California Department of Housing and Community Development

Clear to Build: HCD's Housing Entitlement Guide



Housing Policy Development Division
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Introduction

California needs more homes—and quickly.

HCD's Housing Entitlement Guide offers developers, local governments, and advocates a **straightforward roadmap to faster housing approvals and fewer surprises.** It explains how cornerstone state housing laws work together to add predictability, prevent costly delays, and keep housing production on schedule, including among others:

- The Permit Streamlining Act
- The Housing Accountability Act
- The Housing Crisis Act

Across California's 540 cities, towns, and counties, development standards and permitting procedures can vary dramatically. Each local government must adopt a General Plan consisting of seven required elements (i.e., chapters), including the housing element. The local government implements these plans through zoning codes, specific plans, and detailed design standards that dictate where and how homes can be built. Navigating this patchwork can be daunting.

Fortunately, the combined requirements of multiple state housing laws now **standardize much of the development review process, known as the "entitlement process."** This process—how a housing application is accepted, reviewed, and ultimately approved or denied—is largely governed by state statute, even as local governments retain legislative control over land-use policy itself.

Purpose

This guide provides an **accessible, plain-language overview of every step in the entitlement process** for a typical housing development and shows how state housing requirements must be woven into local permitting. Drawing heavily from the Housing Accountability Unit's (HAU) real-world technical assistance, it includes statutory references and clear explanations to help developers, local officials, and community members move projects from proposal to entitlement approval with confidence. The determinations included in this guide largely draw from those included in the numerous letters of technical assistance that HCD has written to local governments in recent years.

Limitations

This guide is for informational purposes only. It is not an exhaustive guide intended to, or capable of, addressing all circumstances and legal requirements that may be encountered by a residential development project as it navigates a local government's development review process. The HAU reviews each request for technical assistance independently. The content of this guide is subject to change depending on amendments

to existing state housing laws or future laws. It should not be considered legal advice, does not create any rights, and is not binding on any party, including HCD. References to governing laws regarding housing, including definitions of terms, are noted throughout the guide. If there is a conflict between any statute and this guide, the statute prevails.

Topics Not Covered

The following non-exhaustive list enumerates topics that are outside of the scope of this guide and are therefore not included. Note that these and other laws may still apply to a given project:

- Post-entitlement processing requirements contained in Government Code section 65913.3
- Building Permits pursuant to the California Building Standards Code (Cal. Code Regs., Title 24)
- Builder's remedy application or processing requirements contained in Government Code section 65589.5
- Streamlining laws like the Streamlined Ministerial Approval Process (SB 35) contained in Government Code section 65913.4 or the Affordable Housing and High Road Jobs Act (AB 2011) contained in Government Code sections 65912.100-65912.140

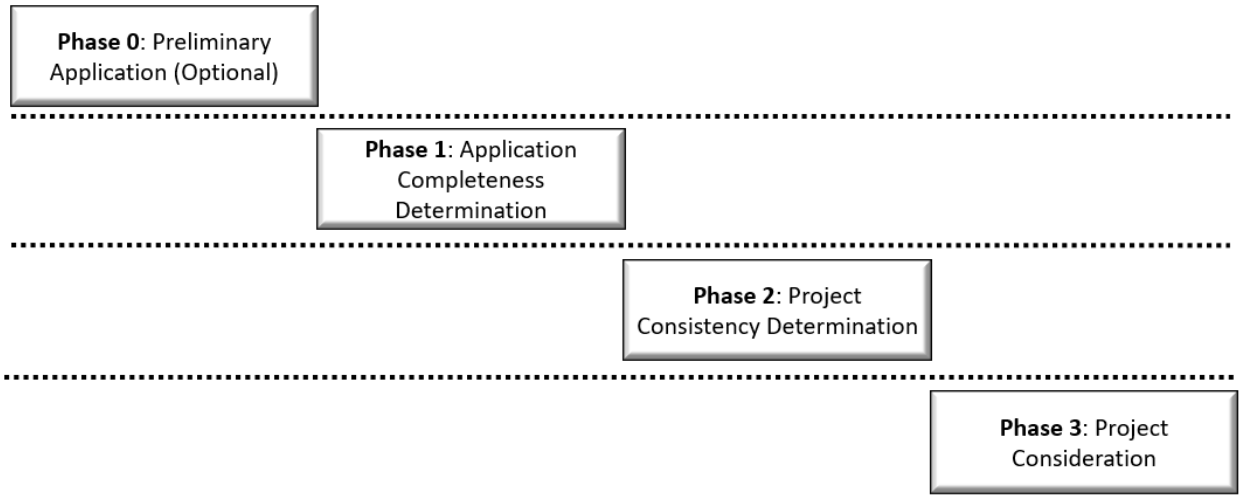
Applicable Projects

The content of this guide relates most directly to projects with the characteristics listed below. Projects with more certain review processes (e.g., by-right approval of permanent supportive housing) or less certain review processes (e.g., a project involving legislative approval such as a rezone) may not benefit from the content of this guide.

