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LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

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January 14, 2021

VIA U.S. MAIL AND E-MAIL

Fred Ramirez, Assistant Director
Scott Plambaeck, Deputy City Planner
Maciel Medina, Associate Planner
Planning Division, Community Development Department
City of Burbank
150 N. Third Street
Burbank, CA 91502

framirez@burbankca.gov
splambaeck@burbankca.gov
mmedina@burbankca.gov

Re: 2311 N. Hollywood Way- Preliminary Application under SB 330

Dear Fred, Scott, and Maciel:

As you know represent NHW Investors, LLC (“NHW”), the owner of the approximately 10.43-acre site at 2311 N. Hollywood Way (the “Site”) that is currently developed with a Fry’s Electronics store. NHW is seeking approvals from the City of Burbank (“City”) to develop the Site with a mixed-use development with a total of 863 apartment units (including 11 live/work units and 80 deed restricted Very Low Income units, or 13.2% of the base density¹), 9,000 square feet of ground retail/restaurant uses, and 893 parking spaces in two seven-story buildings, and one of two office options. Under Option 1, approximately 89.6% of the total Project floor area would be devoted to residential uses.

The first office option comprises four 55-foot tall buildings that contain a total of 81,000 square feet of office space and 243 parking spaces in a standalone four-story garage. The floor area ratio (“FAR”) would be 1.9 to 1. The second office option comprises a single 75-foot building with 150,000 square feet of office space and 450 parking spaces in a standalone five-story garage. The FAR would be 2.1 to 1. Under Option 2, approximately 80% of the total Project floor area would be devoted to residential uses.

We are writing on behalf of our client to submit a preliminary application under Senate Bill 330 (“SB 330”).

¹ This complies with the City’s inclusionary requirements, which require 10% of the base density to be Low Income units and 5% very low income units, but allows the Low Income units to be replaced with Very Low Income units on a 1.25 to 1 basis.

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A. Overview of Early Vesting Under SB 330

In the fall of 2019, Governor Gavin Newsom signed SB 330, the Housing Crisis Act of 2019, in order to address the statewide housing crisis. This law took effect on January 1, 2020. Among other things, SB 330 enables applicants to secure early vesting by submitting a “preliminary application.” Once an applicant has submitted a preliminary application, the project will be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted (subject to the limitations set forth in the statute)².

The preliminary application provisions apply to any “housing development project.”³ As defined in SB 330, a “housing development project” includes mixed-use development projects “consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use.”⁴ The submitted plans demonstrate that the Project qualifies as a “housing development project” under SB-330 because it is a mixed-use project that includes at least two-thirds of the square footage designated for residential use.

Government Code Section 65941.1(b)(1) provides that each local agency “shall compile a checklist and application form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application.” Government Code Section 65941.1(b)(2) provides that the State Department of Housing and Community Development (“HCD”) “shall adopt a standardized form that applicants for housing development projects may use for the purpose of satisfying the requirements for submittal of a preliminary application if a local agency has not developed its own application form.” We have attached a copy of this form as Exhibit 1.

Government Code Section 65941.1(a) provides that an applicant for a housing development project will be deemed to have submitted a preliminary application “upon submittal of the information set forth in that section and payment of the permit processing fee.” As set forth below, NHW has submitted all the information set forth in Government Code Section 65941.1(a) and has paid the application fee. Therefore, we believe that the City should deem NHW to have already submitted a preliminary application that provides early vesting under SB 330. Therefore, the Project will be subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. We would appreciate it if you could confirm your agreement in writing.

If for some reason you do not concur, please consider this letter to be NHW’s submittal of a “preliminary application” under SB-330. You have informed us that the City has not prepared a preliminary application form. Thus, the following is based on the attached HCD form in

² Govt. Code § 65589.5(o).

³ Govt. Code § 65941.1.

⁴ Govt. Code § 65589.5(h)(2)(B).

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accordance with Government Code Section 65941.1(b)(2). We have also attached as Exhibit 2 an executed Property Owner Affidavit also based on the HCD form.

