

STAFF REPORT



COMMUNITY DEVELOPMENT

DATE: November 16, 2021

TO: Justin Hess, City Manager

FROM: Patrick Prescott, Community Development Director
Via: Fred Ramirez, Assistant Community Development Director
Scott Plambaeck, Deputy City Planner
By: Maciel Medina, Associate Planner

SUBJECT: Adoption of a Resolution Denying the Appeal of the Planning Board's Approval of a Development Review, Conditional Use Permit, Tentative Parcel Map No. 083410, and Density Bonus Request; and a Resolution Denying the Appeal of the Planning Board's Approval of a Sustainable Communities Environmental Assessment and a Mitigation Monitoring and Reporting Program for a Project Submitted Pursuant to SB 330 for the Site located at 2311 N. Hollywood Way. (Project No. 20-0003289)

RECOMMENDATION

1. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK DENYING AN APPEAL OF THE PLANNING BOARD'S APPROVAL OF A SUSTAINABLE COMMUNITIES ENVIRONMENTAL ASESMENT (SCEA) AND MITIGATION MONITORING AND REPORTING PROGRAM (MMRP) PURSUANT TO THE CALIFORNIA ENVIORNMENTAL QUALITY ACT (CEQA) FOR THE BURBANK AERO CROSSINGS MIXED-USE PROJECT AT 2311 N. HOLLYWOOD WAY (PROJECT NO. 20-0003289), AND APPROVING THE SCEA AND MMRP BASED ON THE FINDINGS OF FACT AND SUBJECT TO RECOMMENDED CONDITIONS OF APPROVAL (Attachment 1, Exhibits 1-3); and
2. Adopt A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURBANK DENYING AN APPEAL OF THE PLANNING BOARD'S APPROVAL OF PROJECT NO. 20-0003289 FOR A DEVELOPMENT REVIEW, CONDITIONAL USE PERMIT, DENSITY BONUS REQUEST AND TENTATIVE PARCEL MAP NO. 083410 FOR A PROPOSED MIXED-USE DEVELOPMENT LOCATED AT 2311 N. HOLLYWOOD WAY, AND APPROVING THE PROJECT BASED ON THE FINDINGS OF FACT AND SUBJECT TO RECOMMENDED CONDITIONS OF APPROVAL (Attachment 2).

BACKGROUND

Project Description

The appeal is in response to a decision made by the City of Burbank Planning Board approving a request for a Development Review (DR), Conditional Use Permit (CUP), Density Bonus Waivers and Tentative Parcel Map No. 083410, and a SCEA prepared pursuant to the CEQA to construct a mixed-use development located at 2311 N. Hollywood Way (the “Project”). The Project consists of 862 residential units, which includes 80 very low-income units, 9,700 square feet of ground floor commercial space and up to 151,800 square feet of office space. The Project includes a request for a 42.5% increase of the Project’s allowed base density, as permitted under Burbank Municipal Code (BMC) Section 10-1-643 (Affordable Housing) and California Government Code Section 65915 (“California Density Bonus Law”). Additionally, as allowed under local and California Density Bonus Law, the Project includes a request for waivers from specific development standards that if applied would physically preclude the construction of the Project, with the density bonus to which the developer is entitled.

The Project site is zoned C-3 (Commercial General Business) with a General Plan Designation of Regional Commercial. The Project site is currently improved with a vacant 101,967 square foot building that was most previously occupied by the Fry’s Electronics retail store.

Table 1: General Property Information	
Site Address	2311 N. Hollywood Way
Cross Street	Hollywood Way and Vanowen Street; Hollywood Way and Valhalla Drive
Assessor’s Parcel Number	2463-001-019
General Plan Designation	Regional Commercial (Maximum 1.25 FAR, 58 units per acre)
Zoning	C-3 Commercial General Business
Property Size	454,286 square feet (10.43-acres)
Maximum Residential Density Allowed (Base Density)	605 units per the BMC
Proposed Residential Density	The BMC and Burbank2035 General Plan allows 605 base units. With a 42.5% increase through the density bonus request, this adds an additional 257 residential units for a total of 862 units.
Number of Units Set Aside as Affordable Housing Units (Low-Income)	80 units are set aside as very low income units – this equates to 13.2% of the allowed base density – permitted under the Burbank Municipal Code and California Density Bonus Law
Required Number of Parking Spaces	Residential 1,686 parking spaces – Per the BMC Commercial 32 parking spaces – Per the BMC Office 456 parking spaces – Per the BMC