- **Two or More Housing Units** (i.e., meets the statutory definition of "housing development project" under Government Code section 65589.5, subdivision (h)(2))
- **Discretionary Approval** (i.e., a "project" under the California Environmental Quality Act [CEQA] that is not statutorily exempt from CEQA)
- **Consistent with Land Use Element of General Plan** (i.e., a project whose use and design appear to be consistent with the applicable General Plan Land Use Designation)

Phases of the Entitlement Process

The entitlement process of the applicable projects above can be conceptualized in four distinct phases. When each phase ends, the next phase begins, with a distinct regulatory milestone separating each. The following graphic summarizes these phases.



Additional Resources

HCD provides numerous technical assistance materials on the Accountability and Enforcement page of its website.[1] Notably, HCD's specific technical assistance and enforcement letters that inform the guidance contained in this guide are organized by housing law (e.g., the Permit Streamlining Act for more information about application completeness determinations). The Technical Assistance and Enforcement Letters Dashboard[2] is continually updated as new letters are released. Applicants, local government staff, and members of the public may also submit a request for technical assistance to the HAU via the online submittal portal.

Durations

In all instances where this guide refers to a number of days (e.g., permitting deadlines) the intended meaning is calendar days unless otherwise specified.

Recordkeeping

To establish a clear procedural record, both the applicant and local government should keep detailed notes regarding key project milestones and correspondence. These records are critical for resolving any issues that may emerge during the entitlement process.

[1] Available at https://www.hcd.ca.gov/hau.
[2] Available at https://www.hcd.ca.gov/hau/enforcement-letters.

Phase 0: Preliminary Application (Optional)

(Reference: Gov. Code, §§ 65589.5, subd. (o); 65941.1)

Overview

The Preliminary Application established under Senate Bill 330[3] allows applicants to submit a Preliminary Application in advance of, or concurrently with, a Full Application submittal. The Preliminary Application process allows a developer to "freeze" (via "vesting") the applicable ordinances, policies, and standards in effect at the time the Preliminary Application is submitted.[4] This prevents the local government from applying changed development requirements that could negatively impact the project after the Preliminary Application is submitted. A Preliminary Application "vests" the applicable ordinances, policies, and standards in place when the applicant submits all 17 components of a Preliminary Application listed in the statute, along with the application processing fee payment.[5] Applicants then have up to 180 days to submit a Full Application.[6]

A compliant Preliminary Application must contain the following 17 items. Note that the following list is intended only to provide a conceptual overview. It has been paraphrased for brevity and should not serve as a substitute for the actual statutory language.

1. Project Location
2. Existing Uses
3. Conceptual Site Plan and Building Elevation Drawings
4. Number of Units and Residential/Nonresidential Floor Areas
5. Parking Spaces
6. Point Sources of Air or Water Pollutants
7. Wildlife Species of Special Concern
8. Environmental Hazards (e.g., Fire, Floodplain, Earthquake, etc.)
9. Historic Resources
10. Affordable Units
11. Density Bonus, Incentives/Concessions, and Waivers
12. Subdivision Information
13. Applicant Contact Information
14. Coastal Resources (e.g., Coastal wetlands, Public Access Points, etc.)
15. Residential Units to be Demolished
16. Streams and Waterways
17. Recorded Public Easements (e.g., Storm Drains, Water Lines, etc.)

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[3] Chapter 654, Statutes of 2019.
[4] Gov. Code, § 65589.5, subd. (o).
[5] Gov. Code, § 65941.1, subd. (a).
[6] Gov. Code, § 65941.1, subd. (e)(1).

Terms Defined

The following terms commonly occur in association with the Preliminary Application phase of the entitlement process.

Preliminary Application. A Preliminary Application pursuant to Government Code section 65941.1 that conveys a conceptual understanding of a proposed residential development project prior to the submittal of a Full Application.

Full Application. A residential development application that contains, or is in the process of being amended to contain, all items specified in the local government's list of required application materials adopted pursuant to Government Code section 65940, subdivision (a)(1), including payment of the application processing fee.[7]

Deemed Submitted. A Preliminary Application is deemed submitted when the local government receives application materials, including the 17 items listed in Government Code section 65941.1, subdivision (a), as well as payment of the application processing fee.

Vesting. When a Preliminary Application is submitted, it "freezes" the ordinances, policies, and standards adopted and in effect at that time in accordance with Government Code section 65589.5, subdivision (o).

Information for Applicants

The following information is intended to assist applicants in navigating the Preliminary Application phase of the entitlement process.

Forms. Applicants should use the Preliminary Application form created by the local government. If the local government has not created a Preliminary Application form, applicants may use the form provided by HCD. It is available on HCD's website.[8]

Fastidious Preparation. Applicants should prepare the Preliminary Application with utmost care to avoid delays in the establishment of a vesting date. Because the statute provides that the Preliminary Application is deemed submitted upon submittal of the 17 items and payment of the application fee, the local government must necessarily review the Preliminary Application to verify the presence of the 17 items and payment of the fee. A Preliminary Application that is found by the local government to be missing one or more of the 17 items does not vest the

[7] Gov. Code, § 65943, subd. (e).
[8] Available at https://www.hcd.ca.gov/planning-and-community-development/statutory-determinations.

ordinances, policies, and standards in effect at that time and will not do so until the missing item(s) are submitted.

