

Streamlined Ministerial Approval Process Guidelines Response to Comments

July 6, 2020

This document summarizes how comments received through public comment were considered and/or incorporated into the Guidelines developed by the California Department of Housing and Community Development (HCD) for the Streamlined Ministerial Approval Process pursuant to Government Code section 65913.4. Some comments received included technical or minor modifications to phrasing in the Guidelines. HCD incorporated those changes where appropriate.

The proposed changes are reflected in the June 16 draft of the Guidelines, available at www.hcd.ca.gov, with changes from the previous draft Guidelines shown in strikethrough and underline format.

HCD received comments from 24 individuals and organizations. Copies of these comments can be requested by emailing CAHP@hcd.ca.gov.

Comments were received from the following individuals, agencies, and organizations:

1. Adams Broadwell Joseph & Cardozo, Attorneys at Law, on behalf of California Unions for Reliable Energy (CURE)
2. AMG & Associates
3. Architect Orange*
4. Bay Area Council, California Apartment Association, California Building Industry Association, California Business Properties Association, California Chamber of Commerce, Los Angeles Chamber of Commerce, Orange County Business Council, Valley Industry & Commerce Association
5. California Building Industry Association, Bay Area
6. California Housing Consortium
7. City of Camarillo
8. City of Concord
9. City of Fillmore
10. City of Moorpark
11. City of Oxnard
12. City of Walnut Creek
13. Coastland Pacific Inc.
14. Deep Green, Housing and Community Development*
15. Eden Housing
16. Golden West Communities*
17. Law Office of Barbara Macri-Ortiz*
18. Office of Senator Scott Wiener
19. Relevant Group*
20. Sandhill Property Company
21. Santa Cruz County
22. Sinanian Development, Inc.*
23. Sheppard Mullin
24. SL Realty Ventures

*These commenters provided letters of support to the comments received from AMG & Associates.

Article 1. General Provisions

Section 101: General Purpose and Scope

Comment 1 (Commenter 6): The commenter recommends adding clarifying language that this guidance shall serve as the minimum standard where no local process has been developed.

Response: As stated on the second page of the Guidelines, these Guidelines are regulatory mandates. They implement uniform standards or criteria that supplement or clarify the terms, references, or standards of Government Code section 65913.4 pursuant to delegated authority. As a result, they establish the minimum standards regardless of local process and no change is needed.

Section 102: Definitions

Definition of "Application" – Section 102(b)

Comment 2 (Commenter 1): The proposed revisions weakens the definition of Application. Recommend adding additional language relating to the applicant providing substantial evidence that it meets the objective standards.

Comment 3 (Commenter 4): The definition should be simplified to reflect what the definition of an application is rather than the requirements for the application, which should be outlined in Article 3.

Comment 4 (Commenter 2 and 6): This definition should be further defined to prevent a local jurisdiction from requesting items that are not typically provided in a standard entitlement. Local jurisdictions have asked for detailed construction information beyond entitlement requirements such as detailed design elements, construction details, or calculations that are not provided until construction documents.

Response: HCD simplified the definition of "Application" to remove reference to the requirements for an application for clarity but added a cross reference to the applicable part of the Guidelines that describes the content of the application (Section 300). HCD further amended Section 300(a) to respond to the concern raised from Comment 4. Comment 2 is addressed under the Reasonable Person Standard section below.

Definition of "Car Share Vehicle" – Section 102(d)

Comment 5 (Commenters 2 and 6): The current definition should be clarified to narrow interpretations at the local level and, for instance, give developers the option to incorporate their own car share system in a proposed development.

Response: HCD agrees with the comment and incorporated the suggested language into the Guidelines.

Definition of "Objective Planning Standards" – Section 102(q)

Comment 6 (Commenters 2 and 17): Add new definition for "Objective Planning Standard" or "Objective Standard". The commenter notes that these terms are referenced several times throughout the Guidelines with no clear definition provided.

Response: HCD agrees with the comment and included a definition for "objective standards" and "objective planning standards" into the Guidelines.

Definition of “Public Transit” – Section 102(d)

Comment 7 (Commenters 2, 6, 23, and 13): Originally the Guidelines adopted a definition for “public transit” that was synonymous with the definition of major transit stop found in Public Resources Code Section 21064.3. This definition significantly reduced the number of properties that could utilize SB 35. The proposed change by HCD to this definition is greatly appreciated as it clarifies the intent of the Legislature and will produce more affordable housing for the State of California and help Governor Newsom meet his housing goals.

