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October 4, 2024

VIA EMAIL

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**Re: Determination of Application Status
SB 35 Streamlined Ministerial Design Review
Project No. 23-0002305
910 South Mariposa Street (APN: 2443-004-017)**

Dear Mr. Onyebuchi:

We represent Butterfly Gardens, LLC (“Applicant”), the applicant for the proposed multifamily residential project located at 910 South Mariposa Street (“Project”) in the City of Burbank (“City”). As you know, the Applicant submitted an SB 35 application for the Project on May 10, 2024 and the City responded on July 1, 2024, with a letter entitled “Determination of Application Status” (“Review Letter”). The Review Letter lists two items that were missing from the submittal and states that the Project is inconsistent with seven objective standards. Each of the issues raised in the Review Letter are addressed below.

Required Application Materials

1. *Biologist Report*

The Review Letter requires the submittal of a biologist report confirming that the proposed Project site is not a habitat for protected species as required by Government Code Section 65913.4(a)(6)(J). A biologist report was previously submitted to you on July 22nd and is also attached to this letter.

The Review Letter also states that the City will engage a consultant to conduct a peer review of the submitted biologist report, with the cost of this peer review borne by the Applicant, and that “the Project cannot be deemed complete until the City is in possession of information needed to complete review of the Project.” This latter requirement for peer review exceeds the permissible requirements that the City may impose on the Applicant under state law. The Applicant’s biology report provides expert analysis concerning the presence of habitat for protected species on the Project site. Government Code Section 65913.4(c)(3) provides that:

[A] development is consistent with the objective planning standards specified in subdivision (a) if there is substantial evidence that would allow a reasonable person to conclude that the development is consistent with the objective planning standards.

The biologist report submitted by the Applicant provides ***more than sufficient*** substantial evidence that would allow any reasonable person to conclude that the Project satisfies the requirement in subsection (a)(6)(J). While we do not object to the City seeking to peer review Applicant submitted information, it is by no means necessary to confirm compliance with the objective standards at this point in the process and cannot be used to frustrate and delay SB35's clear statutory processing timeframes. If the City insists on a peer review it would need to be completed prior to the final City Council hearing and cannot be a reason to suspend the application timelines when the applicant has clearly demonstrated that all SB35 statutory criteria has been satisfied.

2. Load Schedule and Secondary Service Schematic

The Review Letter requires submission of a load schedule and secondary service schematic to determine the extent of the electrical load requirements for the Project. Although we do not believe this related to compliance with any particular objective standard, load calculations and electrical diagrams and plans have nevertheless been provided with this letter.

In addition to requesting the load schedule and secondary service schematic, the Review Letter asks for "an electronic copy of a plot plan of the Project site" to aid BWP Electrical Engineering in the electrical design process and advises the Applicant that a meeting should be scheduled with the architect, electrical engineer, and BWP Electrical Engineering to finalize the location of the electrical facilities. Again, although not required to confirm any compliance with objective standards, to move the process along this letter includes the requested load calculations and electrical diagrams, satisfying this requirement. The Applicant also met with Michael Truong of BWP on July 10 to review the plans. The Applicant subsequently revised the layout to provide a door straight to the exterior from the electrical room in the parking level. This design is reflected in the plans provided with this resubmittal. As the electrical design also requires the furtherance of design documents which would be developed during the plan check and building permit application process, we expect that further coordination with BWP Electrical Engineering will be required as a condition of approval.

Consistency with Objective Standards

The Applicant is submitting an updated plan set with this letter, attached, which addresses all of the specific comments in the Review Letter concerning consistency with objective standards.

1. Two-Way Driveways and End Stall Condition

The City's Review Letter states that two-way driveways, including drive aisles, must have a minimum width of 23 feet pursuant to Burbank Standard Plan BT-400. The plans have been revised to show a drive aisle width ranging from 24' to 27'-6". The Project complies with this standard.

The Review Letter states that pursuant to Burbank Standard Plan BT-400, end stalls shall extend 3 feet beyond the bay. The plans have been revised to so that end stalls have at least three feet beyond the bay or are wider than the minimum required stall width. The Project complies with this standard.

2. Fire Apparatus Access Roads

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The City originally provided Fire Department comments to the Applicant dated June 23, 2024 which were sent with the Review Letter. Since that time the Applicant has met repeatedly with representatives from the Fire Department. The Applicant also met with City staff to discuss the Fire Department's comments on July 16 via Zoom and then in person on August 13. On September 5, the Fire Department provided updated comments for the Project and on September 10, the Fire Chief instructed the Applicant to refer to those updated comments when making changes to the Project. The September 5 comments are attached to this letter. The Applicant again met with Fire Department staff on September 18 and September 25 to discuss compliance with the provided comments. As a result of these multiple meetings and other communications with City staff, the Applicant has revised the Project plans to meet the requirements in the September 5, 2024 comment letter. The revised plans are included with this letter.

