Housing Production
-  Senate Bill 35: Affordable Housing Streamlined Approval
-  Senate Bill 330 and Senate Bill 8: Summary of Housing Crisis Act of 2019

<https://scag.ca.gov/streamlining>

# Legal Disclaimer

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The purpose of this material is to provide guidance, which agencies and other entities may use at their discretion. This guidance does not alter lead agency discretion in decision-making, independent judgment and analysis, and preparing environmental documents for project or governmental action subject to CEQA requirements. This material is for general information only and should not be construed as legal advice or legal opinion.





# Current Streamlining Practices: Implementing SB 35 and SB 330

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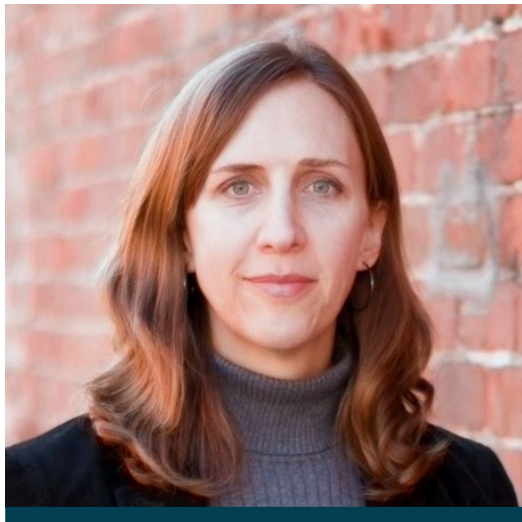
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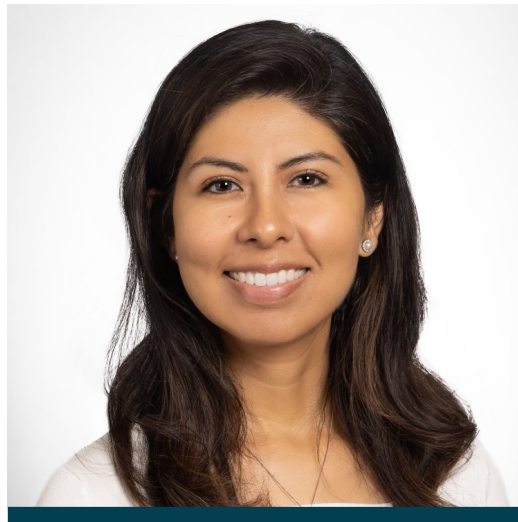
# Introductions

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**Jean Ward, AICP**

Community Planning Services Manager  
Civic Solutions



**Edith Medina, MPP, PhD**

Associate Planner  
Civic Solutions



**Margaret Sohagi, Esq.**

The Sohagi Law Group, PLC

# Agenda

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- Workshop Announcement and Housekeeping Items
- Poll
- SB 35: Affordable Housing Streamlined Approval
- SB 330/SB 8: Housing Crisis Act of 2019
- Legislative and Judicial Position on Housing Law
- Summary of Builder's Remedy
- Q & A



# SCAG Development Streamlining Efforts Workshop #2

**What:** Density Bonus Law and AB 2345

**When:** Thursday, April 13, 2023

**Time:** 11:30 am

Sign up online at:

<https://scag.ca.gov/streamlining>



# Housekeeping Items

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Webinar will be recorded and available on SCAG website:  
<https://scag.ca.gov/streamlining>



Questions in Q&A box will be addressed at end of presentation



You can also send questions to Nashia Lalani at  
**[lalani@scag.ca.gov](mailto:lalani@scag.ca.gov)**



Upcoming "Office Hours" – dates and registration forthcoming

# Poll

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- Has your jurisdiction processed SB 35 applications?
  - If yes, how many SB 35 applications has your jurisdictions processed?
- Has your jurisdiction processed SB 330 applications?
  - If yes, how many SB 330 applications has your jurisdictions processed?
- Has your jurisdiction received a Builder's Remedy application request?