Proposed Number of Parking Spaces	1,125 parking spaces – Per Density Bonus Law Commercial 32 parking spaces – Per the BMC Office 456 parking spaces – Per the BMC
Existing Development on the Property	101,967 square foot commercial building

The proposed mixed-use development will contain the following uses:

- One, 7-story building containing a total of 424 residential units (building one);
- One, 7-story building containing a total of 438 residential units (building two);
- One, single-level subterranean parking area under each residential building;
- 8,200 square feet of commercial and retail space at ground level below building two;
- 1,500 square feet of commercial and retail space will be located at the north-west corner of the property;
- The proposed development includes two office alternatives:
 - Option One: Four (4), three-story buildings totaling 84,900 square feet of office space with a 4-level parking structure with 255 parking spaces
 - Option Two: One (1), five-story office building containing a total of 151,800 square feet of office; space with integrated 5-level parking structure containing 456 parking spaces;
- A total of 1,125 parking spaces are provided for the residential units;
- A total of 32 parking spaces will be provided for the retail component;
- A total of 456 parking spaces will be provided for the office component;
- A total of 57 bicycle parking spaces

Project History

The Project was originally submitted on July 2, 2020 and was reviewed by staff and other City departments through the pre-development process, followed by a subsequent submittal on November 5, 2020, as a proposal for a mixed-use development Project containing residential, office, and retail space that would utilize California Density Bonus Law (AB 2345) (Attachment 7) to increase the number of housing units permitted through the BMC. As part of the density bonus request, the Project Applicant applied for waivers from specific development standards that would have the effect of physically precluding the construction of the Project with the density bonus to which the developer is entitled. The density bonus request and associated waivers are being requested to facilitate the development of the permitted dwelling units under local and State density bonus laws.

Furthermore, per California Density Bonus Law, the project must provide 80 of the proposed dwelling units as units set aside and available to qualifying very low-income households. A restrictive covenant will require that these 80 affordable housing units be maintained as very low-income units for a 55-year period. Furthermore, the mixed-use development project was submitted as a housing project pursuant to SB 330 (Housing Crisis Act of 2019) and the provisions of The Housing Accountability Act (Attachment 8), which collectively aim to increase housing production and streamline the review time for housing projects. Under SB 330, the

filing of a preliminary application freezes the rules that may be applied to the project and places limitations on the City's discretion to disapprove the Project or approve it at a reduced density (California Government Code Section 65589.5).

City Staff Review of the Project

As a part of the DR, CUP, Tentative Tract Map No. 083410 and Density Bonus Request review process, City staff conducted a review for Burbank2035 General Plan compliance, City zoning code compliance, and the Project's compliance with local and California Density Bonus Law. Over the course of several months, City staff worked with the Project Applicant to make plan design revisions including modifications to the proposed orientation and layout of the overall residential building design to ensure that the parking garages were less visible from the street and to create safer vehicle entry and exit points. Furthermore, City staff engaged the developer in the incorporation of certain physical improvements such as the inclusion of bike paths, common gathering areas, sidewalk improvements, crosswalk signals, and undergrounding of utilities that improved the overall project design, which created some opportunities for publicly accessible amenities and physical upgrades that help to integrate the Project into the surrounding neighborhood. Some of these physical improvements were required under the City development standard and General Plan policies, but some of these improvements agreed to by the developer went beyond the objective development standards applicable to the Project under SB 330. Nonetheless, the Project Applicant agreed to provide these improvements to help create amenities, like bike paths, wider tree lined sidewalks, and onsite open space paseos and pathways that helps build a complimentary use to the adjacent neighborhood. Once the Project was revised to comply with the applicable zoning requirements and California Density Bonus Law, City staff began the community outreach process to gather public input on the Project.

Community Meeting

On June 10, 2021, the City of Burbank Community Development Department hosted a virtual informational community meeting for the Project. During the meeting, the Project Applicant and City staff provided an overview of the Project, answered questions, and listened to community feedback and recommendations. The feedback and recommendations provided at the meeting included the following:

- Assess any potential impact the Project may have on the local school district;
- Assess potential parking impact the Project may have on the adjacent neighborhood;
- Address any potential traffic impact that may result from Project implementation; and
- Consider a public request to hire union labor during construction.

