



SB 35 Eligibility Criteria

Government Code Section 65913.4 provides that a development proponent may submit an application for a development that is subject to the streamlined, ministerial approval process provided by subdivision (b) and is not subject to a conditional use permit if the development satisfies all of the following objective planning standards:

Applicant: Complete the following to verify eligibility.

- (1) The development is a multifamily housing development that contains two or more residential units.

Verification: Identify how many dwelling units are included in the development.

- (2) The development is located on a site that satisfies all of the following:

- (A) A site that is a legal parcel or parcels located in the City of Berkeley, which is located within an urbanized area as designated by the United States Census Bureau.

Verification: Provide the parcel number(s), situs address(es), and a copy of the County of Alameda's assessor map with the subject parcels: <https://www.acgov.org/MS/prop/index.aspx>

- (B) A site in which at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses (defined as current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses). For the purposes of this section, parcels that are only separated by a street or highway shall be considered to be adjoined.

Verification: Indicate the location of the development and adjacent properties on a satellite view (such as Google Earth) or other depiction illustrating surrounding urban development.

- (C) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.

Verification: Identify the following:

- Zoning District
- Zoning Overlay (if any)
- Permitted Uses (cite Berkeley Municipal Code)
- Berkeley General Plan Designation
- Other Area Plan Designation (if any)

- (3) The development proponent shall commit to record that prior to the issuance of the first building permit issuance, a land use restriction for the following applicable minimum durations:

- (i) Fifty-five years for units that are rented.
- (ii) Forty-five years for units that are owned.

Verification: Provide a written statement acknowledging the commitment and identify the form of anticipated recorded land use restriction and its duration, depending on the proposed housing tenure.

PLANNING & DEVELOPMENT

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- (4) The development is located in the City of Berkeley, which has issued fewer building permits for low income housing units than allocated under the latest Regional Housing Needs Assessment and has committed to dedicate 50% of the total number of units in the project to housing affordable to households making at or below 80% of the AMI.

Verification: Provide a written statement with a commitment and explanation of how the project complies with the affordability requirement.

- (5) The development, excluding any additional density or any other concessions, incentives, or waivers of development standards granted pursuant to the **Density Bonus Law in Section 65915**, is consistent with objective zoning standards and objective design review standards in effect at the time that the development is submitted to the local government pursuant to this section. For purposes of this paragraph, “objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are 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 prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a city or county, and **may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances**, subject to the following:

- (A) A development shall be deemed consistent with the objective zoning standards related to housing density, as applicable, if the density proposed is compliant with the maximum density allowed within that land use designation, notwithstanding any specified maximum unit allocation that may result in fewer units of housing being permitted.

Verification: Indicate the General Plan land use designation and associated density standards for the development site: https://www.cityofberkeley.info/Planning_and_Development/Home/General_Plan_-_Land_Use_Element_Introduction.aspx

Indicate the zoning district and allowable density for the development site: https://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/Zoning%20Map%2036x36%2020050120.pdf

The City of Berkeley GIS Portal is available as a reference: <https://www.cityofberkeley.info/gisportal/>

Submit a completed Tabulation Form, which compares existing, proposed and permitted/required development standards: <https://tinyurl.com/yxxq47jt>

If the development will utilize State Density Bonus Law, indicate the following:

- Any applicable Area Plan or Specific Plan and the associated objective land use, development and design standards, and demonstrate how the development will be consistent.
- Any applicable objective design guidelines and demonstrate how the development will be consistent.
- Any other applicable municipal code provisions (signs, subdivisions, streets, hazardous materials, environmental health, etc.) and demonstrate how the development will be consistent.
- Any applicable engineering, transportation/parking, urban forestry, storm drainage and other standards and demonstrate how the development will be consistent.



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- (B) In the event that objective zoning, general plan, or design review standards are mutually inconsistent, a development shall be deemed consistent with the objective zoning standards pursuant to this subdivision if the development is consistent with the standards set forth in the general plan.

Verification: If there are any identified conflicts between the zoning, general plan or design review standards, provide justification for reconciling those discrepancies and demonstrate how the development will be consistent.

- (6) The development is not located on a site that is any of the following:

- (A) A coastal zone, as defined in Division 20 (commencing with Section 30000) of the Public Resources Code.

Verification: No Action Required. The City of Berkeley is not within the Coastal Zone [the Bay is exempt under Public Resources Code Section 30103(a)]. <https://www.coastal.ca.gov/coastact.pdf>

- (B) Either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

Verification: No Action Required. The City of Berkeley does not have any designated farmland or conservation contracts. <https://maps.conservation.ca.gov/dlrp/ciff/>

- (C) Wetlands, as defined by the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

Verification: Document that the development would not be located on a site that has defined wetlands. <https://www.fws.gov/wetlands/data/mapper.html>

- (D) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by a local agency, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.