# SB 35 - AFFORDABLE HOUSING STREAMLINED APPROVAL

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*No CEQA required*

<https://scag.ca.gov/streamlining>

# Introduction to SB 35 (Gov. Code Section 65913.4)

- Targets jurisdictions with insufficient RHNA goal progress and/or have not submitted the latest Housing Element APR
- Projects reviewed against objective standards
- Not subject to CUP
- Voluntary program
- Sunsets on January 1, 2026





# Key Aspects of SB 35

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- Project approval is streamlined and ministerial
- If project qualifies, approval in 90 or 180 days or less
- Extremely limited public review opportunities
- Exempt from CEQA



# HCD's SB 35 Statewide Determination Summary

HCD's determination of jurisdictions subject or not subject to SB 35 streamlining:

Standards Met/Not Met	HCD's Determination	# of Jurisdictions
Met their prorated Lower (Very-Low and Low) and Above-Moderate Income RHNA	Not subject to SB 35 streamlining provisions	38 jurisdictions
Insufficient progress towards Above Moderate income RHNA <b>and/or</b> not submitted the latest HE Annual Progress Report	Subject to SB 35 w/ at least 10% affordability proposed developments	263 jurisdictions
Insufficient progress towards Lower income RHNA (Very Low and Low income)	Subject to SB 35 w/ at least 50% affordability proposed developments	238 jurisdictions



# Other Resources from HCD

## Updated Streamlined Ministerial Approval Process

Government Code Section 65913.4

### Guidelines



State of California  
Governor Gavin Newsom

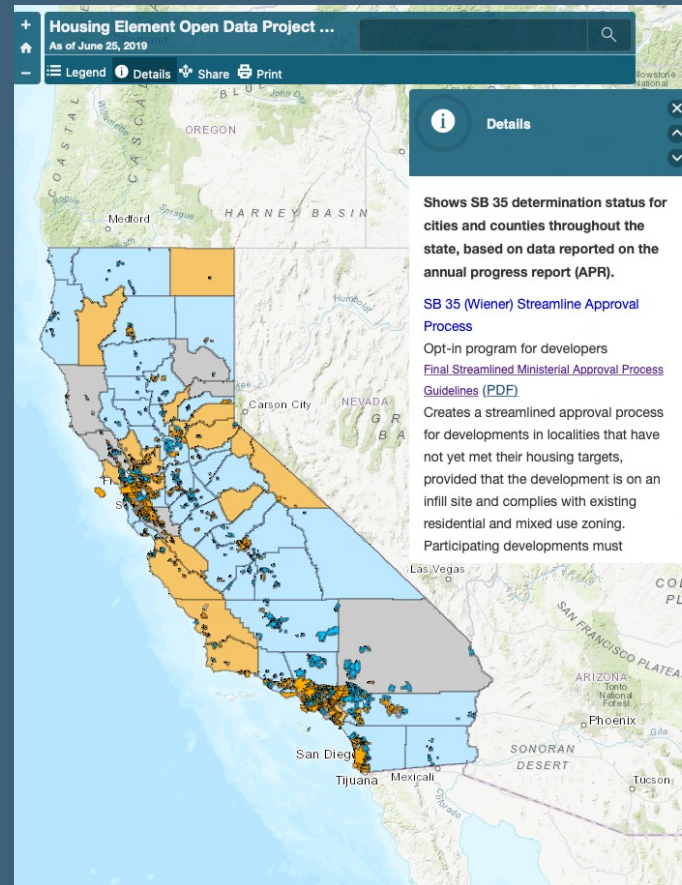
Lourdes M. Castro Ramirez, Secretary  
Business, Consumer Services and Housing Agency

Gustavo Velasquez, Director  
California Department of Housing and Community Development

Megan Kirkeby, Deputy Director  
Division of Housing Policy Development

Division of Housing Policy Development  
2020 West El Camino Avenue, Suite 500  
Sacramento, CA 95833

Originally issued November 29, 2018  
March 30, 2021



### SB 35 Determination Methodology and Background Data June 2022

#### SB 35 Reporting Period

SB 35 (Chapter 366, Statutes of 2017) defines the Reporting Period as the first half of the regional housing needs assessment (RHNA) cycle or the second half of the RHNA cycle.