B. NHW Has Submitted All Information Required Under Government Code Section 65941.1(a) for a Preliminary Application.

Government Code Section 65941.1(a) requires submittal of the information set forth in (1) to (17) below. As demonstrated below, NHW has provided all of the required information.

(1) The specific location, including parcel numbers, a legal description, and site address, if applicable.

This information is included in the submitted Site Survey. The Site is at 2311 N. Hollywood Way (APN: 2463-001-019).

(2) The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

(A) Existing uses:

The Site is currently developed with a Fry's Electronics retail store and surface parking.

(B) Major physical improvements:

The Project is described above and in the submitted Project Plans.

(3) A site plan showing the location on the property, elevations showing design, color, and material, and the massing, height, and approximate square footage, of each building that is to be occupied.

The Project Plans include a site plan and elevations with this information.

(4) The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

The Project would include 863 residential units in 778,300 square feet of space, 9,000 square feet of ground floor retail/restaurant uses, and either 81,000 square feet (Option 1) or 150,000 square feet (Option 2) of office space.

(5) The proposed number of parking spaces.

The Project would include a total of 893 vehicle and 26 bicycle parking spaces for the apartments and retail/restaurant uses, 243 spaces for the offices under Option 1, and 450 spaces for the offices under Option 2.

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(6) Any proposed point sources of air or water pollutants.

The Project, which consists of residential, retail/restaurant, office uses, and related parking would not contain any point sources of air or water pollutants.

(7) Any species of special concern known to occur on the property.

There are no species of special concern on the Site, which is located in a highly urbanized area, is developed with a retail store and surface parking lot, and does not include any suitable habitat for species of special concern.

(8) Whether a portion of the property is located within any of the following:

(A) A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178.

The Project site is not located within a very high fire hazard severity zone.⁵

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

There is no jurisdictional riparian or wetland habitat within the development area, and the Project would not substantially interfere with, or create a barrier to, the movement of wildlife.⁶

(C) 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.

The Site is not a hazardous waste site 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.⁷ No known hazardous waste is present on the property.

⁵ See California State Geportal, California Fire Hazard Severity Zone Viewer, available at <https://gis.data.ca.gov/datasets/789d5286736248f69c4515c04f58f414>.

⁶ See National Wetlands Inventory Map, available at <https://fwsprimary.wim.usgs.gov/wetlands/apps/wetlands-mapper/>.

⁷ See California State Geportal, DTSC Hazardous Waste and Substances Site List (Cortese List) Map, available at https://gis.data.ca.gov/datasets/f3564ae052ce4378b93e239801b77a22_0.

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(D) A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency.⁸

The site is not located in a special flood hazard area.⁹

(E) 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.

The subject property is not located in a delineated earthquake fault zone.¹⁰

(F) A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

As noted above, there is no jurisdictional riparian or wetland habitat within the Site or its vicinity that would be subject to a streambed alteration agreement.

(9) Any historic or cultural resources known to exist on the property.

The Site is developed with a Fry's Electronics store and related surface parking. There are no known historic or cultural resources on the Site.

(10) The number of proposed below market rate units and their affordability levels.

The Project will include 80 Very Low Income Units (50% AMI), which represents 13.2% of the base density of 605 units.¹¹

⁸ Similarly, the statute does not preclude projects that are located in 100-year flood hazard areas from qualifying for vesting.

⁹ See the listing as FEMA X Zone, FEMA Flood Map Service Center, available at <https://msc.fema.gov/portal/home>.

¹⁰ See California Earthquake Hazards Zone Application, data for 2311 N. Hollywood Way, available at <https://maps.conservation.ca.gov/cgs/EQZApp/app/>.

¹¹ 454,330 SF Site divided by 43,560 SF (SF in an acre) x 58 units per acre (base density) = 604.94 units, rounded up to 605 units

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(11) The number of bonus units and any incentives, concessions, waivers, or parking reductions requested pursuant to Section 65915.

By including 80 Very Low Income Units (13.2% of the base density), the Project is entitled to a density bonus of 42.5% under AB 2345, for a total of 863 units.