Include Explanations. Applicants should include detailed written explanations to support each of the 17 items. For instance, the statute requires that the Preliminary Application include "any species of special concern known to occur on the property." If the applicant does not have knowledge that any species of special concern are present on the site, the Preliminary Application should contain an explanation for why that is.

Information for Local Governments

The following information is intended to assist local governments in navigating the Preliminary Application phase of the entitlement process.

Prompt Processing. The local government should process the Preliminary Application promptly, which includes the collection of the processing fee, and provide a written response to the application confirming the vesting date (i.e., the day that the 180-day Full Application submittal window begins). The local government might consider adopting a flat fee to process a Preliminary Application to avoid delays associated with invoicing. Given the limited scope of review for a Preliminary Application (see below), a fee equivalent to a few hours of a single staff person's time is likely sufficient.

Limited Review. The review of the Preliminary Application is limited to verification of 1) the presence of all 17 items and 2) fee payment.[9] The local government should not perform an Application Completeness determination (see Phase 1: Application Completeness Determination) or a Project Consistency Determination (see Phase 2: Project Consistency Determination). Note that a local government is expressly prohibited from requiring the submittal of additional items beyond the 17 items identified in statute.[10]

Simultaneous Submittals. An applicant may submit a Preliminary Application at the same time as the Full Application in order achieve an earlier vesting date (e.g., to avoid a pending increase in impact fees). The Full Application also vests the ordinances, policies, and standards, but it does not do so until the date the application is determined or deemed to be complete (i.e., not on the date of submittal).[11] The statute does not prohibit this practice. The local government should process the Preliminary Application and Full Application separately and simultaneously.

[9] Gov. Code, § 65941.1, subd. (a).
[10] Gov. Code, § 65941.1, subd. (c)(3).
[11] Gov. Code, §§ 65589.5, subds. (h)(5) and (j)(1).

Phase 1: Application Completeness Determination

(Reference: Gov. Code, §§ 65940, 65943)

Overview

The purpose of the Application Completeness Determination is to formally establish that the Full Application contains each item listed in the local government's adopted list of application materials, thereby allowing the local government to verify that the project is consistent with applicable regulatory requirements. This phase of the entitlement process is regulated under the Permit Streamlining Act (PSA).[12]

Terms Defined

The following terms commonly occur in association with the Application Completeness Determination phase of the entitlement process.

Full Application. A residential development application that contains or is in the process of being amended to contain, all items specified in the local government's list of required application materials adopted pursuant to Government Code section 65940, subdivision (a)(1), including payment of the application processing fee.

Incomplete Letter. A letter written by the local government to the applicant that lists any items that are required to be submitted per the local government's list of required application materials (i.e., submittal requirement checklist) that have not yet been submitted. A Full Application that does not include all required items, or whose items appear in a form not specified by the local government, is considered "incomplete."[13]

Deemed Complete/Determined to be Complete. For the purposes of the PSA, the status of a Full Application when the local government verifies the presence and qualities of all required application items or when such status is achieved by operation of law (i.e., because the local government failed to meet deadlines established in statute).[14]

Information for Applicants

The following information is intended to assist applicants in navigating the Application Completeness Determination phase of the entitlement process.

Contents of Application. After locating the online application form and list of required application materials on the local government's webpage, the applicant

[12] Gov. Code, § 65920 et seq.
[13] Gov. Code, § 65943.
[14] Gov. Code, §§ 65905.5, subd. (b)(1); 65943, subds. (a) and (b).

should carefully read all the information. Commonly required application items include a project description, site plan, building elevations, etc. The applicant should prepare and assemble all materials exactly as listed.

Explain Anything Potentially Unclear. The application should contain detailed explanations of any omitted (i.e., not applicable), changed, or modified application materials. The information can be included in a transmittal memo and/or throughout the materials as notes. The intent is to demonstrate as clearly as possible that the application contains all required items and that the items are presented in the required format.

Explain Relationship to State Laws. If the proposed project makes use of any state housing laws (e.g., State Density Bonus Law (SDBL)), explain in a transmittal memo how they are expected to affect the physical form or processing procedures of the application. This should be provided regardless of whether the application checklist indicates it as a required submittal item.

Response to Incomplete Letter. Upon receipt of the initial Incomplete Letter, carefully review each deficiency listed in the Incomplete Letter. The applicant should reproduce this list (numbering items if they have not already been numbered by the local government) and include it in the transmittal memo accompanying the applicant's next resubmittal of missing Full Application materials. The transmittal memo should include detailed responses to each deficiency identified in the Incomplete Letter. For added clarity, HCD recommends that applicants use the word "resubmittal" in the title of the transmittal memo.

Deadlines. No deadline is imposed on applicants to resubmit a revised Full Application to the local government after receiving an Incomplete Letter. However, to preserve vested rights under a Preliminary Application, the resubmittal must occur within 90 days, or the vesting by the Preliminary Application expires. The 90-day resubmittal period restarts with each subsequent Incomplete Letter.[15]

Information for Local Governments

The following information is intended to assist local governments in navigating the Application Completeness Determination phase of the entitlement process.

