



# STREAMLINED MINISTERIAL APPROVAL PROCESS

Government Code § 65913.4

## INTRODUCTION

State law allows a streamlined ministerial approval process (SMAP) for certain multifamily housing development projects if a jurisdiction is not making sufficient progress toward its regional housing need allocation (RHNA). This process is commonly referred to as “SB 35” (Chapter 366, Statutes of 2017) or “SB 423” (Chapter 778, Statutes of 2023) in reference to the enacting legislation.

HCD reviews each local jurisdiction’s permit data received through the Annual Progress Report (APR) that jurisdictions must submit to HCD each year. HCD then uses the permit data, along with the jurisdiction’s housing element compliance status, to determine which local jurisdictions are subject to SMAP and whether a jurisdiction is subject to SMAP for proposed projects with either 10 percent or 50 percent affordability. The determination is made at the end of year four and year eight of the housing element planning period for each region. For the small number of jurisdictions with a five-year planning period, HCD makes determinations based upon a pro-rata share of the RHNA for the first three years in the planning period.

To find out where SMAP is currently available to developers and in which affordability category, or to download HCD’s SMAP Guidelines, which offer more details and information to implement the statute, visit <https://www.hcd.ca.gov/community-development/accountability-enforcement/statutory-determinations.shtml>.

## KEY PROVISIONS

To be eligible for SMAP, a proposed project must be a multifamily development (containing two or more attached units) that is consistent with the objective zoning and design review standards in effect at the time the project proponent submits the application. Projects can include rental or ownership units. Any additional density or any concessions and development standard reductions or waivers to which the project is entitled under State Density Bonus Law (SDBL) shall be considered consistent with objective zoning, design review, and subdivision standards. Projects must be on an infill site (i.e., a site in an urbanized area where at least 75 percent of the perimeter is developed with urbanized uses) that is zoned for residential development or residential mixed-use development where two-thirds of the square footage is for residential use.

### Affordability Requirements

All affordability requirements in SMAP projects are calculated based on the base project (i.e., not including any units added as a result of a density bonus). Units must be deed-restricted for 55 years for rental projects and 45 years for for-sale projects. If there are

The Housing Law Fact Sheets provide an overview of existing laws which the California Department of Housing and Community Development (HCD) has statutory authority to enforce. The fact sheet does not constitute legal advice but is intended to be a resource for local agencies and decision-makers within California, including members of City Councils, Boards of Supervisors, and Planning Commissions.

local inclusionary housing requirements that require more affordable units, that policy applies rather than SMAP affordability requirements.

### 10 Percent Affordability

A developer can request SMAP for qualifying projects in any of the following situations:

- ▶ The jurisdiction has failed to permit half of its *above moderate-income* RHNA share in the first half of the housing element planning period or all of its above moderate-income RHNA share by the end of the housing element planning period,
- ▶ The jurisdiction has failed to submit its latest APR to HCD by the required deadline,
- ▶ The jurisdiction did not adopt a housing element found in substantial compliance with Housing Element Law by HCD by the statutory deadline.

Projects with more than 10 units of housing must deed-restrict at least 10 percent of the units for very low-income households (for rental projects) or lower-income households (for for-sale projects). Projects with fewer than 10 units of housing are exempt from this affordability requirement.

### 50 Percent Affordability

A developer can request SMAP for qualifying projects in which at least 50 percent of the units are deed-restricted for lower-income households if the jurisdiction has met above-moderate income RHNA targets but has failed to permit at least half of its *low- or very low-income* RHNA share in the first half of the housing element planning period or all of its low- or very low-income RHNA share by the end of the housing element planning period.

### San Francisco Bay Area Jurisdictions

Within the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and San Francisco, jurisdictions underproducing above moderate-income housing have an alternative for meeting affordable housing requirements. Projects are eligible for SMAP if they dedicate 20 percent of units to households earning up to 100 percent of the area median income (AMI), provided that the average affordability of these units remains at or below 80 percent of AMI.

### Site Eligibility

SMAP is not applicable to sites in environmentally sensitive locations, including certain areas of the coastal zone, prime farmland or farmland of state importance, wetlands, very high fire hazard severity zones (VHFHSZ) that have not adopted fire hazard mitigation measures, a hazardous waste site, certain flood-hazard areas, an earthquake fault zone (unless the development complies with seismic protection building code standards), conservation lands, and protected habitat. In addition, it cannot be used on sites where the project would require the demolition of deed-restricted housing affordable to lower- or moderate-income households, rent-controlled housing, housing that has been occupied by tenants within the past 10 years, or a historic structure. It also cannot be used on any site where housing that had been occupied by tenants was demolished within the past 10 years.