Many of the questions and comments received from the attendees of the community meeting focused on the operational characteristics and noted potential impacts of the Project rather than on Project design. After the community meeting, Planning staff met with the Project Applicant and other City departments to make adjustments to the layout of the Project to ensure greater functionality and, wherever possible, address community input. The noted operational characteristics and potential impacts were studied as part of the SCEA that was prepared for the Project, which is included herein as Attachment 1 of this report.

CEQA Process

State law (SB 375) allows a lead agency to prepare a SCEA to assess the environmental impacts of transit priority projects. City staff determined that the Project is a Transit Priority Project (as defined in California PRC Section 21155(b)) that met all the criteria to qualify for a SCEA, including proximity to transit (the Hollywood Burbank Airport – South Metrolink Station). As required under the CEQA, City staff and its CEQA consultant, Environmental Science Associates (ESA), prepared a SCEA and associated technical studies (Attachment 1) that provides substantial evidence that the Project would not result in any potentially significant environmental impacts with implementation of the mitigation measures identified in the SCEA and MMRP. Consistent with SB 375, these measures include feasible and applicable measures from prior Environmental Impact Reports (EIR).

Noticing

Prior to the Planning Board hearing, there were several methods that were used to inform the public as well as the surrounding property owners and occupants of the dates for the Community Meeting and Planning Board hearing held for the Project. A notice was mailed out on May 26, 2021 to all the property owners and residents within a 1,000-foot radius of the Project site informing them of the proposed Project and the community meeting on June 10, 2021. In addition, three (3) separate notices were posted around the Project site notifying anyone passing by the property of the proposed Project. These notices were posted along Vanowen Street, Hollywood Way, and Valhalla Drive.

On September 10, 2021, a notice was sent to all property owners and residents within a 1,000-foot radius of the Project site informing them of the proposed Project (including the proposed entitlements and the SCEA) and the September 27, 2021 Planning Board virtual hearing date. On September 7, 2021, three (3) separate notices were posted around the property notifying anyone passing by the property of the proposed Project (including the proposed entitlements and the SCEA). These notices were posted along Vanowen Street, Hollywood Way and Valhalla Drive. Additionally, a notice was published in the Los Angeles Times on September 10, 2021, notifying the public of the proposed Project and the Planning Board hearing date. All of these noticing efforts are in compliance with the BMC noticing requirements.

Furthermore, pursuant to Public Resources Code Section 21092 and California Code of Regulations Title 14, Section 15072, a Notice of Intent to adopt a SCEA was recorded by the Los Angeles County Recorder on July 13, 2021 and was also posted on the California State Clearinghouse online portal on July 9, 2021. Public Resources Code Section 21155.2 provides that the City, as the lead agency, shall provide notice that the draft SCEA is available for public comment by publication, posting of notice, or direct mailing to owners and occupants of contiguous property. In this case, City staff satisfied this requirement by utilizing the methods previously described.

Planning Board Review and Approval

On September 27, 2021, the Planning Board held a noticed public hearing to consider the requested Project applications and associated SCEA. During the public hearing on the Project, the Planning Board considered the City staff report, staff and Project Applicant presentations, and public input (Attachment 9). As part of the public comments, the Planning Board heard

comments from the public related to traffic concerns, the inclusion of a community wealth policy (e.g., hire union workforce with full family health plan, skilled and trained workforce standards, certified apprenticeship, paid sick leave, pension, vacation-holiday pay, and local hire), airport noise concerns, the Uber/Lyft drop off stations, and overall SCEA process. City staff answered these questions by letting the public know that the traffic study and noise analysis did not indicate any major impacts that could not be mitigated. Regarding the community wealth policy, City staff concluded that implementing such a plan is not a requirement either through the City's applicable objective development standards or through CEQA. Staff also let the public know that they would be able to use the proposed on-site Uber/Lyft drop off station for their convenience.

After closing the public hearing and Planning Board deliberation on the Project, the Board voted 4-0 to approve the SCEA (Attachment 10) and (Attachment 11), which included the Mitigation Monitoring and Reporting Program (MMRP), and the DR, CUP, Density Bonus Request, Tentative Tract Map No. 083410. The staff report presented to the Board is included as Attachment 9.