Focus of Review. The local government should be primarily concerned with verifying that all required application materials (i.e., those from the submittal requirement checklist) are present and appear in the specified form. The submittal requirement checklist must be posted online and specify in detail the information that will be required from any applicant for a development project.[16] For instance,

[15] Gov. Code, § 65941.1, subd. (e)(2).
[16] Gov. Code, § 65940, subds. (a), (d).

if the requirement to provide a site plan does not specify that potential wetlands be identified, the local government cannot consider the application "incomplete" for lack of identified wetlands. Correspondingly, the local government cannot require the applicant to submit a revised site plan that shows potential wetlands for the purpose of achieving completeness. Additionally, the application items must appear in the format specified in the submittal requirement checklist. For instance, if the submittal requirement checklist specifies that the site plan must be digitally drawn at a scale of 1:20 and it is submitted hand drawn at a different scale, it would rightfully be considered "incomplete."

Supplemental Consistency Information. In no case may a local government find an application to be incomplete because the project design does not meet applicable development standards (i.e., is inconsistent). However, when reviewing an application for the purposes of determining completeness, it is natural for the local government to notice certain project elements that are not consistent with the development standards of the applicable zoning district. For instance, a local government might notice when examining the site plan that the building footprint does not meet all required building setbacks. In the spirit of pragmatism and with an eye toward achieving housing production goals, the local government can and should, where feasible, include this information in its letter to the applicant, provided that it makes clear that the issue is related to project consistency and not application completeness (See "Format and Content of Letter" section, below). By clearly communicating about the existence of inconsistent elements of the project design early in the process, the local government best prepares the applicant to speedily achieve an approvable project. For more information regarding consistency information, please see Phase 2: Project Consistency Determination, below.

Initial Incomplete Letter. It is critical that the initial Incomplete Letter include a numbered list of items missing from the application or not appearing in the form specified on the submittal requirement checklist. Any item that is not identified in the initial Incomplete Letter cannot be requested in a subsequent Incomplete Letter.[17] For example, if a local government fails to notice that a landscaping plan has not been included in the application, despite being listed in the submittal requirement checklist, and does not identify the deficiency in the initial Incomplete Letter, then the local government is prohibited from requiring it as an incomplete item in a subsequent Incomplete Letter.

Subsequent Incomplete Letters. The local government sends a subsequent Incomplete Letter to the applicant if one or more of the deficient items listed on the initial Incomplete Letter have not yet been satisfactorily addressed in an applicant's

[17] Gov. Code, § 65943, subd. (a).

resubmittal. Because subsequent Incomplete Letters cannot identify new deficiencies, the succession of letters documents the dwindling list of outstanding items. [18] Subsequent Incomplete Letters must "specify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete, including a list and thorough description of the specific information needed."[19]

Appeals. The applicant has the right to appeal the local government's determination that the application is not complete. If the applicant files an appeal, the local government must provide a final written determination within 60 calendar days of receipt. If the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete by operation of law. [20]

Deadlines. The local government must send the initial Incomplete Letter within 30 calendar days of the Full Application submittal.[21] Similarly, subsequent Incomplete Letters must be sent to the applicant within 30 calendar days of resubmittal. If the local government fails to meet these deadlines, the application is deemed complete by operation of law. [22] If the local government cannot meet these deadlines for a particular project (e.g., due to a staffing shortage), it may request an extension from the applicant.[23] Be advised, however, that the applicant is not obligated to grant the extension request, nor does the act of requesting an extension affect the statutory deadlines.

Format and Content of Letter. The initial Incomplete Letter and subsequent Incomplete Letters should contain at least the following information:

- **Date of Application Submittal.** The date that the local government received the application.
- **Additional Dates.** The dates of application resubmittals and of subsequent Incomplete Letters. This information creates a permitting timeline that demonstrates compliance with statutory requirements.
- **Numbered List of Items.** A numbered list of missing or incomplete items, along with references. Avoid the use of bullet points, narrative text formats, or grouped items as these increase the difficulty of later referencing items.
- **Separate Headings for Missing/Incomplete Items and Supplemental Consistency Information.** Local governments are encouraged to include

[18] Gov. Code, § 65943, subd. (a).
[19] Gov. Code, § 65943, subd. (a).
[20] Gov. Code, § 65943, subd. (c).
[21] Gov. Code, § 65943, subd. (a).
[22] Gov. Code, § 65943, subds. (a) and (b).
[23] Gov. Code, § 65943, subd. (d).

supplemental consistency information (see discussion above) in an Incomplete Letter if staff resources permit. Whether they do or not, it is crucial that the applicant can clearly distinguish between those deficiencies relating to application completeness and those of project consistency. The best way to do this is by using separate headings (e.g., "Incomplete Application Items" and "Project Consistency Information").