Comment 8 (Commenter 18): The statutory language in SB 35 was adapted from ADU law, and the term “transit” was intended by the author and the Legislature to mean public transit broadly -- a single bus stop, a rail station, street car, an intersection of these lines, etc. The legislative intent was to interpret “transit” in its broadest sense. The reference for the parking language in SB 35 was taken from SB 1069 (2015-16, Wieckowski), Government Code Section 65852.2 (e).

Comment 9 (Commenters 7, 9, 10, 11, and 12): The commenter is opposed to the proposed changes to the definition of “public transit.” Individual bus stops are not major transportation hubs. This level of service is not conducive to mass transit that could serve ministerially-approved, high-density housing.

Comment 10 (Commenter 21): The proposed change in definition of “public transit” does not consider the diversity of land uses that transit serves. Counties with small fringe communities or that are rural in nature often provide a coverage-based model of transit service, which means providing service to urban areas with limited service to remote areas. Changing the definition of public transit, coupled with the broad definition of infill, would allow for development without parking in areas that may not have access to necessary urban facilities and services, particularly small rural and fringe communities where transit service may exist, but is extremely limited. In addition, many rural areas have limited pedestrian facilities, including minimal sidewalks or narrow shoulders for pedestrian use. Often these facilities exist along high-use roadways with constrained right-of-way that may not have adequate space for new facilities necessary to support increased pedestrian and transit use. Encouraging development and more dependence on transit in these rural areas could unnecessarily put residents at risk of injury when walking to or waiting at transit stops. We urge HCD to revert to the previous definition of “public transit” and consider limiting the distance to serviced public transit stops to ¼ mile.

Response: The modified definition of “public transit” is proposed to more closely align with Legislative intent, mirror the definition in other housing statutes, such as Accessory Dwelling Units (ADU) law, and facilitate and expedite housing, consistent with SB 35. HCD understands the concerns raised by the local governments responding to these Guidelines in terms of the potential unavailability of transit to provide the necessary levels of service for a high density multifamily development in some neighborhoods. Moreover, as indicated by Comment 8, the author of the original legislation intentionally used the phrase “public transit” rather than “major transit stop” when drafting the legislation, the Legislature adopted the broad definition drafted rather than amending it with narrower language, and HCD’s proposed changes in these Guidelines were intended to conform to the original intent. As a result, HCD has not modified the language as suggested by local government, but rather has retained the language as proposed in the April 9, 2020, version of the proposed Guidelines.

Definition of “Subsidized” – Section 102(bb)

Comment 11 (Commenter 8): The commenter recommends adding a requirement that the projects be restricted through a regulatory agreement.

Response: While regulatory agreements are common practice in some jurisdictions, Government Code section 65913.4, subdivision (a)(3)(A), does not require a regulatory agreement for projects approved under the Streamlined Ministerial Approval Process. However, local governments can still require a regulatory agreement where there is an adopted objective standard for all affordable housing projects to enter into a regulatory agreement with the local government, and the standards for that agreement are objective.

Comment 12 (Commenter 23): Some local jurisdictions have imposed requirements for lower rents on all restricted affordable units than what is required by federal law as referenced in the statutory definitions for low and very low-income households. The discrepancy is based on local interpretation of the correct maximum rent limitations referenced in the Government Code and Health and Safety Code. Recommend the Guidelines include clarifying language to ensure that a local agency not require rents lower than what is required by federal limits.

Response: HCD included language in the definition to ensure that a jurisdiction cannot reduce the maximum rent allocation lower than what is defined in state law for lower-income and very-low income units. However, it should be noted that Health and Safety Code Sections 50079.5 and 50105, which define lower-income and very low-income, reference the qualifying limits published by HCD. Those limits can be found here <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>. Due to the State of California’s 2013 Hold Harmless Policy, these limits may be different from federal limits.

Definition of “Tenant” – Section 102(cc)

Comment 13 (Commenter 23): The Guidelines include a broad definition of the term “tenant” as “a person who occupies land or property rented from a landlord for use as a residence.” This broad definition could completely exclude certain urban infill sites in cities struggling with the increasingly high cost of housing. Infill in these cities typically includes the redevelopment of sites that may have been residential, either solely or mixed-use. The definition should be revised to ensure that every housing project can benefit from the streamlined processing of SB 35 without displacing at-risk tenant groups (e.g., lower-income individuals and families, veterans, disabled, and the elderly, etc.).