Appeal to the Planning Board's Decision

During the 15-day appeal period after the Planning Board's decision to approve the Project, the Planning Division received two (2) appeals of the Planning Board's decision. The appeals were submitted by resident Roy Wiegand (Appeal No. 1) (Attachment 12) on October 11, 2021 and Mitchell M. Tsai, Attorney at Law on behalf of the Southwest Regional Council of Carpenters (Appeal No.2) (Attachment 13) on October 12, 2021. On October 27, 2021, the City received a "Withdrawal of Appeal of Planning Board Decision on SCEA for 2311 N. Hollywood Way Project (Project No. 20-0003289)" from Mitchell M. Tsai, Attorney at Law on behalf of the Southwest Regional Council of Carpenters (Attachment 4). The withdrawal of appeal was submitted pursuant to BMC 10-1-1907.3 (E). As such, Roy Wiegand is the only appellant of the Project approval.

The following is an overview of the appellant's application and the basis for the appeal:

Overview of Appeal No. 1

Appeal No. 1 (Attachment 12) was filed by Roy Wiegand on October 11, 2021. The appeal application indicates the following as the basis for the appeal:

- The decision made by the Planning Board is being appealed because the Board erred on all resolutions approved for this project and on the recommendations made by staff that were presented to the Planning Board based on BMC 10-1-634 and California Government Code 65-945, but not limited to just those codes. (See Attachment 12 for appeal application.)

The appeal application did not include supplemental information that helped identify noncompliance with the specific sections of the Burbank Municipal Code and California Government Code listed or any others.

DISCUSSION

The following discussion and applicable attachments to the staff report, as noted in the sections that follow, are intended to provide an overview of the Project's compliance with objective zoning development standards and general plan standards as well as provide a response to the specific points that are included in the appeal application. Staff has analyzed each point that is referenced in the appeal. Staff assess that the claims made by the appellant do not provide sufficient evidence, based upon a preponderance of the evidence in the record, that the Project does not meet the required written findings that are applicable under the City zoning regulations including local and State Density Bonus Law and that the Project would result in a "specific, adverse impact" or comply with other provisions of SB 330 that would result in written findings to justify the denial or modification of the Project pursuant to The Housing Crisis Act of 2019 and The Housing Accountability Act (California Government Code Section 65589.5) . Therefore, it is City staff's determination that the Planning Board decision to approve the Project is justified based on the following information.

Consistency with Zoning Regulations

With a zoning designation of C-3 (General Commercial Business Zone), the Project is subject to all C-3 development standards. These standards include objective criteria pertaining to allowable square footage (lot coverage), allowable floor area ratio (FAR), building height, building setbacks, required on-site parking, open space and landscaping. As noted in Attachment 2 – DR findings, the Project was reviewed for and found to be in compliance with all C-3 General Commercial Business Zone development standards—with the exception of those specific development standards for which waivers under applicable local and state density bonus law are being requested. These waivers are for the building height to exceed the maximum height of 85 feet by 9 feet, the required 18 feet 9 inch building setback by providing a 5 feet setback from the front property line along Hollywood Way, and for allowing residential uses on the ground floor. These waiver requests are discussed in greater detail later in this report.

Consistency with the Burbank2035 General Plan

The Project has been reviewed for conformance with the Burbank2035 General Plan and is consistent with the overall goals and policies outlined therein. As referenced in Attachment 15, the proposed Project is consistent with the applicable objectives and policies that are outlined in the Burbank2035 General Plan. The attachment demonstrates that the Project meets several objectives, such as sustainability, by proposing a Transit Oriented Development Project; utilizing the City's Complete Our Streets Plan (adopted June 16, 2020) to ensure that streets surrounding the Project site will be improved to provide attractive and safer streets that are oriented towards bicycle and pedestrian users; promoting transit use by providing a connection point between different modes of transportation; providing Neighborhood Protection by requiring a Neighborhood Protection Management Plan that will be designed to reduce any potential traffic spill over into adjacent neighborhoods; and facilitating the development of 862 residential units, including 12 live/work units and 80 very low-income units on a Project site that is a Transit Oriented Project and Transit Priority Project, which is located immediately adjacent to major transit facilities that provide increased accessibility to local and regionally serving public transit connections.