Post-Completeness Clarifications. The local government is permitted to "request the applicant to clarify, amplify, correct, or otherwise supplement" application materials after the application has been determined/deemed complete.[24] These requests are typically minor in nature. For example, the local government might request that the applicant include the names of the plant species on the landscaping plan if they were initially omitted.

Consequences of Violating the PSA. Local governments should be aware that recent changes to the Housing Accountability Act (HAA) definition of "disapprove the housing development project" expand that definition such that violating the PSA could trigger a violation of the HAA.[25]

[24] Gov. Code, § 65944, subd. (a).
[25] Gov. Code, § 65589.5, subd. (h)(6)(F).

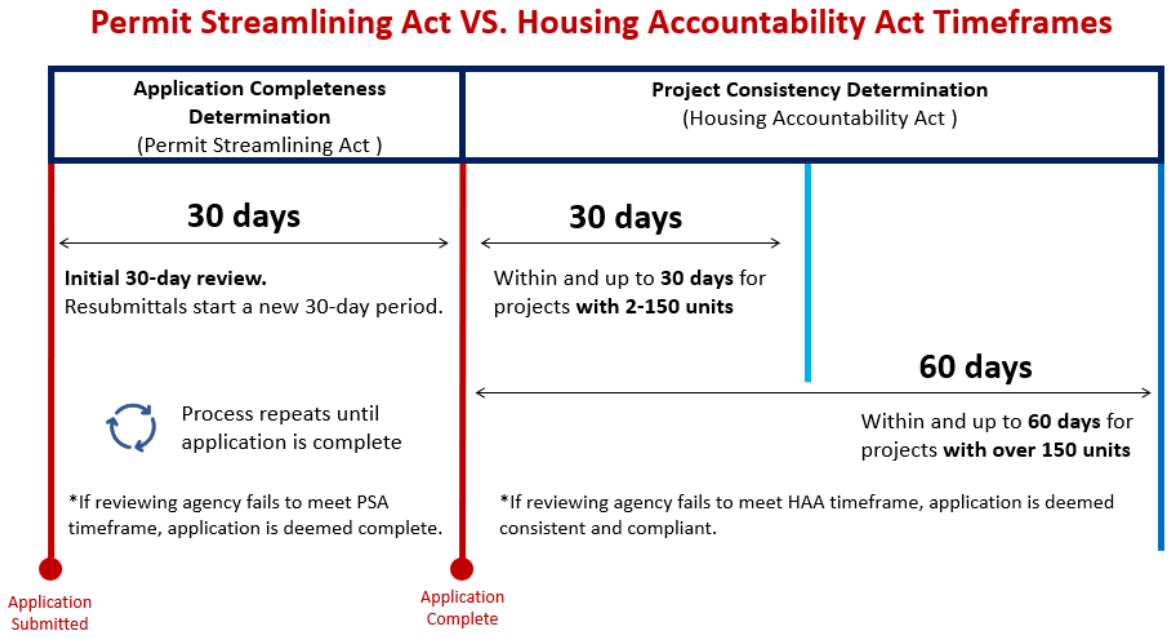
Phase 2: Project Consistency Determination

(Reference: Gov. Code, § 65589.5, subd. (j))

Overview

The purpose of the Project Consistency Determination is to formally establish that the project meets all objective standards (except those proposed to be lawfully modified pursuant to state housing law). At this stage, the local government completes its comprehensive review of the design of the proposed project to verify that the project is consistent with applicable regulatory requirements. This phase of the entitlement process is regulated under the HAA, Government Code section 65589.5.

The PSA and HAA have related, but independent, timing requirements, as shown in the summary graphic below.



As summarized above, the PSA application completeness phase of the entitlement process requires a written response by the local government within 30 days of Full Application submittal/resubmittal and repeats as long as necessary to achieve a complete application. The HAA consistency determination clock begins only once the Full Application has been determined to be complete and differs in duration depending on project size.

Terms Defined

The following terms commonly occur in association with the Project Consistency Determination phase of the entitlement process.

Consistency Determination Letter. A letter written by the local government to the applicant that lists any elements of the project's design that do not conform to the local government's applicable "plan, program, policy, ordinance, standard, requirement, or other similar provision."[26] This letter must also include an explanation of the reasoning behind the local agency's determination. For example, the letter might communicate that the footprint of a building does not meet the setback requirement(s) listed in the zoning code.

Objective Development Standard. A regulation that controls the physical form of development such as a building height limit, a setback requirement, a floor area ratio, an onsite open-space requirement, a minimum lot area per unit requirement, or a parking ratio.[27] The term "objective" for the purposes of state housing law means "involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official."[28]

Deemed Consistent. When a project is deemed consistent, it means either (1) the local government has formally determined that the project meets all objective development standards or (2) the project design becomes consistent by operation of law because the local government has failed to meet its statutory deadline to notify the applicant of any inconsistencies.[29]

Information for Applicants

The following information is intended to assist applicants in navigating the Project Consistency Determination phase of the entitlement process.

