

Streamlined Ministerial Approval Process Guidelines Statement of Reasons

April 9, 2020

This document describes the rationale behind significant proposed changes to 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.

The proposed changes are reflected in the draft Guidelines, available at www.hcd.ca.gov, with deviations from the previously adopted Guidelines shown in strikethrough and underline format.

Clarifying changes throughout Article 1 through 4

Amendments to the terms “can”, “will” and “must” have been executed throughout the Guidelines to ensure clarity, consistency and necessity of legal requirements. In addition, definition references were changed throughout the document to reflect new reference numbers.

Article 1. General Provisions

Section 100(b) – Purpose and Scope

This language is included to make clear that local governments must continue to follow state law, regardless of anything that could be construed in the Guidelines to allow a local government to not implement the provisions of the Streamlined Ministerial Approval Process. This question arose when a local government inquired whether they still had to process a Streamlined Approval Process Guideline Application despite not making information for that application available.

Section 101(b) – Applicability

This language is added to clarify when new amendments to the Guidelines are applicable to developments using the Streamlined Ministerial Approval Process.

Section 102(b) – Definition of “Application”

This language was added to clarify the amount of information necessary to be included in a submission to be considered an application for a Streamlined Ministerial Approval for the application to be considered a submission. This change is in response to a technical assistance question related to the applicability of the Permit Streamlining Act’s concept of application completeness (Government Code section 65943) which only applies to non-ministerial development projects (Government Code section 65928).

Addition of the words “a reasonable person” is due to changes to Government Code section 65913.4(b)(3) from Chapter 663, Statutes of 2019 (AB 1485).

Section 102(o) – Definition of “Moderate-income housing units”

This definition was added due to the addition of Government Code section 65913.4(i)(7) pursuant to AB 1485.

Section 102(q) – Definition of “objective zoning standard”, “objective subdivision standard”, and “objective design review standard”

The definition was revised to clarify that all objective standards that apply to the project must be adopted prior to the submission of a Streamlined Ministerial Approval Process application.

Section 102(s) – Definition of “public transit”

The definition was revised to conform with the definition of “public transit” pursuant to Government Code section 65852.2(j)(10). The previous definition conformed with the term “major transit stop” which is a term not used in Government Code section 65913.4.

Section 102(x) – Definition of “San Francisco Bay Area”

This definition was added due to the addition of Government Code section 65913.4(a)(4)(B)(i)(II)(ib) pursuant to AB 1485.

Section 102(x) – Definition of “Subsequent permit”

This definition was added due to the addition of Government Code section 65913.4(f)(2) pursuant to AB 1485.

Section 102(aa) – Definition of “Subsidized”

This definition was modified to delete the word “permanently”, as this word was deleted from the definition of subsidized pursuant to Government Code section 65913.4(i)(10) pursuant to AB 1485.

Article 2. Streamlined Ministerial Approval Process Determination

Section 200(a) – Methodology

Clarification was added on which Annual Progress Report must be considered when calculating the Streamlined Ministerial Approval Process Determination pursuant to Chapter 844, Statutes of 2019 (AB 235).

Section 200(c) and (d) – Methodology

Added language reflecting the additional affordability option due to the addition of Government Code section 65913.4(a)(4)(B)(i)(II)(ia) pursuant to AB 1485.

Article 3. Approval Process

Section 300(a)(1) – Local Government Responsibility

To address a technical assistance question related to whether a local government must accept an application for the Streamlined Ministerial Approval Process when it has not created any application materials nor defined its process to apply pursuant to Guidelines Section 300(a), additional information was added to require local governments to accept such applications and detail what should be included in that application.

Section 300(b)(2) – Local Government Responsibility

Language was simplified for clarity.

Section 300(e) – Local Government Responsibility

The word “impose” was added due to changes to Government Code section 65913.4(f)(1) pursuant to SB 1485.

Section 301(a)(2)(B) – Development Review and Approval

This subparagraph was removed because it is duplicative with Section 301(b)(3)(C)

Section 301(a)(3)(A) – Development Review and Approval

This subparagraph was added due to the addition of Government Code section 65913.4(b)(3) pursuant to AB 1485.

Section 301(a)(6)(A) and (C) – Development Review and Approval

This subparagraph was added due to the addition of language added to Government Code section 65913.4(h)(1) and (2) pursuant to AB 1485, Statutes of 2019. The additional language was added to ensure the provision of the Streamlined Ministerial Approval Process with AB 2923, Statutes of 2018 related to transit-oriented development on land owned by the San Francisco Bay Area Rapid Transit District.

Section 301(b)(1) – Development Review and Approval

Language added to cross-reference the timeframes for review of submitted applications.

Section 301(b)(3) – Development Review and Approval

This language was added to be declaratory of what is in the statute.

