



COMMUNITY DEVELOPMENT

December 23, 2022

SENT VIA EMAIL AND US MAIL

Butterfly Gardens, LLC
910 South Mariposa Street
Los Angeles, CA 91506

ATTN: BUTTERFLY GARDENS, LLC

Subject: 910 South Mariposa Street (APN: 2443-004-017)
SB 35 Project - Notice of Intent (NOI) to Submit Application (Project No. 22-0006774)

To Whom It May Concern:

On October 27, 2022, the City of Burbank received your Notice of Intent (NOI) to submit an application for Streamlined Ministerial Approval Process for a proposed residential project located at 910 South Mariposa Street (**Project**). The NOI was reviewed for eligibility requirements and compliance with Senate Bill (SB) 35, pursuant to California (CA) Government Code Section 65913.4. In addition, since the receipt of your NOI on October 27, 2022, the City has reached out to the California Native American Tribes that are traditionally and culturally affiliated with the geographic area within which the Project site is located (the "Tribes") to request initiation of the required tribal consultation process.

You have indicated in the SB 35 eligibility checklist submitted with the NOI application that you intend for the proposed Project to comply with all SB 35 eligibility criteria, including, but not limited to the City's objective design, development, and subdivision standards, and the applicable affordability and labor provisions pursuant to CA Government Code Section 65913.4. After reviewing the application and items that you submitted, City Staff has determined that your application is not consistent with the City's objective standards. The Project does not currently meet the housing affordability requirements as set forth in Burbank Municipal Code (BMC) Section 10-1-646. The Project is proposing for-sale dwelling units, and pursuant to the BMC's Subdivision Regulations (Title 11), a condominium/tentative tract map is required. It is important to note that the assessment provided in the City's Zoning Matrix table (Attachment E) indicates that more detailed information regarding the Project must be provided as part of any subsequent Project resubmittal of to complete the NOI review and any subsequent SB 35 Application.

On December 12, 2022, the Community Development Director presented the proposed Project to City Council for review and consideration of three site eligibility requirements per CA Government Code Section 65913.4, subsections (a)(2)(A-C) in accordance with BMC Section 10-1-19302(A)(3). After deliberation, the City Council voted 3-2 to adopt the City Council resolution affirming the Director's determination that the Project met the site eligibility requirements as provided for under CA Government Code Section 65913.4 and BMC Section 10-1-19302(A)(3).

SB 35 Eligibility Criteria and Consistency Analysis

The City received a Notice of Intent (NOI) for the proposed Project on October 27, 2022. As a part of the NOI application the proposed Project must demonstrate consistency with all SB 35 eligibility criteria per CA Government Code Section 65913.4. Please find the NOI consistency analysis below.

- 1. NUMBER AND TYPE OF UNITS.** The project must be a housing development that contains at least two residential units and complies with the minimum and maximum residential density range permitted for the site, plus any applicable density bonus.

Analysis: Consistent. The Project site is in the M-1 (Limited Industrial) Zone and within the Rancho Commercial General Plan Land Use Designation. The M-1 Zone permits a maximum residential density of 20 units per acre within the Rancho Commercial Land Use area with “discretionary approval”. The Project is requesting a 20 percent density bonus with the provision of two units affordable to low-income households. The density bonus would allow a maximum of 24 units on the one-acre lot; however, the Project is proposing 21 total units. Pursuant to local and state SB 35 requirements, the Project does qualify as a multifamily housing development that contains at least two residential units and complies with the maximum residential density range permitted for the site. Per CA Government Code Section 65913.4, the Project site is in a zone and has a general plan land use designation that allows residential density at 20 dwelling units to the acre and as such must be reviewed as part of the streamlined ministerial approval process outlined in SB 35 and BMC Sections 10-1-500 through 10-1-2464, without any discretionary approval.