The Project seeks the following incentives and waiver, and parking reductions:

- An incentive for increased height to permit a maximum height of up to 99 feet in lieu of 35 feet otherwise permitted in the C3 zone without a conditional use permit;
- An incentive for reduced open space to permit an up to 20 percent reduction in open space; and
- A waiver to permit ground floor residential uses in the mixed use buildings.

(12) Whether any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a tentative map, or a condominium map, are being requested.

NHW is requesting a vesting tentative tract map.

(13) The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

The applicant owns the property. The applicant's contact information is:

NHW Investors, LLC
c/o LaTerra Development, LLC
1880 Century Park East, Suite 1017
Los Angeles, CA 90067
(310) 552-0065
Attn: Charles Tourtellotte
CharlieT@LaTerraDev.com

(14) For a housing development project proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

(A) Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

The subject property is not located within the coastal zone and does not contain any wetlands.

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(B) Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

The subject property is located approximately 15 miles from the Pacific Ocean and is not located in the coastal zone or in environmentally sensitive habitat areas.

(C) A tsunami run-up zone.

The subject property is not located within the coastal zone or in tsunami run-up zone.¹²

(D) Use of the site for public access to or along the coast.

The subject property is not located within the coastal zone.¹³

(15) The number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied.

There are no existing residential units on the Project site, as shown on the submitted Site Survey.

(16) A site map showing a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code and an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

As shown on the submitted Site Survey, no creeks or wetlands are present.

(17) The location of any recorded public easement, such as easements for storm drains, water lines, and other public rights of way.

Easements are shown on the submitted Site Survey.

C. Conclusion

The submittal of the above information and payment of the permit processing fee automatically “vests” the Project with the protections afforded by Section 65589.5(o). SB 330 makes clear that no affirmative determination regarding the completeness of a preliminary application is required for the Project to be vested.¹⁴ Accordingly, the Project is automatically

¹² See California Official Tsunami Inundation Maps, available at <https://www.conservation.ca.gov/cgs/tsunami/maps>.

¹³ See Coastal Zone Boundary maps, available at <https://www.coastal.ca.gov/maps/czb/>.

¹⁴ Govt. Code § 65941.1(d)(3).

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vested under the General Plan, the City of Burbank, and any other applicable ordinances, standards, and policies as currently in effect.

Thank you for your time and consideration of this matter. Please do not hesitate to contact us with any questions.

Sincerely,



Dale J. Goldsmith

cc: NHW Investors LLC

HOUSING CRISIS ACT of 2019 – SB 330

PRELIMINARY APPLICATION FORM

PURPOSE

This form serves as the preliminary application for housing development projects seeking vesting rights pursuant to SB 330, the Housing Crisis Act of 2019.

GENERAL INFORMATION

An applicant for a housing development project that includes (1) residential units (2) a mix of commercial and residential uses with two-thirds of the project's square footage used for residential purposes; or (3) transitional or supportive housing, shall be deemed to have submitted a preliminary application upon provision of all of the information listed in this Preliminary Application form and payment of the permit processing fee to the agency from which approval for the project is being sought.

After submitting this Preliminary Application to the local agency, an applicant has 180 days to submit a full application or the Preliminary Application will expire.

Submittal Date Stamp*1,2:

*1Submittal of all the information listed and payment of the permit processing fee freezes fees and development standards as of this date, unless exceptions per Government Code § 65889.5(o) are triggered.

*2Note: Record keeping pertaining to which standards and fees apply at date of submittal is imperative, as **penalties may apply for imposing incorrect standards**

Notes:

1. California Environmental Quality Act (CEQA) and Coastal Act standards apply.
2. After submittal of all of the information required, if the development proponent revises the project to change the number of residential units or square footage of construction changes by 20 percent or more, excluding any increase resulting from Density Bonus Law, the development proponent must resubmit the required information so that it reflects the revisions.

SITE INFORMATION

- 1. **PROJECT LOCATION** - The specific location, including parcel numbers, a legal description, and site address, if applicable.