To be clear, the Applicant is absolutely committed to ensuring that the Project meets all fire safety standards. If the City still has concerns about the Project's compliance with Fire Code requirements, the appropriate time to address those concerns is at the building permit stage. SB 35 requires the City to approve the Project if it complies with objective ***planning standards*** in Government Code Section 65913.4(a). (Emphasis added). Compliance with all detailed Fire Code and Building Code requirements are not listed in subsection (a). Subsection (a)(5) states that the Project must be consistent with "objective zoning standards, objective subdivision standards, and objective design review standards." Fire Code requirements are not zoning standards, subdivision standards, or design standards. Instead, SB 35 describes Fire Code standards as "building standards." (Government Code Section 65913.4(h)(3)(C)(i).) Consequently, a determination that the Project complies with all Fire and Building Code is not required for determining compliance with the objective planning standards or for issuance of an SB 35 approval. This is for good reason given that to require compliance with such detailed and technical code requirements at this stage would make it impossible for the City to comply with SB35's strict and intentionally expedited processing timeframes.

Although already required as a matter of law before any building permits may be issued, the City can further ensure that the Project complies with any and all Fire and Building Code requirements by adding conditions of approval to that effect to the SB35 approval. Although we don't believe it will be necessary, if downstream compliance with any Fire or Building Code requirements necessitates some fundamental design change rendering the Project inconsistent with one or more objective planning standards, the Applicant may request a modification to the approved Project, which would be governed by the process in Government Code Section 65913.4(h).

3. Electrical Meter Locations

The Review Letter indicates that "outdoor metering locations are preferred" but that an enclosed meter room is acceptable with conditions and compliance with specific requirements, including being located on the ground floor, having two exit doors with panic hardware, having one door that leads directly to the ground levels, and providing an access key in a lock box adjacent to the door. The revised plans include an electrical room on the first, semi-subterranean level with a design that reflects compliance with the comments in the Review Letter as well as additional consultation with BWP in a Zoom meeting on July 10. Thus, the Project complies with this requirement. The exact location of the meters is shown on the load schedule and diagrams attachment, on sheet E-2.0.

We further note that a “preference” for a certain metering locations is not an objective standard that may be used to delay the Project or require further modifications. More coordination with BWP to refine the design of the electrical room may be included as a condition of approval for the Project.

4. Overhead Line Relocation

The Review Letter states that any existing overhead electrical facilities traversing the Project are required to be undergrounded at the Applicant’s cost. The Review Letter notes that the Applicant should consult with BWP to determine if any easements will be required to permit facilities to be installed on the Project which serve other customers. As this level of coordination and detail is not able to be fully completed during the entitlement phase of the Project, the revised electrical plans include a note to memorialize compliance with this comment.

Additionally, as stated above, this comment is not an objective planning standard for which the Project must comply during the SB35 approval stage. Further design and coordination must take place with BWP during the development of more advanced design documents during the plan check building permit application process. More coordination with BWP to refine the design of the electrical service may be included as a condition of approval for the Project.

5. Pedestrian Ramps

The Review Letter requests the installation of a pedestrian ramp at the curb between the driveway and the southern property line across from the southwest corner of Mariposa and Valley Heart, to connect the pedestrian path of travel to the contiguous public sidewalk, and to design the curb at the driveway as a Type 2 per Burbank Standard Plan BS-103. The Project includes a preliminary design for a pedestrian ramp at the specified location, as depicted on page 7 and 10 of the revised architectural plans set and on the civil Preliminary Grading and Drainage plan. Additional specific details will be provided in the civil engineering plans during the building permit processing phase, which will provide the level of detail required to demonstrate compliance with the Complete Streets Objective Development Standards (CSODS) Section 3.2. The Project, as designed and as will be conditioned, complies with these standards.

6. Bicycle Racks

The Review letter asks for the plans to illustrate the type of bicycle racks to be utilize to show conformance with the types permitting the CSODS Section 4.1.2. This document states:

“All bicycle racks shall be painted (powder coated) with a protective coating to prevent normal wear and tear. Bicycle racks that support the bicycle solely by the wheel or by one point on the bicycle frame are not permitted. All racks shall support the bicycle in a stable position and allow cyclists to secure their frame at two points.