Neighborhood Protection Program

Though not a requirement under CEQA, the City conducted an operational traffic analysis for the Project, which found that the Project has the potential to increase cut-through traffic in the residential neighborhood located south of the Project site. As part of the Project's "Conditions of Approval", the Project Applicant will be required to pay \$250,000 towards the development of a neighborhood Traffic Management Plan that is consistent with the Burbank2035 General Plan Mobility Element goals and policies for Neighborhood Protection. The Traffic Management Plan funded by the Project Applicant will identify physical improvements that will reduce any potential cut-through vehicle traffic that may result from the Project. This plan would be developed with input from the residents of this neighborhood. The resulting Plan and any recommended improvements would be approved by the City Council. Should funding for additional improvements be required, the City Council could fund these improvements with Transportation Development Impact Fees.

State Density Bonus Law and Assembly Bill 2345

State density bonus law, as most recently amended by Assembly Bill 2345 (Attachment 7), allows for a project to utilize incentive, concessions, and/or waivers from a local jurisdiction's development standards to allow for the creation of more units, with the inclusion of affordable units. Pursuant to California Density Bonus Law, the Project Applicant requested, and was granted approval, of three waivers to allow deviations from the C-3 height standards, the C-3 setback standards, and the C-3 standard that limits residential units from being located on the ground floor of buildings located on a C-3 zoned property.

To receive a waiver from a development standard through California Density Bonus Law, the project must include a certain number of affordable units on-site as part of the Project. The proposed Project includes 80 very low-income units, which equates to approximately 13.2% of the total unit count being provided as affordable units for rent to qualifying very low-income households. These very low-income units will be restricted through an affordable housing agreement covenant as affordable to qualifying very low-income households for 55 years. These affordable units will provide an opportunity for very low-income households to get an opportunity to reside in the City of Burbank and benefit from the amenities and location that would result from the construction of this Project as a mixed-use development in close proximity to major public transit and employment centers within the City.

The Project is seeking a waiver of the development standard that limits use of the ground floors of the residential buildings to commercial uses only. Requiring the Project to have only commercial at ground level would significantly limit the ability of the Project to accommodate the total number of residential units that are allowed under local and California Density Bonus Law. Specifically, the live-work units would be unable to accommodate ground floor living space connected to the storefront that is typical of a live-work unit. The denial of the waiver would physically limit the ability to place this type of residential unit on the ground floor. Removing the residential living space of these ground floor live-work units would result in the elimination of these types of units and require relocation of residential units to the upper floors of the proposed residential structures, which would require the Project height and/or the building footprint to be increased, neither of which are feasible.

Due to the Project site's proximity to the Hollywood-Burbank Airport, the Project was reviewed by both the Airport Land Use Committee (ALUC) and the Federal Aviation Administration (FAA). Both ALUC and the FAA reviewed the Project to identify any potential impacts that may result due to airport proximity and overall height of the Project. Minor impacts were found resulting from the Project's height and location that were mitigated to a less than significant impact as noted in the MMRP (Attachment 1) and approvals for the Project to proceed based on the current height were given by both ALUC and the FAA (Attachment 16). Increasing the height would not be consistent with these approvals and could interfere with airport operations.

Increasing the building footprint would require encroachment into City required sidewalk dedications, building setbacks, fire lanes, emergency and disabled access, and/or open space or setbacks and therefore physically preclude the construction of these live-work units and limit the Project's ability to build out the number of residential units allowed under local and State-mandated Density Bonus Law.

The Project Applicant is also asking for a waiver related to the C-3 setback requirements. Applying the code-required setbacks would push all the buildings towards the center of the property and would significantly decrease the open space, as well as the buildable area, and encroach onto the required fire lanes. This reduction in setback would result in a reduction in the number of units, including the number of affordable units that could be built.

The applicant is also asking for a waiver from the C-3 height limits. As previously mentioned, the height waiver is needed in order to build the number of units proposed, while still allowing for open space and other amenities at the ground floor level. The waiver request is needed because the residential buildings must be built at a higher level than permitted in the City zoning code to accommodate the number of proposed units allowed under California Density Bonus Law.

Pursuant to California Density Bonus Law, the Project is entitled to a by-right, reduced parking standard. Per applicable Density Bonus Law, this type of Transit Oriented Development (TOD), is granted a minimum and maximum range of parking that can be considered. The State-mandated minimum parking standard that can be applied to the Project is 0.5 spaces per unit and the maximum parking standard is 1.25 spaces for a studio unit less than 500 square feet, 1.75 spaces for every 1 bedroom unit or studio greater than 500 square feet and 2 spaces for each unit with two or more bedrooms.