Response: While HCD understands the concern, it is constrained by express statutory language. Government Code section 65913.4, subdivision (a)(7), contains express provisions for projects that cannot qualify under SB 35, among them projects located on a site where housing was demolished in the past 10 years. While it also specifically mentions housing subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, it also separately calls out sites where “Housing that has been occupied by tenants within the past 10 years”. (Compare Government Code section 65913.4, subdivision (a)(7)(A)(i) with subdivisions (a)(7)(A)(3) and (a)(7)(B).) As this latter provision does not mention any specific income group that may have occupied that housing, HCD is not authorized to amend the definition without subsequent changes in Government Code section 65913.4.

Article 3: Approval Process

Section 300: Local Government Responsibility

Development Application – Section 300(a) and (a)(1)

Comment 14 (Commenter 1): The commenter suggests that this section should be revised to ensure the development proponent demonstrate in its application substantial evidence that would allow a reasonable person to conclude that the development is consistent with objective planning standards.

Response: HCD disagrees with the commenter. There is no requirement in the statute that the application itself shows that there is substantial evidence that the development is consistent with objective planning standards in order for the application to be processed under the Streamlined Ministerial Approval Process. Rather, the reasonable person standard is intended to govern the agency's review of the application. Accordingly, the placement of this standard is more appropriate in Section 301 of the Guidelines relating to Development Review and Approval.

Comment 15 (Commenter 2): The commenter notes that jurisdictions rely on various zoning and municipal code sections to determine that a project is inconsistent with "objective zoning standards". Unfortunately, these standards are not easily identifiable or are not provided by the city until the second or third round of application review. This creates a moving target for the applicant and diminishes the streamlined review of applications contrary to the intent of SB 35.

Comment 16 (Commenter 15): The commenter requests that HCD provide a standard checklist and/or set a deadline for jurisdictions to create their own checklists before defaulting to the HCD standard. Without a standard checklist to reference, many jurisdictions have simply converted their lengthy Site Development Review checklists to apply to SB 35 applications or declined to create a checklist at all.

Comment 17 (Commenter 4): The draft updated Guidelines should be revised to ensure that localities cannot reject applications by claiming "incompleteness" in line with the Santa Clara Superior Court decision (Order Granting Petitions for Writ of Mandate, 40 Main Street Offices LLC v. City of Los Altos, No. 19-CV-349845).

Response: HCD shares the concerns raised by commenters that some agencies have created a checklist or a process for SB 35 projects that is more onerous and time consuming than that used for standard applications, directly contrary to the statutory intent. In response, HCD has incorporated language to ensure that requirements for applications for the Streamlined Ministerial Approval Process are not held to a more stringent standard than non-streamlined applications. In addition, HCD closed a loophole for jurisdictions to reject the submittal of an application based on "completeness" of the information provided if an application includes the information required for an application pursuant to the Guidelines.

Determination of Consistency – Section 300(b)(2)

Comment 18 (Commenters 4 and 20): Two commenters opposed the deletion of the phrase "on a case-by-case basis" in the context of identifying standards that are subjective and may not be imposed on the basis that the language helps articulate that a standard which may be objective but application to project is discretionary would not meet the objective standard requirements outlined in the statute.

Response: HCD appreciates the commenter’s concerns and has added the language back into the Guidelines.

Comment 19 (Commenter 2,6, and 17): Several commenters complain that Section 300(b)(6) has been used by local jurisdictions to declare a SB 35 application ineligible by conflating the requirements of this paragraph with the development eligibility standard found in Section 401(a)(3). On this basis, the local jurisdictions deny a project if the site’s general plan designation is not residential or residential mixed-use even though the zoning is such. The objective zoning, subdivision, or design review standards pertain specifically to a building’s form and design and should not be equated to use.

Response: HCD agrees this was not the intent of the Guidelines to confuse design and development standards with general plan and zoning eligibility of a project. Subparagraph (A) was added into the Guidelines per the suggestion of the commenters to provide additional clarity.

Fees – Section 300(e)

Comment 20 (Commenter 15): The commenter appreciates the Guidelines’ position that jurisdictions should not penalize, through fees or otherwise, projects which pursue Streamlined Ministerial Approval. The commenter recommends that the Guidelines also specifically state that a local government shall not deny a project access to local housing funds, including housing trust funds, HOME, and CDBG, solely on the basis that the project is eligible to receive streamlined processing.