Once a jurisdiction completes the first-half of the fifth RHNA cycle a jurisdiction's determination will be updated next at the end of the fifth RHNA cycle. Thereafter, each jurisdiction's determination will be updated once a jurisdiction has completed the first-half of the 6<sup>th</sup> cycle planning period and again once the jurisdiction has reached the end point of the 6<sup>th</sup> planning cycle.

APRs are on calendar years, while RHNA planning periods<sup>1</sup> may begin and end at various times throughout the year. When a planning period begins after July, the APR for that year is attributed to the prior RHNA cycle. When the planning period ends before July 1, the APR for that year will be attributed to the following RHNA cycle.

More detail is shown below by regional government or county and applies to all jurisdictions within the regional government or county.

#### Credit for Permitting during Projection Period

Jurisdictions may count permits that occurred during the 5th cycle projection period<sup>2</sup> before the planning period began on the first APR of the 5th cycle planning period.

#### Annual Progress Report (APRs) Due Dates

APRs are due each April and report on the prior calendar year's activities. As of April 1, 2022, the 2022 APRs and prior APRs were due. While HCD will continue to update APR data as APRs are received, permits from APRs received after June 1, 2022, will not count toward this determination of a jurisdiction's eligibility for the Streamlined Ministerial Approval Process pursuant to SB 35 (Chapter 366, Statutes of 2017). The determination includes APRs received as of 6/1/2022.

<sup>1</sup> **Planning Period:** The time-period between the due date for one housing element and the due date for the next housing element. This time-period can be either 8 or 5 years, depending on the jurisdiction.

<sup>2</sup> **Projection Period:** The time-period for which the regional housing need assessment (RHNA) is calculated.

June 2022

<https://scag.ca.gov/streamlining>

# Project Eligibility: Housing Types

- Multi-family or Mixed-used
- Reviewed for compliance against Objective Standards



# ODS Resource from HCD

*Approaches and Considerations for*

January 2021

## OBJECTIVE DESIGN STANDARDS

### INTRODUCTION

To address the housing shortage, recent State legislation, including Senate Bill (SB) 35 and SB 330, requires projects to be reviewed against objective standards. Objective standards include a **broad set of standards used by an agency to regulate development**, including "objective zoning standards," "objective subdivision standards," and "objective design review standards." Objective standards are the only basis a local agency may use to deny or reduce the density of certain eligible projects.

This toolkit focuses on how to regulate design objectively and presents approaches and considerations for adopting objective design standards. There is no one-size-fits-all approach to objective design standards, and each community should consider different options for implementing such standards. Although there are a range of approaches, it is important to balance flexibility and predictability while minimizing constraints on the development of new housing.

### WHAT ARE OBJECTIVE DESIGN STANDARDS?

Objective design standards are intended to make the requirements that apply to certain eligible residential projects more predictable and easier to interpret for all stakeholders, including decision makers, staff, applicants, and members of the public. The purpose of objective design standards is for applicants to know beforehand what requirements apply to a proposed development and for the applicant to be able to design a project that meets those requirements before submittal. Objective design

### Provided as Part of HCD's SB 2 Technical Assistance Program

The Building Homes and Jobs Act (SB 2, 2017) provides funding and technical assistance to all local governments in California to help cities and counties prepare, adopt, and implement plans and process improvements that streamline housing approvals and accelerate housing production. The California Department of Housing and Community Development (HCD), in coordination with the Governor's Office of Planning and Research (OPR), has developed this toolkit as part of a technical assistance program to accelerate housing production and streamline the approvals of housing.