A transportation study was prepared for this Project using the methodology of Vehicle Miles Traveled (VMT) to study any potential impact that the Project may have on the traffic infrastructure and any possible congestion resulting from Project. Under the VMT analysis and as a TOD, the Project cannot provide more parking stalls than what would otherwise be required by the BMC and California Density Bonus under the premise that surplus parking induces additional vehicle trips. Per local and State Density Bonus Law, the minimum required parking spaces for the proposed residential portions of the Project would be 431 spaces, and the maximum allowed would be 1,686 spaces. The Project Applicant provided more parking spaces than the required minimum under Density Bonus Law by providing 1,125 onsite parking spaces for the residential portion of the Project. This number complies with the maximum

allowed parking under local and State Density Bonus law, which ensures that the Project complies with the allowable thresholds as outlined in the Project's VMT analysis (Attachment 1) and would therefore not result in a significant traffic (VMT) impact to the surrounding area. It is important to note that the proposed office and retail uses are being parked on-site at the required City code number of parking spaces applicable for office and retail uses within the C-3 zone (BMC Section 10-1-1408), which account for 32 on-site parking spaces for the ground floor retail space and an additional 456 on-site parking spaces for the proposed office square footage.

Division 5 – Affordable Housing Incentives

The Purpose of the Inclusionary Housing provisions in the BMC is to encourage the development of housing affordable to a broad range of households with varying income levels consistent with the City's General Plan Housing Element while increasing the supply of affordable housing in conjunction with market rate housing and to establish a regulatory tool to facilitate private sector development and/or financial support of affordable housing to supplement public sector programs. BMC Section 10-1-635 notes that the City shall grant a Density Bonus to a developer of a Residential Development of five (5) or more dwelling units in accordance with the City's Density Bonus regulations. These regulations are considered in combination with the City's Inclusionary Housing regulations, which note that a Housing Development of 5 or more units must allocate a total of 15% of the base density as affordable to low-income households. More specifically, 10% must be allocated for low-income units and 5% must be dedicated to very low-income units (BMC Section 10-1-646(A)).

The City's Inclusionary Housing regulations allow for "Inclusionary Credits" that allows for Density Bonus projects that provide a greater number of Very Low-Income units. If Very Low-Income units are provided in lieu of required Low Income rental units, a credit of 1.25 units for every one (1) unit shall be provided. Consistent with this provision of the BMC, the Project is providing 80 Very Low-Income units. Therefore, this Project is in compliance with the City's Density Bonus and Inclusionary Housing regulations as it relates to the total number and level of affordability required for the size of the proposed Project.

Senate Bill 330

On January 14, 2021, the Project Applicant submitted a preliminary application (Attachment 17) for the Project under Senate Bill 330 (Housing Crisis Act of 2019; CA Government Code Section 65589.5). (See Attachment 8.) SB 330 aims to increase residential unit development and creates an expedited permitting process for eligible housing and mixed-use development projects. Certain ordinances and policies that a local jurisdiction had previously implemented on projects can no longer be applied under SB 330, one example being that it bans jurisdictions from downzoning or otherwise adopting standards that would lessen housing intensity on sites zoned or planned for residential use and limits the City's ability to change development standards to a housing development project during the application process and strengthens the protections of the Permit Streamlining Act. In this case, the City of Burbank is precluded from applying multifamily residential development standards to this Project that is in the C-3 zone. Previously we have applied these multifamily residential development standards to other mixed-use projects under Planned Development proposals or other discretionary permits because those multifamily residential development standards are not identified as existing

objective zoning standards in the C-3 zone. This is consistent with the provisions of SB 330 in which cities and counties are limited in applying only those objective development standards that are in place at the time that the preliminary application is submitted for the proposed housing development.

Additionally, SB 330 strengthens the Housing Accountability Act (Government Code Section 65589.5), which states that a housing development project that complies with the objective standards of the General Plan and Zoning Ordinance must be approved by the City. Furthermore, "Subjective" standards can no longer be used as a means to deny a project. Only objective standards as previously mentioned can be used to deny a project under SB 330. For example, in a recent case (*California Renters Legal Advocacy and Education Fund v. City of San Mateo*, 68 Cal.App.5th 820), the Court of Appeal recently found that certain guidelines to protect neighborhood character were subjective standards that were barred by SB 330. Objective standards are limited to design standards that involve no personal or subjective judgment by a public official. They must be verifiable by reference to an external and uniform benchmark available to both the applicant and the public official prior to application submittal. The public agency may require the housing development to comply with the objective zoning code standards applicable to the property, but only to the extent they facilitate the development at the density allowed by the general plan.