- 2. AFFORDABILITY.** If more than 10 residential units are proposed, at least 10 percent of the project's total units must be dedicated as affordable to households making below 80 percent of the area median income. If the project will contain subsidized units, the applicant has recorded or is required by law to record, a land use restriction for the following minimum durations, as applicable:
 - i. 55 years for rental units.
 - ii. 45 years for homeownership units.

Analysis: Not Consistent. The Project proposes 10 percent of the units to be affordable to low-income households. Section 402 (a)(3)(A) of the Government Code Section 65913.4 states that “If the locality has adopted a local ordinance that requires greater than 10 percent of the units be dedicated to housing affordable to households making below 80 percent of the AMI, that local affordable housing requirement applies.” 80 percent of AMI would qualify as Low-Income Housing. BMC Section 10-1-646 requires a minimum of 15 percent of newly constructed dwelling units in Residential Developments to be developed, offered to and sold or rented to very low, low and moderate-income households at an affordable rent or affordable ownership housing cost.

As part of an NOI resubmittal, the Project shall note how it complies with the City’s Inclusionary Housing Ordinance for similar for-sale units or provide the CA government code section that allows an exemption from this requirement.

3. **URBAN INFILL.** The Project must be located on a legal parcel or parcels within the incorporated City limits. At least 75 percent of the perimeter of the site must adjoin parcels that are developed with urban uses. For purposes of SB 35, “urban uses” means any current or former residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses. Parcels that are only separated by a street or highway shall be considered adjoined.

Analysis: Consistent. The Project site consists of a legal parcel (APN: 2443-004-017) that is located within the City of Burbank boundaries. Additionally, the City of Burbank, inclusive of the Project site, is located within a designated urbanized area as established by the United States Census Bureau (Attachment A). The Project site currently adjoins parcels that are developed with urban uses that include residential and commercial uses on all sides of the subject property (Attachment B). Specifically, the site is bounded by commercial office uses to the north, the Los Angeles Equestrian Center to the east, a commercial recreational and special event use related to horse rental and equestrian uses to the south, and South Mariposa Street with residential dwellings beyond to the west.

4. **ZONED OR PLANNED RESIDENTIAL USES.** The project must be located on a site that is either zoned or has a General Plan designation for residential or residential mixed-use development, including sites where residential uses are permitted as a conditional use. If the multifamily housing development is a mixed-use development, at least two-thirds of the project's square footage must be designated for residential use.

Analysis: Consistent. The Project site is zoned M-1 (Limited Industrial) (Attachment C) and has a General Plan land use designation of Rancho Commercial (**Attachment D**). The Project site’s General Plan land use designation of Rancho Commercial allows for single-family residential properties and a variety of low-intensity multi-family residential and commercial uses in accordance with BMC Section 10-1-2109.6 (General Plan Consistency). The proposed development is 100 percent residential.

5. **CONSISTENT WITH OBJECTIVE STANDARDS.** The project must meet all objective zoning and design review standards in effect at the time the application is submitted.
 - i. If the project is consistent with the minimum and maximum density range allowed within the General Plan land use designation, it is deemed consistent with housing density standards.
 - ii. Any density bonus or any concessions, incentives, or waivers of development standards or reduction of parking standards requested under the Density Bonus Law in CA Government Code Section 65915 are deemed consistent with objective standards.
 - iii. Objective standards are those that require no personal or subjective judgment and must be verifiable by reference to an external and uniform source available prior to submittal. Sources of objective standards include, without limitation:
 - a) Burbank2035 General Plan,
 - b) Burbank Municipal Code,
 - c) Complete Our Streets Plan
 - d) Burbank Greenhouse Gas Reduction Plan Update

Analysis: Consistent. The Applicant has indicated on the SB 35 NOI Application that the Project would comply with all the objective standards. The Applicant has also indicated that the California State’s Density Bonus Law (Govt. Code Section 65915) would be applied to this Project, which

would allow for increased density, incentives, concessions, waivers and reduced parking standards. City Departments' comments are provided as Attachment E at the end of this letter. Attachment E includes a review of objective development standards in Title 10 (Zoning) of the Burbank Municipal Code. The Applicant would be required to comply with all applicable objective standards provided by all City Departments.