Short-Term Bicycle Parking

Bicycle racks for short-term bicycle parking must be secured to the ground and located in areas visible from the associated Project site. While the City permits variations in rack design so long as they meet CSODS requirements, the “Inverted U Rack” is the preferred rack designs:

Inverted “U” Rack: Mounts onto a level surface, typically a sidewalk. The rack is equipped with a surface flange to allow for mounting with anchor bolts. This rack is the most common rack currently installed throughout the City and can be found along commercial corridors and at City facilities. The rack is typically powder-coated in black to prevent regular rusting and wear and tear.

Long-Term Bicycle Parking

The “Inverted U Rack” utilized for short-term bicycle parking is also suitable for long term bicycle parking if located in an indoor area or outdoor weather-protected location not visible to passersby, and only accessible to employees, patrons, or residents. However, there are additional types of racks that may be used to maximize space for indoor bicycle parking areas, such as a double decker bicycle racks or vertical bike racks (pictured below). Note that these types of racks shall maintain ground level rack access for heavier bicycles, such as e-bikes, cargo bikes, etc.”

This standard indicates that bicycle racks shall be painted with a protective coating, that bicycle racks for short term bicycle parking must be secured to the ground, be located in areas visible from the project site, and that they must support the bicycle in a stable position and allow cyclists to secure their frame at two points. The “preferred” design is the U-rack, but it is not mandatory to provide this type of rack. Nonetheless, the Project proposes short term parking in the form of U-racks located on the first residential level and a combination of U-racks and vertical racks within the enclosed garage. A note on page 9 of the revised plans also ensures that the final design of the racks will comply with CSODS Section 4.1.2. The Project, as designed and as will be conditioned, complies with these standards.

7. Equestrian Path and Fence Separation

The Review Letter specifies that the points where the equestrian path crosses the Project’s driveway and pedestrian access paths must have a surface of concrete with stiff broom finish, per CSODS Section 5.1 and that the equestrian path must be separated from the Pedestrian Zone of the sidewalk area by a 4-foot fence. The plans have been updated to include a 4-foot fence, as shown on the Street Cross Section on page 19 of the plans. The revised landscape plans include a note (#2) on sheet L-3 to indicate compliance with the concrete finish in accordance with CSODS Section 5.1. The Project, as designed and as will be conditioned, complies with these standards.

Project Requests and SDBL Incentives and Waivers

The Project includes 15% Very Low Income units and is therefore entitled to three incentives/concessions and additional waivers of development standards. (Government Code Section 65915(d)(2)(C).) The original SB 35 application submitted on May 10, 2024 included two incentives and one waiver requests. The requests have not changed, but are restated below with clarifications and updates to correspond to the revised set of plans included with this letter.

Incentive for Fee Deferral

Burbank Municipal Code (“BMC”) 10-1-640(A)(3) permits applicants to request “Deferred development impact fees” as an incentive/concession. As such, the Applicant requests a deferral of payment of all development impact fees applicable to the Higher-Density Project so that they may be paid

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24 months from the issuance of the Certificate of Occupancy. This deferral of payment of development impact fees will result in identifiable and actual cost reductions for the project, by allowing the Applicant to construct and sell units prior to the payment of a large lump sum for development impact fees. Thus, the existing financing for the project may be directed to the permitting and construction costs for the three Very Low and three Moderate Income units and will lower the overall costs of financing. The cost reductions resulting from the deferral of fees will enable the project to provide the three Very Low Income units and three Moderate Income units.

Incentive for Balcony Encroachment into Front Yard

The original full SB 35 application included a request for an incentive to provide relief from BMC Section 10-1-1211 (C) and (E) to permit the balcony from encroaching more than four (4) feet into a required front yard. The Project design still includes a request to permit an encroachment of the balcony, but we would like to clarify this request as an incentive to instead provide relief from BMC 10-1-624(E), which regulates yards and encroachments. The requested incentive is to allow the balconies to encroach into the setback area, permitting the closest point on the balcony to be a minimum of 1 foot, 6 inches from the property line after dedication. The requested incentive provides identifiable cost reductions that provide for affordable housing by allowing for the building to be designed more efficiently given the shape of the site. The incentive to permit the encroachment of balconies into the average setback will allow the Project to have an expanded overall building footprint so that additional residential units can be provided, therefore reducing the overall cost of providing the affordable units.

To be clear, the overall building is designed to comply with the required average setback required by BMC 10-1-624. The Project is required to provide a front yard of 12 feet, 9 inches, which is 20 percent of the proposed height of 63 feet, 8 ½ inches. As demonstrated on the architectural plans pages 20-22, the enclosed building maintains an average setback between 23 feet, 2 inches and 58 feet, 4 inches on the first through fifth floor. On average, the building maintains a larger than required setback, which is measured after accounting for the 37 foot dedication from the existing property line. The incentive request explained above is required solely to permit the encroachment of the balconies at the southwest corner into the setback, permitting them to be a minimum of 1'6" from the property line, after dedication.