Street Address _____ Unit/Space Number _____

Legal Description (Lot, Block, Tract) _____ Attached? YES NO

Assessor Parcel Number(s) _____

- 2. **EXISTING USES** - The existing uses on the project site and identification of major physical alterations to the property on which the project is to be located.

- 3. **SITE PLAN** - A site plan showing the building(s) location on the property and approximate square footage of each building that is to be occupied.

Attached? YES NO

- 4. **ELEVATIONS** - Elevations showing design, color, material, and the massing and height of each building that is to be occupied.

Attached? YES NO

- 5. **PROPOSED USES** - The proposed land uses by number of units and square feet of residential and nonresidential development using the categories in the applicable zoning ordinance.

a. **RESIDENTIAL DWELLING UNIT COUNT:**

Please indicate the number of dwelling units proposed, including a breakdown of levels by affordability, set by each income category.

	Number of Units
Market Rate	
Managers Unit(s) – Market Rate	
Extremely Low Income	
Very Low Income	
Low Income	
Moderate Income	
Total No. of Units	
Total No. of Affordable Units	
Total No. of Density Bonus Units	

Other notes on units:

6. **FLOOR AREA** - Provide the proposed floor area and square footage of residential and nonresidential development, by building (attach relevant information by building and totals here):

	Residential	Nonresidential	Total
Floor Area (Zoning)			
Square Footage of Construction			

7. **PARKING** - The proposed number of parking spaces:

8. **AFFORDABLE HOUSING INCENTIVES, WAIVERS, CONCESSIONS and PARKING REDUCTIONS** - Will the project proponent seek Density Bonus incentives, waivers, concessions, or parking reductions pursuant to California Government Code Section 65915?

YES NO

If "YES," please describe:

9. **SUBDIVISION** – Will the project proponent seek any approvals under the Subdivision Map Act, including, but not limited to, a parcel map, a vesting or tentative map, or a condominium map?

YES NO

If “YES,” please describe:

10. **POLLUTANTS** – Are there any proposed point sources of air or water pollutants?

YES NO

If “YES,” please describe:

11. **EXISTING SITE CONDITIONS** – Provide the number of existing residential units on the project site that will be demolished and whether each existing unit is occupied or unoccupied. Provide attachment, if needed.

	Occupied Residential Units	Unoccupied Residential Units	Total Residential Units
Existing			
To Be Demolished			

12. **ADDITIONAL SITE CONDITIONS** –

a. Whether a portion of the property is located within any of the following:

i. A very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, pursuant to Section 51178?

YES NO

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

YES NO

iii. 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?

YES NO

iv. A special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by any official maps published by the Federal Emergency Management Agency?

YES NO

v. 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?

YES NO

vi. A stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code?

YES NO

If "YES" to any, please describe:

b. Does the project site contain historic and/or cultural resources?

YES NO

If "YES," please describe:

c. Does the project site contain any species of special concern?

YES NO

If "YES," please describe:

- d. Does the project site contain any recorded public easement, such as easements for storm drains, water lines, and other public rights of way?

YES NO

If "YES," please describe:

- e. Does the project site contain a stream or other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code? Provide an aerial site photograph showing existing site conditions of environmental site features that would be subject to regulations by a public agency, including creeks and wetlands.

YES NO

If "YES," please describe and depict in attached site map:

13. COASTAL ZONE - For housing development projects proposed to be located within the coastal zone, whether any portion of the property contains any of the following:

- a. Wetlands, as defined in subdivision (b) of Section 13577 of Title 14 of the California Code of Regulations.

YES NO

- b. Environmentally sensitive habitat areas, as defined in Section 30240 of the Public Resources Code.

YES NO

- c. A tsunami run-up zone.

YES NO

- d. Use of the site for public access to or along the coast.

YES NO

14. PROJECT TEAM INFORMATION - The applicant's contact information and, if the applicant does not own the property, consent from the property owner to submit the application.