6. PARKING. The project must provide at least one parking space per unit; however, no parking is required if the project meets any of the following criteria:

- i. The project is located within one-half mile of public transit as defined by Section 102(r) of the HCD Guidelines.
- ii. The project is located within an architecturally and historically significant historic district.
- iii. On-street parking permits are required but not offered to the occupants of the project.
- iv. There is a car share vehicle as defined by Section 102(d) within one block of the development. A block can be up to 1,000 linear feet of pedestrian travel along a public street from the development.

Analysis: Consistent. The Project is providing two private parking spaces per every 2 to 3-bedroom unit with a total of 42 enclosed parking spaces. The Project is also proposing an additional five open parking spaces to be used for guest parking. The site is not within one-half mile of public transit as defined by Section 102(r) of the HCD Guidelines and is therefore not exempt from the parking requirement but must comply with the parking requirements as outlined under applicable local and State Density Bonus law (CA Government Code Section 65915(p)).

Section 102 of the HCD Guidelines defines public transit as the following:

“Public transit” means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge a set fare, run on fixed routes, and are available to the public.

7. LOCATION. The Proposed Project must be located on a property that is **outside** each of the following areas:

1. 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 City's voters.

Analysis: Consistent. The Project site is not located on prime farmland or farmland of statewide importance, as designated by the California Department of Conservation. The Map shown in Attachment F indicates that the Project site is in “Urban and Built-Up Land”.

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

Analysis: Consistent. The Project site is outside designated Wetland Areas according to the National Wetlands Inventory of the U.S. Fish & Wildlife Service (See Attachment G).

3. A very high fire hazard severity zone, as determined by the California Department of Forestry and Fire Protection pursuant to CA Government Code Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the California Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This does not apply to sites excluded from the specified hazard zones by the City, 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.

Analysis: Consistent. The Project site is outside the very high fire hazard severity zone as determined by the California Department of Forestry and Fire Protection (See Attachment H).

4. 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.

Analysis: Consistent. The Project site is located within the 91506 zip code. After review of the California Department of Toxic Substances Control's Cortese List (Hazardous Waste and Substances Site List), it was determined that two sites within this zip code are designated as hazardous waste sites. The Project site is not located within a designated hazardous waste site (See Attachment I).

5. 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.

Analysis: Consistent. The Project site is not located in an earthquake fault zone, state official map as determined by the State Geologist (See Attachment J).

6. A flood plain as determined by maps promulgated by the Federal Emergency Management Agency, unless the development has been issued a flood plain development permit 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.

Analysis: Consistent. The Project site is not located on a flood plain as determined by FEMA (See Attachment K).

7. A 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.

Analysis: Consistent. The Project site is not located on flood plain as determined by FEMA (See Attachment K).

8. 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.

Analysis: Consistent. The Project site is not located on lands identified for conservation in an adopted natural community conservation plan according to the California Department of Fish & Wildlife (See Attachment L).

9. 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).

Analysis: Consistent. A map showing Critical Habitats provided by the U.S. Fish & Wildlife Service indicates that there are no critical habitats within the Project site or in the immediate vicinity of this Project site (Attachment M).

10. Lands under conservation easement.

Analysis: Consistent. The Project site is not located on a conservation easement according to the National Conservation Easement Database (See Attachment N).

11. A site that would require demolition of housing that is:

- Subject to recorded restrictions or law that limits rent to levels affordable to moderate, low, or very-low income households.
- Subject to rent control.
- Currently occupied by tenants or that was occupied by tenants within the past 10 years.

Analysis: Consistent. The Project site is currently improved with commercial horse stables consisting of one-story open barn structures, sheds, and open corrals, which are proposed to be demolished. Therefore, proposed Project would not require the demolition of any existing housing.

12. A site that previously contained housing occupied by tenants that was demolished within the past 10 years.

Analysis: Consistent. A commercial horse rental business currently operates on the Project site and City records indicate that the commercial space has been in for more than a decade.