### SB 2 Planning Grants Technical Assistance

<https://www.hcd.ca.gov/community-development/planning-grants-ta.shtml>

### Contents

- Introduction.....1
- What are Objective Design Standards?.....1
- Overview of Guiding Legislation .....2
- How do you Measure Design Objectively? .....3
- How is a Design Guideline Different from a Design Standard? .....4
- A Variety of Approaches.....5

# Project Eligibility: Site Requirements

Infill Development

Zoning or general  
plan consistency

Not located in  
sensitive  
environments

Not subject to  
hazardous  
conditions

No demolition of  
residential units

Not demolish a  
historic structure

Not on a parcel  
subject to the CA  
Subdivision Map  
Act

Not within a  
coastal zone



# Additional Requirements

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- Engage in Tribal Consultation
- Parking: At least one parking space per unit (some exceptions apply)
- Labor provisions: Prevailing wages for project > 10 units. Skilled and trained workforce provisions.

# SB 35 Application Process

If no agreement,  
project is **not**  
eligible for SB 35

- Within 60 days for projects  $\leq$  150 units
- Within 90 days for projects  $>$  150 units

- Within 90 days for projects  $\leq$  150 units
- Within 180 days for projects  $>$  150 units

Applicant submits a "preliminary application" with a notice of intent to invoke SB 35



Agency notifies and invites tribes to engage in scoping consultation



Application submitted to lead agency



Agency determines eligibility



SB 35 streamlined approval

If agreement reached or no response from tribes, project can proceed for SB 35

## Updates to SB 35

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- **AB 831 (2020):** Applicants are allowed to make project modification requests prior to the issuance of the final building permit (Gov. Code Section 65913.4(f)(3)).
- **AB 1174 (2022):** For approved SB 35 projects, a modification request is extended until the project obtains final approval plus 180 days to obtain building permit.
- **AB 2668 (2022):** Clarifies that SB 35 projects are not subject to conditional use permits or other discretionary approvals and that the local government must approve a development that satisfies the criteria.



# Eligibility Checklist

## WORKSHEETS

### SB 35 Eligibility Checklist

Requirements	Applicability	Yes	No	N/A
<b>HOUSING TYPES</b>				
<b>Multi-family or Mixed-use</b>	The development is a multifamily housing development containing at least two or more net new residential units, or a mixed-use project where at least 2/3 of the square footage is dedicated to residential uses.			
<b>Consistent with Objective Standards</b>	The project meets all objective standards of the Planning Code at the time of SB 35 application submittal.			
<b>SITE REQUIREMENTS</b>				
<b>Infill Development</b>	At least 75 percent of the perimeter of the site adjoins parcels currently or formerly developed with urban uses, including parcels separated by a street or highway.			
<b>Zoning or General Plan Consistency</b>	The development is located on a legal parcel or parcels that are zoned or designated by the general plan for residential or mixed uses.			

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# HOUSING CRISIS ACT OF 2019: SB 330 & SB 8

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<https://scag.ca.gov/streamlining>

# Introduction

- Went into effect January 1, 2020
- SB 8 extended the HCA to January 1, 2030
- HCA has 3 aims to address the “housing crisis”:
  - Increase residential unit development
  - Protect existing housing inventory
  - Expedite permit processing
- Applies to “affected” jurisdictions



# Project Qualifications

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- HCA defines “housing development project” as:
  - Residential units
  - Mixed-used development
  - Transitional, supportive, emergency or farmworker housing
- SB 8 expanded to include one single dwelling projects or ADUs; however,
  - Court of Appeal ruled that HAA does not apply “to building an individual single-family home” (*Reznitskiy v. County of Marin*, 2022, 1<sup>st</sup> App. District Case No. A161813)
- CEQA and Coastal Act standards still apply to the project.



# Preliminary Application

- All required 17 items and project plans
- HCD has a preliminary application
- Creates vested right
- Locks in development requirements, standards, and fees

## PURPOSE

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

Although this Preliminary Application is not required for housing development projects, an agency must accept it if submitted. Agencies may customize this application; however, any revised form must include only the 17 provisions as required by the Housing Crisis Act. The Preliminary Application must be made available in print and on the agency's website.