Verification: Indicate the development location on the State's Fire Hazard Severity Zone Map: <https://osfm.fire.ca.gov/media/5604/berkeley.pdf>

- (E) A hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.

Verification: Submit a Hazardous Waste and Substance Statement: <https://tinyurl.com/w2nu4j8>

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- (F) Within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

Verification: Indicate the development location on a delineated earthquake fault zone map: <https://maps.conservation.ca.gov/cgs/EQZApp/> or submit evidence of compliance with seismic protection codes.

- (G) Within a 100-year flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development site is subject to a Letter of Map Revision issued to the City or the development site meets minimum floodplain management criteria pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations.

Verification: Indicate the development location on a flood plain map promulgated by the Federal Emergency Management Agency: <https://msc.fema.gov/portal/search#searchresultsanchor> or submit a copy of a letter of map revision or a flood plain development permit.

- (H) Within a regulatory floodway as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations.

Verification: Indicate the development location on a floodway map promulgated by the Federal Emergency Management Agency: <https://msc.fema.gov/portal/search#searchresultsanchor> or submit a copy of a no-rise certification.

- (I) Within lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), or other adopted natural resource protection plan.

Verification: No action required. There are no adopted NCCPs in the City of Berkeley: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline>

- (J) Within habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

Verification: Provide documentation that the development would not affect habitat for protected species identified as candidate, sensitive, or species of special status.

(K) Within lands under conservation easement.

Verification: No Action Required. The City of Berkeley does not contain any lands under conservation easement.

(7) The development is not located on a site where any of the following apply:

- (A) The development would require the demolition of the following types of housing:
- (i) Housing that is 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.
 - (ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.
 - (iii) Housing that has been occupied by tenants within the past 10 years.

Verification: Document the history of the development site (e.g. buildings, occupancy, deed restrictions, and rent control status) to demonstrate that the development would not affect these types of housing.

(B) The site was previously used for housing that was occupied by tenants that was demolished within 10 years before the development proponent submits an application under this section.

Verification: Document the history of the development site (e.g. buildings, occupancy and demolition) to demonstrate that the development would not affect these types of housing.

(C) The development would require the demolition of a historic structure that was placed on a national, state, or local historic register.

Verification: Document that the development site is not listed on a national, state or local historic register and/or would not require the demolition of a historic structure according to these official listings:

- [https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3 - LPC/COB Landmarks updated%20April%202015.pdf](https://www.cityofberkeley.info/uploadedFiles/Planning_and_Development/Level_3_-_LPC/COB_Landmarks_updated%20April%202015.pdf)
- http://ohp.parks.ca.gov/?page_id=21388
- <https://www.nps.gov/subjects/nationalregister/database-research.htm>

(D) The property contains housing units that are occupied by tenants, and units at the property are, or were, subsequently offered for sale to the general public by the subdivider or subsequent owner of the property.

Verification: Document that the development complies with this limitation.

(8) The development proponent certifies:

- (A) Either of the following is true, as applicable:
- (i) The entirety of the development is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code; or
 - (ii) If the development is not in its entirety a public work and includes more than 10 units, all construction workers employed in the execution of the development will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations.

Verification: Document that the project is a public work or commit to provide prevailing wages as required for a project that is not a public work and includes more than 10 units.



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- (9) The development did not or does not involve a subdivision of a parcel that is, or, notwithstanding this section, would otherwise be, subject to the Subdivision Map Act (Division 2 (commencing with Section 66410)) or any other applicable law authorizing the subdivision of land, unless either of the following apply:
- (A) The development has received or will receive financing or funding by means of a low-income housing tax credit and is subject to the requirement that prevailing wages be paid pursuant to subparagraph (A) of paragraph (8); or
 - (B) The development is subject to the requirement that prevailing wages be paid, and a skilled and trained workforce used, pursuant to paragraph (8)(A)(ii) above.

Verification: Document that the development will comply with this limitation.

- (10) The development shall not be upon an existing parcel of land or site that is governed under the Mobilehome Residency Law (Chapter 2.5 (commencing with Section 798) of Title 2 of Part 2 of Division 2 of the Civil Code), the Recreational Vehicle Park Occupancy Law (Chapter 2.6 (commencing with Section 799.20) of Title 2 of Part 2 of Division 2 of the Civil Code), the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code), or the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

Verification: Document that the development complies with this limitation.