Applicant's Name _____

Company/Firm _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

Are you in escrow to purchase the property? YES NO

Property Owner of Record Same as applicant Different from applicant

Name (if different from applicant) _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

Optional: Agent/Representative Name _____

Company/Firm _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

Optional: Other (Specify Architect, Engineer, CEQA Consultant, etc.) _____

Name _____

Company/Firm _____

Address _____ Unit/Space Number _____

City _____ State _____ Zip Code _____

Telephone _____ Email _____

Primary Contact for Project: Owner Applicant Agent/Representative Other

PROPERTY OWNER AFFIDAVIT

Before the application can be accepted, the owner of each property involved must provide a signature to verify the Preliminary Application is being filed with their knowledge. Staff will confirm ownership based on the records of the City Engineer or County Assessor. In the case of partnerships, corporations, LLCs or trusts, the agent for service of process or an officer of the ownership entity so authorized may sign as stipulated below.

- **Ownership Disclosure.** If the property is owned by a partnership, corporation, LLC or trust, a disclosure identifying the agent for service or process or an officer of the ownership entity must be submitted. The disclosure must list the names and addresses of the principal owners (25 percent interest or greater). The signatory must appear in this list of names. A letter of authorization, as described below, may be submitted provided the signatory of the letter is included in the Ownership Disclosure. Include a copy of the current partnership agreement, corporate articles, or trust document as applicable.
- **Letter of Authorization (LOA).** A LOA from a property owner granting someone else permission to sign the Preliminary Application form may be provided if the property is owned by a partnership, corporation, LLC or trust, or in rare circumstances when an individual property owner is unable to sign the Preliminary Application form. To be considered for acceptance, the LOA must indicate the name of the person being authorized to file, their relationship to the owner or project, the site address, a general description of the type of application being filed and must also include the language in items 1-3 below. In the case of partnerships, corporations, LLCs or trusts, the LOA must be signed by the authorized signatory as shown on the Ownership Disclosure or in the case of private ownership by the property owner. Proof of Ownership for the signatory of the LOA must be submitted with said letter.
- **Grant Deed.** Provide Copy of the Grant Deed if the ownership of the property does not match local records. The Deed must correspond exactly with the ownership listed on the application.
- **Multiple Owners.** If the property is owned by more than one individual (e.g., John and Jane Doe, or Mary Smith and Mark Jones) signatures are required of all owners.

1. I hereby certify that I am the owner of record of the herein previously described property located in _____ which is involved in this Preliminary Application, or have been empowered to sign as the owner on behalf of a partnership, corporation, LLC, or trust as evidenced by the documents attached hereto.
2. I hereby consent to the filing of this Preliminary Application on my property for processing by the Department of _____ for the sole purpose of vesting the proposed housing project subject to the Planning and Zoning ordinances, policies, and standards adopted and in effect on the date that this Preliminary Application is deemed complete.
3. Further, I understand that this Preliminary Application will be terminated and vesting will be forfeited if the housing development project is revised such that the number of residential units or square footage of construction increases or decreases by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, and/or an application requesting approval of an entitlement is not filed with _____ within 180 days of the date that the Preliminary Application is deemed complete.
4. By my signature below, I certify that the foregoing statements are true and correct.

Signature _____
 Printed Name _____
 Date _____

Signature _____
 Printed Name _____
 Date _____


EXHIBIT 2

Attachment 17 - 18

PROPERTY OWNER AFFIDAVIT

1. I hereby certify that I am have been empowered to sign as the owner on behalf of NHW Investors, LLC, a Delaware limited liability company (NHW).
2. I hereby consent to the filing of this Preliminary Application on the property owned by NHW for processing by the City of Burbank for the sole purpose of vesting the proposed housing project subject to the Planning and Zoning ordinances, policies, and standards adopted and in effect on the date that this Preliminary Application is deemed complete.
3. Furthermore, I understand that this Preliminary Application will be terminated and vesting will be forfeited if the housing development project is revised such that the number of residential units or square footage of construction increases or decreases by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision, and/or an application requesting approval of an entitlement is not filed within 180 days of the date that the Preliminary Application is deemed complete.
4. By my signature below, I hereby certify that the foregoing statements are true and correct.

NHW Investors, LLC,
a Delaware limited liability company

By: 
Charles Tourtellotte,
Authorized Signatory

Date: January 4, 2021