13. A site that would require demolition of an historic structure that is on a local, State, or Federal register.

Analysis: Consistent. The Project site is not located in a historic district and there are no Federal, State, or locally designated historic structures on the Project site (per Appendix D of City of Burbank Historic Preservation Plan, November 1999, California Register of Historic Resources,

National Register of Historic Places). The Proposed Project would not require the demolition of a designated historic structure that was placed on a national, state, or local historic register. (see Attachment O.)

14. A parcel of land or site governed by the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

Analysis: Consistent. The Project site is currently improved with commercial horse stables and there are no mobile homes on the site. Therefore, the proposed Project would not require the demolition of any mobile housing. The proposed Project is not located on an existing parcel of land or site that is governed under the Mobilehome Residency Law, the Recreational Vehicle Park Occupancy Law, the Mobilehome Parks Act, or the Special Occupancy Parks Act.

8. **SUBDIVISIONS.** The project does not involve an application to create separately transferable parcels under the Subdivision Map Act. However, a subdivision is permitted if either of the following apply:

1. The project is financed with low-income housing tax credits (LIHTC) and satisfies the prevailing wage requirements identified in item 9 below.
2. The project satisfies the prevailing wage and skilled and trained workforce requirements identified in items 9 and 10 of this Eligibility Checklist.

Analysis: Not Consistent. The Project site consists of one parcel. The applicant has noted in their NOI submittal that this would be a for-sale housing development but has not provided a proposed subdivision with this application. If the Project site will be subdivided, the applicant must submit a condominium/tentative tract map and would have to notify the city how the Project will comply with the prevailing wage and skilled and trained workforce requirements pursuant to SB 35 and the City's BMC as identified in items 9 and 10 of this Eligibility Checklist.

9. **PREVAILING WAGE.** The project proponent must certify that at least one of the following is true:

1. The entirety of the project is a public work as defined in CA Government Code Section 65913.4(8)(A)(i).
2. The project is not in its entirety a public work and 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.
3. The project includes 10 or fewer units AND is not a public work AND does not require subdivision.

Analysis: Consistent. The Applicant submitted a letter as part of the NOI application indicating their commitment to comply with the Prevailing Wage requirement. The Applicant should submit a notarized signed letter indicating which condition applies to the Project and that this standard will be met.

10. **SKILLED AND TRAINED WORKFORCE.** If the project consists of 75 or more units that are not 100 percent subsidized affordable housing, the project proponent must certify that it will use a skilled and trained workforce, as defined in Government Code Section 65913.4(8)(B)(ii).

Analysis: Consistent. The Proposed Project proposes 21 total dwelling units and does not meet the 75-unit threshold needed to qualify for this requirement. It is important to note that a proposed Subdivision pursuant to item 8 above would have to include an update noting how the Project will comply or is exempt from the skilled and trained workforce requirements.

Should you have any questions, please feel free to contact Joseph Onyebuchi, Associate Planner at (818) 238-5250.

Sincerely,



Joseph Onyebuchi
Associate Planner

CC: Patrick Prescott, Community Development Director
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Attachments

Attachment A – 2010 US Census – Urbanized Area Reference Map: Los Angeles–Long Beach–Anaheim, CA
Attachment B – Site Aerial Map.
Attachment C – Zoning Map
Attachment D – General Plan Land Use Designation Map
Attachment E – City Department Comments
Attachment F – Prime Farmland
Attachment G – National Wetlands Inventory
Attachment H – CAL FIRE - Very High Fire Hazard Severity Zone Map
Attachment I – Dept. of Toxic Substances Control – Hazardous Waste
Attachment J – Earthquake Fault Zone
Attachment K – FEMA Flood Map
Attachment L – Natural Community Conservation Map
Attachment M – Critical Habitats
Attachment N – National Conservation Easement Database Map
Attachment O - City of Burbank Historic Preservation Plan