## Tribal Consultation

Once an applicant submits a Notice of Intent to develop pursuant to SMAP, the jurisdiction must engage in a confidential consultation process with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed development to identify and protect tribal cultural resources. The consultation process must follow strict statutory timelines and procedures. The parties to the consultation process are the jurisdiction and the relevant tribe or tribes. The developer may participate upon agreement of the tribe or tribes, which can rescind their agreement at any time. A developer may not proceed with a SMAP application in any of the following circumstances:

- ▶ There is a tribal cultural resource on the project site that is on a national, state, tribal, or local historic register.
- ▶ The parties to the consultation have not documented an enforceable agreement on treatment of tribal cultural resources.
- ▶ The parties to the consultation do not agree as to whether a potential tribal cultural resource will be affected by the project.

## Labor Requirements

SMAP projects are also subject to labor requirements. SMAP projects of more than 10 units must pay prevailing wages. Projects of 50 or more units must also use an apprenticeship program and make healthcare expenditures for employees. For projects that are over 85 feet in height, developers are required to use a skilled and trained workforce. One hundred percent affordable projects are exempt from the skilled and trained workforce requirements and projects with 10 or fewer units are exempt from requirements for prevailing wage, skilled and trained workforce, apprenticeship programs, and health care expenditures.

## SMAP Timeline

Jurisdictions must follow prescribed timelines when reviewing SMAP project applications.

- ▶ **Projects with 150 units or fewer.** The jurisdiction must determine whether the project is consistent with objective standards within 60 days of receiving the application and complete any design review within 90 days. Reviews of any resubmittals to address written feedback from the jurisdiction must be completed within 30 days.
- ▶ **Projects over 150 units.** The jurisdiction has 90 days to determine whether the project is consistent with objective standards and 180 days to complete any design review. However, it is recommended that the consistency review and design review should be done concurrently. If the jurisdiction fails to provide documentation of either consistency or inconsistency or fails to complete design review within the relevant timeframe, the project is automatically deemed consistent. Reviews of any resubmittals to address written feedback from the jurisdiction must be completed within 30 days.

## RECENT HCD TECHNICAL ASSISTANCE LETTERS

[City of Los Angeles](#),  
June 5, 2024

Subsequent permits following a SMAP entitlement, such as tree removal, are also subject to ministerial review.

[City of Ojai](#),  
December 12, 2023

SMAP requirements include tribal consultation, timing of consistency review, timing of design review, objective standards, SMAP eligibility regarding urban uses, and SDBL.

## RECENT LEGISLATION

### Clarifications in Coastal and Fire Zones; Update Labor Provisions; Planning Director Approval

[SB 423](#), Wiener (2023); Amended Gov. Code, § 65913.4.

SB 423 extends SMAP through 2036 and makes the following additional changes:

- ▶ Allows SMAP in coastal zones with the approval of a ministerial Coastal Development Permit and adds clarifying provisions for sites located in VHFHSZ.
- ▶ Clarifies that SMAP does not apply to equestrian districts for project applications submitted on or after January 1, 2024, but before July 1, 2025.
- ▶ Removes skilled and trained workforce requirements based on the date of development, population, and number of housing units, and whether a project has 50 or more units, or if a project is over 85 feet in height.
- ▶ Clarifies that the city's planning director or equivalent must approve a project if it is consistent with objective standards while maintaining provision for design review.
- ▶ Removes “public oversight” from the design review process and requires the local government to approve a development that meets all objective design standards.
- ▶ Adds a new process for SMAP projects proposed in low or moderate resource areas, or areas of high segregation and poverty, requiring a public meeting before full application submittal.
- ▶ Changes to methodology and eligibility, based on lack of housing element compliance.

### Tribal Consultation

[AB 168](#), Aguiar-Curry (2020); Amended Gov. Code, §§ 65400, 65913.4, and 65941.1.

Establishes a tribal consultation process requiring a developer to first submit a notice of intent in the form of a preliminary application prior to submitting a SMAP application.