## 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<sup>\*1,2</sup>:

<sup>\*1</sup>Submittal 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.

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

## Notes:

1. California Environmental Quality Act (CEQA) and Coastal Act standards apply.
2. After submittal of all of the information required, if the development proponent revises the project to change the number of residential units or square footage of construction changes by 20 percent or more, excluding any increase resulting from Density Bonus Law, the development proponent must resubmit the required information so that it reflects the revisions.

## Consistency with “Objective Standards”

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- Jurisdictions cannot deny projects on subjective design standards
- Projects to only be reviewed against “objective, quantifiable, written development standards, conditions, and policies” (Gov. Code Section 65589.5(j))
- HCA’s definition of objective standards is consistent with SB 35

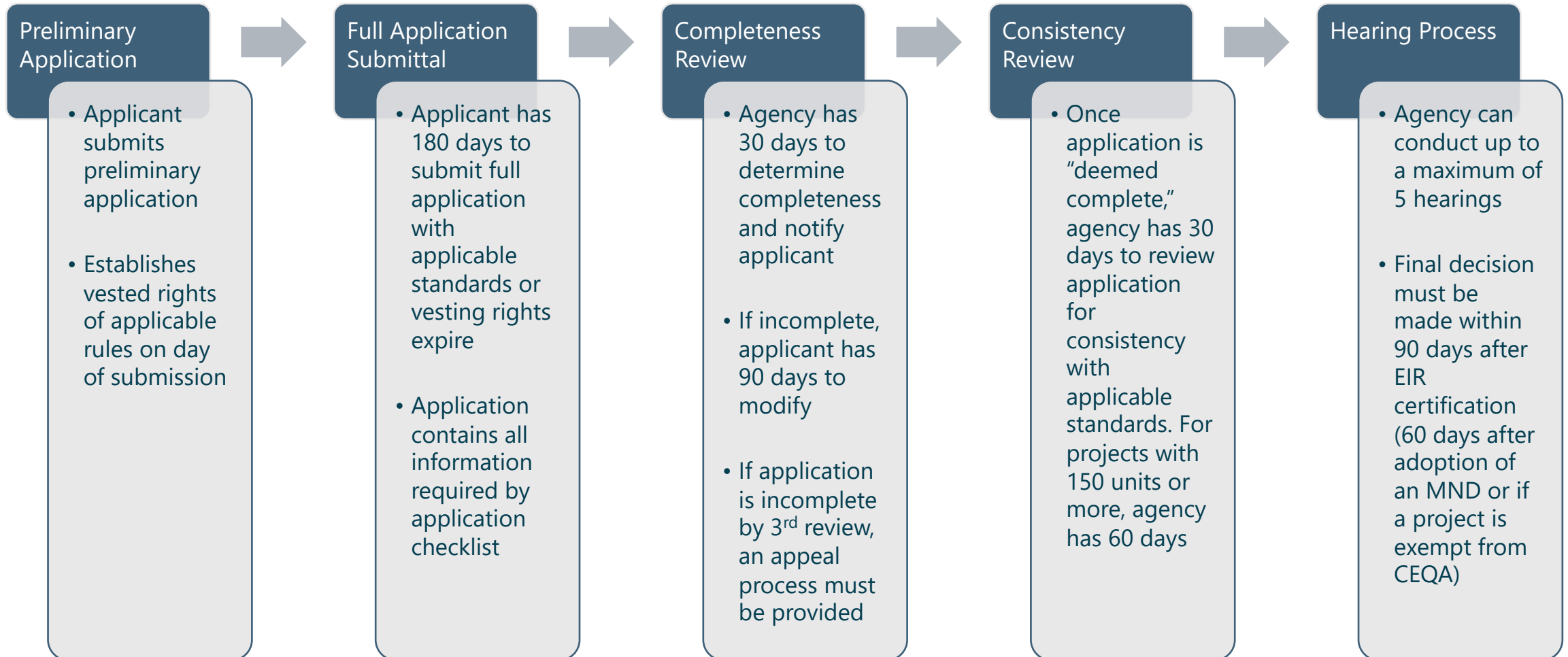
# Public Hearing Limit

- No more than five public hearings or similar meetings
- What doesn't count towards "hearing" limit:
  - Legislative approval reviews
  - Any appeal of the approval/disapproval of a legislative approval