Waiver of Development Standards for Height

The Applicant is requesting a waiver of development standard that would have the effect of physically precluding the construction of the Higher-Density Project at the density permitted under Density Bonus Law. (Government Code Section 65915(e).)

BMC Section 10-1-806(A), which is the most restrictive height standard applicable to the Higher-Density Project, requires that:

"1. The maximum height of a structure shall be determined by its distance from the closest lot line of any property zoned for residential uses as follows:

<i>DISTANCE FROM R-1, R-1-H OR R-2 LOT LINE (OR COMPARABLE PD ZONE)</i>	<i>MAXIMUM HEIGHT</i>
<i>(i) 0 - less than 25 feet</i>	<i>1 foot height per 1 foot distance for any part of the structure (roof and architectural features must also comply with maximum height restrictions within first 25 feet)</i>

<i>(ii) 25 - less than 50 feet</i>	<i>25 feet (roof and architectural features may exceed the maximum height, up to 35 feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)</i>
<i>(iii) 50 - less than 150 feet</i>	<i>35 feet (roof and architectural features may exceed the maximum height, up to 15 additional feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)</i>
<i>(iv) 150 - less than 300 feet</i>	<i>50 feet (roof and architectural features may exceed the maximum height, up to 15 additional feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained)"</i>

The code goes on to specify certain exceptions:

- 2. The maximum height of a building, for those portions more than 25 feet from a R-1, R-1-H, and R-2 lot line, shall be measured to the ceiling height of the highest room permitted for human occupancy. The maximum height of a structure, for those portions of a structure less than 25 feet from R-1, R-1-H, and R-2 lot line, shall be measured to any part of the structure.*
- 3. Conditional Use Permit is required for structure height greater than 35 feet.*
- 4. Structure height shall be measured from grade as defined by this chapter.*
- 5. For structures or portions of a structure between 25 feet and 50 feet from the R-1, R-1-H, R-2, or comparable PD zone, roof and architectural features may exceed the maximum height, up to 35 feet, if a 45 degree angle as depicted in Diagram No. 1 is maintained.*
- 6. The portion of a structure within the distance requirement (e.g. 25 to less than 50 feet) shall meet the height requirement for that section (e.g. 25 feet). Should a structure extend beyond one (1) or more of the distance requirements, the portions of that structure may meet each height requirement separately."*

The Project is located across an existing public street from the properties in the R-1-H zone to the west and also includes a new 37-foot dedication. As such, the architectural plans submitted with the SB 35 Application demonstrate that none of the proposed structures of the Project are within 25 feet of the adjacent R-1-H zone.¹ The plans show that the western one-third of the Project structure is within 50-150 feet of the R-1-H zone, subject to a 35 foot height limit, and the eastern two-thirds of the Project structure is within 150-300 feet of the R-1-H zone, subject to a 50 foot height limit, as measured from the average site grade to the ceiling height of the highest room permitted for human occupancy, or the "top of plate" or "T.O.P." as labeled on the architectural plans. The building is proposed to range in height from approximately 53 feet, at the westernmost and easternmost portions of the site, to a maximum height of 63 feet, 8 ½ inches measured from the average site grade to the T.O.P. Any portion of the building that

¹ Refer to Page 28 of the architectural plans for a diagram showing the distance of the High-Density Project from the R-1-H zone.

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risers above height of 63 feet, 8 ½ inches is a permitted architectural feature or equipment needed to operate the building, as allowed by BMC 10-1-1301.

The Applicant requests a waiver of development standards to permit a maximum height of 63 feet, 8 ½ inches measured from the average site grade to the T.O.P. The waiver will allow an additional 2-3 stories of height across the building, which is necessary to physically accommodate the proposed density of 40 units. Without the waiver, the project would be physically precluded from providing units at the third, fourth and fifth levels, which would result in a reduction of approximately 25 units. The total project would be reduced by 2-3 stories of height and would be precluded from providing 40 total units, including six affordable units. As such, the waiver for additional height is requested to permit a height of 63 feet and 8 ½ inches measured from the average site grade to the T.O.P.

Conclusion

The Applicant has submitted all required information for this Project as listed in the Review Letter and the Project is clearly and demonstrably consistent with all objective planning standards as required by SB35. All technical code requirements, including but not limited to, Building and Code requirements will be confirmed during the plan check process no different than any other development project. Accordingly, we request that the City continue to process and approve the Project.

Sincerely,

Dave Rand

Dave Rand
Partner
of RAND PASTER & NELSON, LLP

Attachments:

1. Biologist Report
2. Load Schedule and Diagrams
3. Updated Plan Set
4. Comments from Fire Department dated September 5, 2024