Housing Accountability Act

The Housing Accountability Act (HAA) (Attachment 18) establishes standards that indicate a local government may not deny, reduce the density of or make it infeasible to develop housing development projects that are consistent with objective local development standards. California Government Code Section 65589.5(j) requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:

1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density; and
2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

"Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. There is no objective evidence suggesting the proposed Project will create a specific adverse impact on public health or safety if the proposed density is maintained, and there is no objective evidence that shows the potential impacts of the project cannot be successfully mitigated. Therefore, it is Staff's assessment that the Project as proposed and subject to the requested waivers as allowed under State and local density bonus law, complies with applicable, objective Burbank2035 General Plan and City of Burbank Zoning standards.

Sustainable Communities Environmental Assessment

The Project was analyzed under SCEA. State law (SB 375) allows the lead agency to prepare a SCEA for Transit Priority Projects (TPP) such as this one, that are consistent with a metropolitan planning organization's sustainable community strategy or an alternative planning strategy that has been determined by the State Air Resources Board to achieve the greenhouse gas emission reductions targets. The intent of SB 375 is to provide a more streamlined CEQA process for projects that meet regional strategies to promote smart growth, reduce VMT and associated emissions, and help achieve greenhouse gas reduction goals. Similar to a mitigated negative declaration or EIR, a SCEA must analyze a broad range of potential environmental impacts and require feasible mitigation measures for potentially significant impacts. A SCEA must also incorporate applicable feasible mitigation measures from prior EIRs. A Mitigation Monitoring and Reporting Plan (MMRP) (Attachment 1) has been provided that lists all of the mitigation measures applied to the Project that will avoid any potential significant environmental impacts as a result of the Project. Furthermore, City staff reviewed the Project and included specific "Conditions of Approval" contained in the Resolution (Attachment 2) that further reduce any potential impacts the Project may create.

RESPONSE TO APPEAL

The following section provides a response to the appellant's comments. The appeal letter is included as Attachment 12 to this report.

Response to Appeal No. 1 (Roy Wiegand)

Burbank resident, Mr. Wiegand, filed an appeal (Attachment 12) of the Planning Board's approval of the Project. The appellant cited the City's failure to comply with Burbank Municipal Code 10-1-634 (Purpose and Intent – Density Bonus) and California Government Code 65915 (Density Bonus Law) as the reasons for his appeal. The comment does not provide an explanation as to how the Board's decision does not comply with noted BMC section related to the local density bonus regulation or how the Project fails to comply with California Density Bonus Law. As previously noted, the Project was approved by the Planning Board for three waivers, which are as follows: 1) C-3 height standards; 2) the C-3 setback standards; and, 3) the C-3 standard that limits residential units the upper stories of a mixed-use development within the C-3 zone.

As previously noted, waiver from the height and building setback standards for the proposed residential buildings will facilitate an overall building envelope that accommodates the necessary square footage and buildable area to construct the number of residential units allowed under local and State Density Bonus Law, while also reducing the potential overall height consistent with the Burbank2035 General Plan goals and policies that seek to facilitate "niche residential (e.g., lofts, live-work spaces) that are compatible with the industrial character of the area" and the surrounding residential neighborhood while encouraging land uses that are compatible with the Hollywood Burbank Airport by limiting height of proposed structures and the location of residential buildings consistent with Federal Aviation Administration (FAA) and the Airport Land Use Committee (ALUC) jurisdiction oversight and guidelines including building the Project in a manner that addresses the existing Airport Influence Area and Runaway Protection Zones. (Burbank2035 General Plan Land Use Element Goal 12 and Policy 12.6, Pg. 3-17.)