Section 301(b)(3)(C) – Development Review and Approval

Language was added to articulate that only objective design review standards can be deliberated if a public oversight body is considering approval of a Streamline Ministerial Approval Process application. In addition, the phrase “inhibit, chill, stall, delay, or preclude” was added in this subparagraph and removed from Section 301(a)(2)(B) to reduce duplication.

Section 301(b)(3)(D) – Development Review and Approval

As a response to technical assistance requests to clarify the timing provisions on when objective design review standards must be considered, language was added to differentiate between timing for objective design review considered by the public body and design review considered at a staff level. The basis for this determination is that the additional timing provisions under paragraph (3) only apply to design review or public oversight conducted by a public body.

Section 301(b)(4) – Development Review and Approval

To provide clarity on which timeframes control when multiple statutory areas apply to the development (i.e., Density Bonus Law, Housing Accountability Act), language was added to state that when considering a Streamlined Ministerial Permit Application, the statutory timeframes for this application apply. The reasoning for this decision is that (1) State Density Bonus law does not lay out any specific timeframes for a determination other than what applies pursuant to the Permit Streamlining Act, which as stated above, does not apply to ministerial processes and (2) the timing provisions to provide consistency findings under the Housing Accountability Act are triggered based on determination of application completeness, which is a different standard than what is provided for under the Streamlined Ministerial Approval Process (see statement of reason for change to definition of “Application”, Page 1).

Sections 301(d)(2), 301(d)(2)(A), and 301(d)(2)(B) – Development Review and Approval

Language to paragraph (2) and these subparagraphs was added due to amendments of Government Code section 65913.4(e)(2)(A) pursuant to AB 1485.

Sections 301(d)(3) – Development Review and Approval

This language was added due to amendments of Government Code section 65913.4(e)(3) pursuant to AB 1485.

Sections 301(d)(3)(A) – Development Review and Approval

This language was struck to avoid duplication with Section 301(d)(2)

Sections 301(e) – Development Review and Approval

This language was added due to the addition of Government Code section 65913.4(f)(2) pursuant to AB 1485, Statutes of 2019. The definition of “unreasonable delay” was

added to clarify the term and is based on the construct established in Government Code section 65913.4(f)(1), where additional requirements not normally applied to developments cannot be applied solely to developments applying for Streamlined Ministerial Approval.

Article 4. Development Eligibility

Sections 400(a) – Housing Type Requirements

This language is included to eliminate confusion over whether a multifamily development can also include mixed-use elements and how Government Code section 65913.4(a)(1) relates to Government Code section 65913.4(a)(2)(C). This clarification is consistent with the legislative intent of the Streamlined Ministerial Approval Process, as a multifamily project can be part of a mixed-use development, and the statute lays out standards for a mixed-use project that would qualify to apply for the Streamlined Ministerial Approval Process.

Sections 400(b)(1)(A) – Housing Type Requirements

This language was added due to amendments of Government Code section 65913.4(a)(2)(B) pursuant to Chapter 159, Statutes of 2019 (AB 101).

Sections 400(b)(1)(B) – Housing Type Requirements

This language was added due to amendments of Government Code section 65913.4(a)(2)(B) pursuant to AB 1485.

Sections 401(b)(5)(A) – Site Requirements

This language was added due to amendments of Government Code section 65913.4(a)(6)(E) pursuant to AB 101.

Sections 402(a)(2) – Affordability Provisions

This is a typographical error correction

Sections 402(a)(2)(A), (B), (B)(i), and (C) – Affordability Provisions

This language was added due to the addition of Government Code section 65913.4(a)(4)(B)(i)(II)(ia) pursuant to AB 1485.

Sections 402(a)(2)(D) – Affordability Provisions

This language was added due to the addition of Government Code section 65913.4(a)(4)(C)(i) pursuant to AB 1485.

Sections 402(f)– Affordability Provisions

This subsection was amended to address cost concerns related to how the inclusionary housing units should be constructed as part of the development. Adding costs that could impact the financial feasibility of a project was an unintended consequence of the drafting of this section of the Guidelines. As a result, language relating to the actual inclusionary unit was removed and a qualifier related to the distribution of the units was added to ensure that potential conflicts with funding sources would be mitigated. However, absent this type of funding source related requirement, distribution and access requirements for the inclusionary units was retained to meet the principles of Affirmatively Furthering Fair Housing (Government 8899.50(a)(1)) and avoid potential discriminatory effects pursuant to the Department of Fair Employment and Housing Regulations Section 12161.

Sections 402(h)– Affordability Provisions

This language was added due to the addition of Government Code section 65913.4(a)(4)(C)(i) pursuant to AB 1485.

Sections 402(h)– Affordability Provisions

This language was added due to the addition of Government Code section 65913.4(g)(2) pursuant to AB 1485.