# Application Process





# LEGISLATIVE AND JUDICIAL POSITION ON HOUSING LAW

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<https://scag.ca.gov/streamlining>

## Legislative Declarations and Findings

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- *"It is the policy of the state that this section be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." Gov Code 65589.5(a)(2)(L).*
- *"The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing." Gov Code 65589.5(a)(1)(B).*

## Statements from the Courts

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- “As the Legislature has steadily strengthened the [HAA]'s requirements, it has made increasingly clear that those mandates are to be taken seriously and that local agencies and courts should interpret them with a view to giving “the fullest possible weight to the interest of, and the approval and provision of, housing.” (§ 65589.5, subd. (a)(2)(L).) The HAA is today strong medicine precisely because the Legislature has diagnosed a sick patient.”
  - *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 854.

## **AB 215 (2021)**

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- Expands the attorney general's (AG) authority to enforce housing laws
- Grants HCD power to hire/appoint outside counsel

## Attorney General's Housing Strike Force

“Our Housing Strike Force, along with the tenant roundtables and Housing Portal, will allow DOJ to ramp up our efforts to tackle [the housing crisis] and advance housing access, affordability, and equity across California. This is a top priority and a fight we won’t back down from. As Attorney General, I am committed to using all the tools my office has available to advance Californians’ fundamental right to housing.”

- Attorney General Bonta



## Bureau of Environmental Justice

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“I am committed to devoting staff and resources to helping those Californians whose health and safety are put at risk by environmental pollution. The expansion of the Department’s Bureau of Environmental Justice will allow us to increase oversight, take on more cases, and hopefully, change the lives of impacted Californians for the better.”

- Attorney General Bonta





# AG's Housing Strike Force & Bureau of Environmental Justice

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Example of warnings:

- City of Encinitas: Denial of 277-unit housing project
- City of Pasadena: Notice of SB 9 violations

Recent Litigation by Attorney General: City Huntington Beach



# SUMMARY OF BUILDER'S REMEDY

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*Government Code Section 65589.5(d)*

<https://scag.ca.gov/streamlining>

# Builder's Remedy

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- If a city or county has not adopted a housing element in substantial compliance with state law, developers may propose housing development projects even if they do not comply with zoning or the general plan.
  - **The city or county would have to rely on 65589.5(d)(1) through (d)(4) to deny the housing development project.**
- Builder's Remedy projects are still subject to CEQA.

## Builder's Remedy

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- The Housing Accountability Act requires that cities and counties make findings to deny a housing development project
  - (d)(1) The city or county has met or exceeded its (RHNA) for the proposed income categories in the development
  - (d)(2) The housing development would have a specific, adverse impact on public health and safety, and there is no way to mitigate or avoid the impact without making the development unaffordable.
  - (d)(3) The denial is required to meet state or federal law, and there is no feasible method to comply without making the development unaffordable.
  - (d)(4) The project is proposed on land zoned for agriculture or resource preservation OR that there is insufficient water or sewage facilities to serve the project
  - (d)(5) **The project is inconsistent with both the zoning ordinance and the land use designation as specific in any general plan element.**

(Government Code Section 65589.5)



# QUESTIONS?

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**Feel free to type your questions in the Q&A box.**

**Contact Nashia Lalani at [lalani@scag.ca.gov](mailto:lalani@scag.ca.gov)**

**<https://scag.ca.gov/streamlining>**



# THANK YOU!

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For more information, please visit:

**<https://scag.ca.gov/streamlining>**