Furthermore, without the waiver to allow ground floor residential, the proposed live-work units would be unable to accommodate ground floor living space connected to the storefront that is typical of a live-work unit. The denial of the waiver would physically limit the ability to place this type of residential unit on the ground floor. Removing the residential living space of these ground floor live-work units would result in the elimination of these types of units and require relocation of residential units to the upper floors of the proposed residential structures, which would require the Project height or the building footprint to be increased, neither of which are feasible. Due to the Project site's proximity to the Hollywood-Burbank Airport, the Project was reviewed by both the ALUC and the FAA to ensure compliance with the Airport Influence Area and Runway Protection Zones. Both ALUC and FAA reviewed the Project to assess any potential impacts that may result due to airport proximity and overall height of the Project. Minor impacts were found resulting from the Projects height and location that were mitigated to a less than significant impact as noted in the MMRP (Attachment 1) and approvals for the Project to proceed were given by both ALUC and the FAA (Attachment 16) based on the current height. Increasing the height would not be consistent with these approvals and could interfere with airport operations. Furthermore, increasing the building footprint would require encroachment into City required sidewalk dedications, building setbacks, needed fire lanes, emergency and disabled access, and/or open space or setbacks and therefore physically preclude the construction of these live-work units and limit the Project's ability to build out the number of residential units allowed under local and State-mandated Density Bonus Law.

The appellant did not challenge the Board's decision to approve the SCEA that was prepared pursuant to the CEQA and the MMRP. The SCEA analysis and resulting MMRP provide not only the disclosure of any potential impacts but the necessary mitigation measures that will reduce any potential environmental impacts to levels that are less than significant. The appeal has been included for the City Council's consideration as Attachment 12 to this report.

DEPARTMENT COMMENTS

Department comments have been incorporated as Project conditions and are noted in the Resolution as "Conditions of Approval" (Attachment 2).

ENVIRONMENTAL REVIEW

The Project was reviewed under the criteria of SCEA. A SCEA may be prepared for a project that (a) is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a sustainable communities strategy (see California Public Resources Code [PRC] Section 21155(a), and (b) is a "transit priority project" (as defined in California PRC Section 21155(b)). The Project meets these criteria and, thus, is eligible for certain CEQA streamlining benefits by way of preparing a SCEA for purposes of clearance under the CEQA. Any potential impacts that have been identified by the analysis have been appropriately mitigated and incorporated into the MMRP (Attachment 1). The MMRP has also been incorporated as part of the Project's Conditions of Approval (Attachment 2).

CONCLUSION

Staff recommends the City Council adopt the two Resolutions (Attachments 1 and 2) denying the appeal and upholding the Planning Board's Decision to approve the SCEA, the MMRP and the Project entitlements. Based on the prior review and analysis, it is Staff's assessment that

the Project meets all the findings required for the approval of a Development Review, Conditional Use Permit, Density Bonus Request, Tentative Parcel Map No. 083410 and Sustainable Communities Environmental Assessment under CEQA. Furthermore, Project approval is warranted as the Project is in compliance with the applicable C-3 General Commercial Business objective zoning standards, the Burbank2035 General Plan goals and policies, and the applicable requirements for a housing development of this type under the California Density Bonus Law and the provisions of a mixed-use development and Transit Priority Project as noted in SB 330 (Housing Crisis Act of 2019) and The Housing Accountability Act.

ATTACHMENTS

Attachment 1 – Resolution (SCEA and MMRP)
Attachment 2 – Resolution (CUP, DR, Density Bonus Waivers, and Tentative Parcel Map)
Attachment 3 – Zoning and Fair Political Practices Act Compliance Map; Aerial Photo
Attachment 4 – Withdrawal of Appeal Letter (Mitchel M. Tsai)
Attachment 5 – Application Form
Attachment 6-1 – Approved Project Plans Options 1
Attachment 6-2 – Approved Project Plans Options 2
Attachment 7 – AB 2345 (Density Bonus Law)
Attachment 8 – SB 330 (Housing Crisis Act)
Attachment 9 – Staff Report to the Planning Board and Meeting Minutes
Attachment 10 – Entitlement Resolution approved by the Planning Board
Attachment 11 – SCEA Resolution approved by the Planning Board
Attachment 12 – Appeal Application Form, Appeal No. 1 (Roy Wiegand)
Attachment 13 – Appeal Application Form, Appeal No. 2 (Mitchell M. Tsai)
Attachment 14 – BMC 10-1-634
Attachment 15 – General Plan Consistency Table
Attachment 16 – ALUC and FAA Approval Letters
Attachment 17 – SB 330 Letter by Applicant
Attachment 18 – Housing Accountability Act
Attachment 19 – Senate Bill 375 (SCEA)
Attachment 20 – Letter by SAFER
Attachment 21 – Responses to Letters by SAFER and Mitchell Tsai
Correspondences