Deadline Awareness. State law requires a local government to provide applicants written documentation of any elements of the project design that are not consistent with the local government's objective development standards within specified timeframes.[30] For that reason, applicants should remain aware of the pending 30-day (150 or fewer dwelling units) or 60-day (151 or more dwelling units) statutory deadline for the local government to send the Consistency Determination Letter. To track this effectively, the applicant will need to be aware of the date the application was deemed complete.

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[26] Gov. Code, § 65589.5, subd. (j)(2)(A).
[27] Gov. Code, § 65915, subd. (o)(2). Note this definition of the term "development standard" from the State Density Bonus Law is included here to provide helpful context from an adjacent housing law.
[28] Gov. Code, § 65589.5, subd. (h)(9).
[29] Gov. Code, § 65589.5, subd. (j)(2)(B).
[30] Gov. Code, § 65589.5, subd. (j)(2).

Applicant's Written Response. When an applicant receives a Consistency Determination Letter from the local government, the applicant should consider and respond to each identified item individually. There are generally four possible distinct responses:

- **Objective Standard – Incorporated.** This means that the applicant agrees that a particular standard is objective and that the project design as submitted did not meet that standard. The applicant has revised the project design to incorporate the change. The applicant should specify where this change has been made in the application materials (e.g., "*See sheet 12 of plan set"*).
- **Objective Standard – Did Not Incorporate.** This means that the applicant agrees that a particular standard is objective, but it intends to use some mechanism to modify or eliminate the requirement.[31] In most cases, the mechanism used will be an incentive/concession or development standard waiver under the SDBL, Government Code section 65915 et seq. If relying on such an incentive/concession or waiver, the applicant should reference supporting application materials (e.g., "*See Attachment 4 for details of SDBL incentive/concession and waiver requests"*).
- **Non-Objective Standard – Incorporated as a Suggestion.** This means that the applicant does not agree that the standard is objective but is voluntarily choosing to revise the application materials to reflect the requested change. The applicant should always explain in writing why the standard does not meet the statutory definition of "objective" (e.g., *"While the Zoning Code does not specify the minimum height of a landscaping tree, the landscaping plan has been revised to specify that all trees will be at least 15 feet in height").*
- **Non-Objective Standard – Declined to Incorporate.** This means that the applicant does not agree that the standard is objective and is therefore declining to revise the application materials. The applicant should always explain in writing why the standard does not meet the statutory definition of "objective" and state explicitly that it is not incorporating the change (e.g., *"Our development team respectfully declines to increase the roof pitch from 4:12 to 6:12 because the request is not based on an objective standard").*

[31] On rare occasions, an applicant may encounter a standard that they agree is objective but contest the local government's determination that the project design does not meet the standard. In this instance, the applicant should clearly communicate their position and rationale to the local government in writing, being mindful that an objective standard should leave almost no room for interpretive disagreement.

The determinations described above should be communicated to the local government in the form of a transmittal memo. Each item should be numbered and discussed individually to avoid confusion.

"Reasonable Person Standard". When attempting to discern whether a housing development project is consistent with the local government's objective development standards, the question is whether "there is substantial evidence that would allow a reasonable person to conclude that the housing development project ... is consistent, compliant, or in conformity."[32] Deference is not automatically given to the interpretation of the local government. A recent California Court of Appeal decision provides helpful guidance on objective standards.[33] In this case, the development standard in question stated that upper stories must be stepped back, but it did not specify how far (i.e., distance in feet). The court found that the standard was not objective despite the City's contrary assertion.

Information for Local Governments

The following information is intended to assist local governments in navigating the Project Consistency Determination phase of the entitlement process.

Deadlines. State law requires a local government to provide applicants written documentation of any elements of the project design that are not consistent with the local government's objective development standards within specified timeframes.[34] If the local government considers the project to be inconsistent, the following deadlines apply.

- **Small Project Deadline.** The local government has 30 days to issue a Consistency Determination Letter for projects proposing to construct 150 or fewer units. The 30-day timeframe is measured from the date that the application is determined/deemed to be complete.[35]
- **Large Project Deadline.** The local government has 60 days to issue a Consistency Determination Letter for projects proposing to construct 151 or more units. The 60-day timeframe is measured from the date that the application is determined/deemed to be complete.[36]

Consequence of Failing to Issue Consistency Determination Letter. When a local government fails to issue a Consistency Determination Letter by the required

[32] Gov. Code, § 65589.5, subd. (f)(4).
[33] *California Renters Legal Advocacy & Education Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 844-45 [283 Cal.Rptr.3d 877, 893-95].
[34] Gov. Code, § 65589.5, subd. (j)(2).
[35] Gov. Code, § 65589.5, subd. (j)(2)(A)(i).
[36] Gov. Code, § 65589.5, subd. (j)(2)(A)(ii).

deadline, the project is deemed consistent by operation of law.[37] In practical terms, this means that the local government cannot deny the project on the basis that it does not meet all objective standards. For example, if the local government fails to issue a Consistency Determination Letter by the deadline, it may not deny a project for not meeting setback requirements. In this scenario, all aspects of the building's design, including setbacks that clearly violate the locality's objective standards, would be deemed consistent with the applicable requirements.