Response: HCD agrees with this comment and language was incorporated in the Guidelines.

Section 301. Development Review and Approval

Reasonable Person Standard – Section 301(a)(3)(A)

Comment 21 (Commenter 1): The proposed language in Section 301(a)(3)(A) exceeds the plain language requirements of the statute and would impermissibly restrict a reviewing court’s ability to review the agency’s record in an action challenging an SB 35 inconsistency determination. The Statute does not require that the agency’s written denial attach substantial evidence of inconsistency.

Comment 22 (Commenters 4 and 5): The Guidelines should be clear that a locality must show that “no reasonable person” could find the project consistent with objective standards if it wishes to reject an SB 35 application. The current draft updated Guidelines might be misinterpreted to suggest for the locality to meet this standard they only have to show that there is some substantial evidence from which one reasonable person could find the project inconsistent. It is important for HCD to support the language the Legislature chose to enact, and to clarify that this standard displaces any other potentially applicable standard through which localities might otherwise enjoy deference in denying housing approvals.

Response: Government Code section 65913.4, subdivision (b), requires the local government to determine if an application conflicts with objective planning standards. Subdivision (b)(3) sets out the standards to be applied to that determination and provides:

For purposes of this section, a development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

Therefore, in its documentation detailing any inconsistencies, it is critical that a local government provide the appropriate detail needed to demonstrate that it reviewed the development's consistency with identified objective planning standards as required by the Legislature. Providing this information in the written documentation provides transparency into the application review process. Providing this information in written form would neither prevent the local agency from defending its actions in court nor prevent the developer from challenging the local government's decision if there was disagreement on how the standard was applied. Further, requiring the local agency to document its compliance with law would not curtail the discretion of a court to interpret and apply the law consistent with its own constitutional mandates. Indeed, providing this level of documentation would likely facilitate the court's review. HCD has, however, amended this Subparagraph to provide additional clarity to this requirement.

Application Corrections During the Approval Process – Section 301(a)(3) and Section 301(a)(4)(A)

Comment 23 (Commenters 2 and 6): Section 301(a)(3), as currently written, is permissive and could potentially prevent a developer from correcting any perceived conflicts with objective planning standards and resubmitting an application to correct the issues if feasible. This creates an opportunity for cities to deny the project without any chance for response.

Comment 24 (Commenters 2, 6, and 17): The Guidelines, as written, may suggest that resubmitting an application in order to respond to a city's comments may restart the clock for review (60 days for projects with 150 units or less and 90 days for projects with 150 units or more). Within Section 301(b)(3)'s final approval timeline (90 or 180 days, depending on project size), a developer should be able to resubmit as necessary to achieve consistency without fear of the timeline extending beyond the SB 35 timeframe

Response: HCD agrees that a development should be able to make adjustments to its application to address findings of inconsistencies with objective standards if there is sufficient time within the remaining approval timeframes to allow for those issues to be addressed and reviewed by the local government. HCD will adopt the following changes to the Guidelines to address this concern:

- Clearly articulates the approval timeframes for a Streamlined Ministerial Approval Process application (Section 301(b)(4))
- Introduces a tolling procedure to allow 30 days for the applicant to address issues but also a) ensures the spirit of faster streamlined review timeframes is met, b) ensures local governments are not held responsible for not meeting the final approval timeframes if the applicant chooses to address consistency issues.
- Ensures that there is at least two weeks prior to the final approval timeframe for local government review of any application changes.

Approval of Streamlined Application – Section 301(b)(2) and (b)(3)(C)

Comment 25 (Commenter 23): If the local government does not provide documentation of inconsistency with objective standards within the time window outlined in the statute, the project should be deemed consistent and approved. The guidelines should be amended to clearly state that a project is deemed approved under these circumstances.

Response: The guidelines have been updated to incorporate this comment.

Applicability of Design Review – Section 301(b)(3)

Comment 26 (Commenter 1): The commenter disagrees that design review gets the extra 30 days only when there is a public hearing.

Comment 27 (Commenter 4): Santa Clara County Superior Court has noted a potential ambiguity in the SB 35 statute related to how design review standards are complied with. "The statutory framing of design standards as both eligibility criteria and criteria capable of review during the extended timeframe for public oversight is problematic because of the distinct deadlines for making those distinct determinations. Treating compliance with objective design standards as an objective planning standard under subdivision (a) arguably renders as surplusage the later deadline for design review in subdivision (c)"l". HCD should clarify accordingly.