Consistent Projects. A local government is not required to provide written documentation to the applicant if the local government finds the project design to be consistent with all objective standards. However, to avoid confusion and provide clarity, HCD recommends communicating consistent project status to the applicant within the applicable timeframes.

Format and Content of Letter. The Consistency Determination Letter should contain the following information:

- **Application Completeness Date**. The date that the local government determined the application to be complete (or date upon which it was deemed complete by operation of law).
- **Numbered List of Items.** The elements of the project design that are inconsistent with the local government's objective development standards in the form of a numbered list that includes references. Avoid the use of bullet points, narrative text formats, or grouped items as these are difficult to reference.

Presumption of Resubmittal. In keeping with the general intent of state housing law (i.e., the predictable and timely approval of code-compliant projects), the applicant should resubmit application materials or otherwise respond in a timely manner, and the local government should work in good faith to resolve design inconsistencies expeditiously. The HAA must be "implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, housing." [38]

CEQA Determination Deadline. State law requires that a local government make a determination as to the appropriate CEQA treatment of a project within 30 calendar days of the application being deemed complete [39] (see Phase 1: Application Completeness, above). In practice, this means that after Phase 1, a local government staff person will review the complete application to determine whether the project qualifies for a CEQA exemption or instead requires the

[37] Gov. Code, § 65589.5, subd. (j)(2)(B).
[38] Gov. Code, § 65589.5, subd. (a)(2)(L).
[39] Pub. Res. Code, §§ 21080.1, subd. (a); 21080.2.

preparation of a Negative Declaration, a Mitigated Negative Declaration, or an Environmental Impact Report. The CEQA determination deadline does not require that the applicant prepare the CEQA document, or that the local government consider, approve, or take any other action on the project within 30 days. The 30-day deadline in Public Resources Code section 21080.2 pertains solely to the need to identify the appropriate regulatory path forward for compliance with CEQA. This is important because the various paths can require dramatically different amounts of time and resources to complete. By determining the appropriate CEQA treatment early in the entitlement process, the applicant, local government, and public can more effectively set expectations for how the remainder of the entitlement process will likely unfold.

Phase 3: Project Consideration

(Reference: Gov. Code, §§ 65589.5, 65905.5)

Overview

The purpose of the Project Consideration phase is to get the project scheduled to go before the decision-making body, heard by the decision-making body, and ultimately approved or denied by the decision-making body. By this point in the process, the project design has been thoroughly vetted by the local government. The applicant and local government staff have worked to identify and resolve issues involving zoning (e.g., consistency with land use regulations), transportation (e.g., pedestrian, bicycle, and vehicular access), life safety (e.g., emergency services), and utilities (e.g., sewer capacity). What remains is for all this work to come together into a final decision. This is also the time for the local government to consider imposing appropriate conditions of approval on the project to mitigate any unusual circumstances that could not have been foreseen prior to application submittal (and duly addressed via objective standards).

Terms Defined

The following terms commonly occur in association with the Project Consideration phase of the entitlement process.

Decision-Making Body. The specific entity charged with reviewing, and ultimately approving or denying, a proposed project. For discretionary approvals, this is typically the planning commission. Alternatively, the decision-making body may be the city/town council, board of supervisors, design review committee/commission, or a similar body. The municipal/county code will usually identify the applicable decision-making body for a particular permit.

Public Hearing. The meeting at which the proposed project will be formally considered by the decision-making body. There are specific requirements in state law regarding how the meeting must be noticed and limits on the number of public hearings that can be held.[40]

Staff Report. A document prepared by local government staff that includes a project description, background, and an explanation of why, in staff's view, a project does or does not meet the required findings for approval. A key component of the staff report is the staff recommendation.

Approval/Denial Resolution. A legal document, written in a roughly narrative format, that records actions made by the decision-making body and specifies each of the required findings for an entitlement. Taken together, these findings provide a legal record of why the decision-making body has approved or denied the project.

[40] Gov. Code, §§ 65905.5, subd. (a); 65090-65094.

Information for Applicants

The following information is intended to assist applicants in navigating the Project Consideration phase of the entitlement process.

Maintain Awareness. An applicant should maintain awareness of the project status prior to its scheduling for a public hearing and in the weeks leading up to the public hearing itself.

Requesting a Public Hearing. In some instances, a project will advance to the point where the applicant feels that it should be scheduled for a public hearing, but the local government does not. If this occurs, the applicant can request a written explanation for the delay.

Staff Recommendation. Applicants should be prepared to accept that local government staff may recommend to the decision-making body that the project be denied for specified reasons. This recommendation to deny will be reflected in the staff report and associated resolution. Additionally, the applicant can request to see the draft Conditions of Approval as soon as they are prepared by local agency staff.

Information for Local Governments

The following information is intended to assist local governments in navigating the Project Consideration phase of the entitlement process.

Prompt Scheduling. Schedule the public hearing for the project as soon as possible, preferably at the next available regularly scheduled meeting. At this stage in the process, the project design has been refined through the previous phases of the entitlement process. The project design has stabilized, with all or nearly all issues resolved. If the local government feels that a delay in scheduling the project hearing is warranted, provide the rationale to the applicant in writing. Local governments should be mindful that needless project delays increase development costs, and, by extension, decrease the project's likelihood of being successfully constructed.

Public Hearing Request. Honor the applicant's request for a public hearing, even if local government staff believe there are outstanding items to resolve (i.e., deficiencies identified in the Project Consistency Determination). If the outstanding items would prevent the lawful approval of the project (e.g., an objective standard is not being met), the local government should communicate this in writing to the applicant during the above-described Project Consistency Determination phase and explain that staff will recommend to the decision-making body that the project be denied or approved with a list of conditions to bring the project into compliance.

In practice, very few applicants will choose to take their project to the decision-making body if they are aware that local government staff will recommend denial.

Five Hearing Limit. The statute imposes a limit of five public hearings on a housing development project which "complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete."[41] Hearings include a variety of meeting types, such as appeals, public workshops, and continuations, but do not include hearings that are related to legislative approvals required by the housing development project (e.g., general plan, specific plan, or zoning amendment)[42]

Content of Staff Report. The staff report should explain the proposed project's relationship to applicable state housing laws. Specifically, explain how the project may or may not qualify for the benefits and protections of various laws. For example, analyze a density bonus project that includes affordable units from the perspective of the SDBL. Analyze a project that is consistent with the General Plan and meets all objective standards from the perspective of the HAA. Conversely, if the local government believes that a project does *not* qualify for the benefits and protections of one or more state housing laws, provide an explanation. It is also beneficial to include a discussion of how the project implements one or more of the Implementation Programs from the local government's housing element. Finally, address any potential No Net Loss issues in the staff report if the project site is identified in the Housing Element Site Inventory.[43]

Content of Approval/Denial Resolution and Findings. State law requires that specific findings be made in circumstances when a project is denied or approved with certain conditions (e.g., reducing the number of residential units in the project).[44] This also applies to certain sub-approvals such as SDBL-enabled requests for development standard waivers and incentives/concessions.[45] Note that these findings are distinct from other findings that may be required under the local municipal/county code. Failure to make the statutorily required written findings of denial, even if later determined to be justifiable, is a violation of state housing law. Local governments should be aware of whether a given project qualifies for the lower level[46] or higher level[47] protections of the HAA. Generally, a project qualifies for the higher level of protections if it meets the minimum

[41] Gov. Code, § 65905.5, subd. (a).
[42] Gov. Code, § 65905.5, subd. (b)(2).
[43] Gov. Code, § 65863.
[44] Gov. Code, § 65589.5, subds. (d) and (j).
[45] Gov. Code, § 65915, subds. (d) and (e).
[46] Gov. Code, § 65589.5, subd. (j)
[47] Gov. Code, § 65589.5, subd. (d).

affordability percentages specified in the HAA. HCD encourages local governments to share the draft conditions of approval with the applicants in advance of the public hearing. This practice alerts applicants so that they may review and understand any potentially problematic conditions that can then be worked out with local agency staff prior to the meeting.

Project Decision Deadline. State law imposes limits on the amount of time that a local government has to approve or disapprove a project subject to CEQA depending upon the project's CEQA treatment. The time limits range from 30 to 180 days depending on the type of CEQA document or exemption.[48] Additionally, be advised that a local government that fails to meet the applicable CEQA-related project approval/disapproval deadline is considered to have "disapprove(d) the housing development project" pursuant to the HAA.[49]

21080.66 CEQA-Exempt Projects. With the passing of AB 130 (Chapter 22, Statutes of 2025), a new and powerful statutory CEQA exemption was made available for builders of infill residential development projects. For projects that make use of this exemption, the local government shall approve or disapprove the project by the latter of the conclusion of the tribal consultation period described in Public Resources Code section 21080.66, subdivision (b), or the expiration of the applicable time limit in Government Code section 65589.5, subdivision (j)(2).[50]

Improper Purpose. A local government should be aware that the recent passing of AB 1633 (Chapter 768, Statutes of 2023) added to the HAA's definition of project disapproval. Specifically, the bill added a new subparagraph pertaining to actions undertaken for an improper purpose such as to harass, delay, or increase the cost of a project. Under certain circumstances, these actions may constitute a denial under the HAA.[51]

[48] Gov. Code, § 65950, subd. (a).
[49] Gov. Code, § 65589.5, subd. (h)(6)(B). See also Gov. Code, § 65956, subd. (b), indicating that if a local government misses a project decision deadline the project may be deemed approved.
[50] Gov. Code, § 65950, subd. (a)(7).
[51] Gov. Code, § 65589.5, subd. (h)(6)(D).

Conclusion

Completing the entitlement process represents a major milestone on a project's path from concept to construction – but it's not the end of the story. Once a project is entitled, it must navigate the intricate process of obtaining a building permit and sometimes other post-entitlement permits. Most significantly, securing a building permit requires the preparation, review, and approval of detailed construction drawings. HCD recognizes the challenges inherent in the review and approval of housing development projects. It is HCD's hope that this guide will help all parties "speak the same language" and facilitate the productive and harmonious implementation of the local government's General Plan.