Response: To address these comments, HCD struck the proposed change in Section 301(b)(3)(D) and added Section 301(b)(4) to clarify the timeframes for approval of an application for a Streamlined Ministerial Approval.

Comment 28 (Commenter 20): The Guidelines should be revised throughout to clarify that design review is not a requirement of the statute but an option for local governments that have design review requirements.

Response: Amendments have been made throughout the Guidelines to incorporate this comment.

Applicability of Density Bonus Law – Section 301(b)(5)

Comment 29 (Commenter 4, 15, and 20): The draft updated Guidelines properly clarify that any Density Bonus Law determinations must be made within the timeframes for review of an SB 35 application. The draft Guidelines also importantly clarify that, in the context of an SB 35 application, the timelines in the Housing Accountability Act are calculated consistently with the SB 35 process. This is consistent with the Santa Clara County Superior Court's interpretation and reconciliation of the relevant statutes. Propose revisions for clarity.

Response: HCD thanks the commenters, but believes the offered revisions are not necessary for clarity.

Modifications to Project After Approval – Section 301(d)

Comment 30 (Commenter 20): The commenter supports the modification process that HCD developed in the original Guidelines, but requests additional clarification. In particular, the commenter thinks it is important to be very clear that a modification should be reviewed based on the same objective planning standards and procedures applicable to the original application. The intent of SB 35 would be undermined if a jurisdiction were able to change the rules in a way that would allow it to deny any change to the project. Also, a modification cannot be an opportunity to revisit consistency with objective standards that are not impacted

by the modification, such as the various site eligibility exceptions in 65913.4(a)(6). The commenter also believes that changes to the density bonus concessions and waivers should continue to be allowed, so long as objective standards and density bonus standards are met. Finally, the Guidelines introduced a concept that would allow a local jurisdiction on its own to require modifications to require compliance with building codes, state or federal law, and to mitigate health and safety impacts. We understand that building codes are updated but would recommend that this is limited to state building codes, rather than local codes.

Response: HCD incorporated the suggested amendments to the Guidelines dealing with modifications to development processed under these streamlined provisions in Section 301(d).

Approval of Subsequent Permits – Section 301(e)

Comment 31 (Commenter 15): The commenter appreciates the new language regarding subsequent permits, noting the need to value engineer projects later in the design phase and require small changes to the Planning Permit. This new language encourages projects to pursue value engineering without the danger of a delay to the project.

Comment 32 (Commenter12): The commenter asks: Is the city required to keep data on typical permit processing times in order to define “unreasonable delay”?

Response: Local governments are not required to keep data on typical permit processing times per these Guidelines. However, HCD recommends that local governments track this data in case of a challenge from a permit applicant or for the purposes of assessing constraints to permit processing times and ensuring consistent treatment of housing development projects.

Article 4. Development Eligibility

Section 400. Housing Type Requirements

Eligibility of Mixed-Use Projects – Section 400(a)

Comment 33 (Commenter 4): Since local governments have approved many mixed-use projects pursuant to SB 35 in the past, we encourage HCD to confirm in the Guidelines, or at least in the final statement of reasons, that HCD has always interpreted SB 35’s text, since it was enacted, to allow Streamlined Ministerial Approval of qualifying mixed-use projects. This will provide appropriate certainty that these already-approved projects can proceed.

Response: Section 400(a) was amended in the April 9, 2020, draft update to these Guidelines to provide clarifying language, but is not a new provision under these Guidelines. Since SB 35 (Statutes of 2017) was enacted, mixed-use projects have always qualified to utilize the Streamlined Ministerial Approval Process as long as they met the two-thirds residential to commercial square footage ratio outlined in Government Code section 65913.4, subdivision (a)(2)(C).

Mixed Use Project Calculation – Section 400(b)(1)(B)

Comment 34 (Commenter 2 and 6): Section 400(b)(1)(B) should incorporate above-grade parking garages as many developers have parking structures located on the first level.

Response: The Government Code section 65913.4, subdivision (a)(2)(C), clearly states the calculation not include underground space such as basements or underground garages but does not mention above ground spaces. The Guidelines track the language of the statute.

General Plan and Zoning Inconsistencies – Section 401(a)(3)

Comment 35 (Commenter 2): The commenter notes: we have a project that is zoned for residential mixed-use but is not designated as such in the general plan. Per this paragraph we are still eligible for the SB 35 process. However, the city argues that because the site is not consistent with the general plan, the application is ineligible for SB 35. Regardless of what's stated in the general plan, the fact that the site is zoned for a residential mixed-use development still qualifies the property for SB 35. Though this section already clearly states that the site needs to be zoned or have a general plan designation for residential or residential mixed-use, we think it could be made even clearer so there is no confusion.

Response: The statutory language is clear that if a residential use is allowed in the zoning or in the general plan, a developer can apply for the Streamlined Ministerial Approval Process. The Guidelines reflect the statutory language. No further clarification is needed.

Application Disqualification: Demolition of Existing Rental Housing – Section 401(c)(2)

Comment 36 (Commenter 8 and 12): The requirement outlined in Section 401(c)(2) does not make sense, as many infill sites zoned residential have not had tenants on it in the past 10 years. Commenter 8 suggests adding the qualifier “unless existing tenants will be accommodated into the proposed housing through a regulatory agreement for a period of no less than 3 years” to the provision that disqualifies a project application if it would include demolition of housing that has been occupied by tenants, as defined by Section 102(cc), within the past 10 years.

Comment 37 (Commenter 15): The commenter agrees with the intent of this language and does not want to encourage speculative development of sites that are occupied by existing or recently demolished housing. However, this section has precluded the use of the Streamlined Ministerial Approval on a 72-unit, 100 percent affordable project that would be eligible if not for two single-family homes that were demolished by a prior public owner in 2014. The commenter encourages HCD to develop an appropriate rule that requires a strict replacement ratio and/or rights to return in exchange for the use of streamlining on land that had prior occupants. Additionally, the 10-year requirement falls outside the ability of applicants to demonstrate reasonable records of demolition or prior occupancy. For example, one city partner had to identify a former member of a redevelopment agency to provide written confirmation that the site had not been inhabited within ten years. The commenter encourages HCD to adopt a more reasonable timeline, such as five years.

Response: While HCD understands the commenters' concerns, the Guidelines reflect the clear statutory language on this point. Without an amendment to Government Code section 65913.4, subdivision (a)(7), the suggested amendments cannot be incorporated.

Comment 38 (Commenter 12): Section 401(c)(4) seems repetitive with the requirements of Section 401(c)(2).

Response: This section is intended to address a different displacement issue where housing units were converted from tenant occupied to owner occupied. HCD agrees that the summation of the statutory requirement is unclear and has amended the language to include the exact wording from Government Code section 65913.4, paragraph (a)(7)(D).

Application of Covenants for Housing Affordable to Lower-Income Households – Section 402(b)

Comment 39 (Commenter 20): The commenter requests that HCD clarify that in projects with more than one building that there may be more than one restrictive covenant and that each must be filed prior to the applicable building permit. In multi-building projects, particularly that are built in phases, it may not be practicable to record a single covenant at the outset.

Response: HCD agrees with the commenter, and the draft Guidelines have been amended to incorporate the comment.

Affordable Housing Inclusionary Requirement – Section 402(f)

Comment 40 (Commenter 4 and 20): The commenters support the revisions to eliminate requirements that units are of a comparable size and quality as market rate units. However, the commenters also request that the Guidelines go further and also eliminate the distribution requirements as well or provide additional flexibility.

Response: While HCD maintains the importance of distribution of affordable housing units throughout the development to ensure consistency with fair housing objectives, further amendments have been incorporated to provide increased flexibility and ensure that this requirement does not unintentionally inhibit a project from Streamlined Ministerial Approval.

Prevailing Wage Requirements – Section 403

Comment 41 (Commenter 20): The commenter states that paying prevailing wages and using a skilled and trained workforce is a central component of SB 35, which it supports. However, the commenter recommends clarifying that these requirements apply only to the initial construction of the development, and that improvements that continue to be made, such as subsequent interior improvements, repairs, or remodels, should not be burdened with these mandates.

Response: The application of prevailing wage requirements, etc., is articulated in Government Code section 65913.4, subdivision (a)(8). The Guidelines reflect the statutory language.

Application of the Housing Accountability Act to Streamlined Ministerial Approval Process – Section 404(b)

Comment 42 (Commenter 4): Localities had previously taken the position that they could deny a Streamlined Ministerial Approval under SB 35 and that this would not qualify as the “disapproval” of a project for purposes of the Housing Accountability Act (HAA). Revisions are recommended to further clarify this point.

Response: The draft Guidelines have been amended to incorporate the comment.