DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
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February 23, 2022

The Honorable Anthony Portantino
California State Senate
Capitol Office
1021 O Street, Ste. 7630
Sacramento CA 95814

RE: Pickwick Gardens Housing Project – Letter of Technical Assistance

Dear Senator Anthony Portantino:

The purpose of this letter is to provide technical assistance regarding the Pickwick Gardens Housing Project ("Project"), which is proposed within the City of Burbank ("City"). This assistance is based in part on conversations with you and Emily J. Gabel, and on correspondence received from Emily J. Gabel on February 2, 2022. The California Department of Housing and Community Development (HCD) understands that there are questions regarding the eligibility of the Project for the Streamlined Ministerial Approval Process created by Senate Bill (SB) 35 (Chapter 366, Statutes of 2017) and codified in Government Code section 65913.4. This letter of technical assistance provides HCD's interpretation regarding the Project's eligibility for a streamlined, ministerial approval process under the statute. In short, HCD concludes that the Project is eligible.

In July 2021, a preliminary application for the Project, prepared pursuant to Government Code section 65941.1, was submitted to the City of Burbank. The Project is proposed on an approximately 8.44-acre site located at 921-1001 W. Riverside Drive in Burbank, California. In the City's General Plan, the land use designation for that site is Rancho Commercial; in the City's Municipal Code, the site is zoned Commercial Recreation. Existing on-site uses consist of a bowling alley, restaurant, banquet rooms, garden wedding venue, ice rink, and parking lots. The proposed housing development project includes 98 dwelling units, of which ten units are proposed for lower-income households (80 percent of area median income), on 5.1 acres of the 8.44-acre site. The ice rink will remain on site, and presumably occupies the remainder of the acreage.

While the land use designation for the site under the General Plan's Land Use Element is called "Rancho Commercial," the primary use described for that designation allows for residential with some incidental commercial. The operative provisions of the General Plan recognize that the properties would be single-family residential, some lower intensity multifamily, and commercial uses. The General Plan provides:

> *RANCHO COMMERCIAL*
> *(Maximum 0.60 FAR, 20 units per acre with discretionary approval)*
> The Rancho Commercial designation is located in the unique Rancho Neighborhood that **allows** for the keeping of horses on **single-family residential properties**, and a variety of low-intensity **multi-family residential** and commercial uses. The neighborhood is located close to the Los Angeles Equestrian Center and a vast regional trails network. The FAR for Rancho Commercial anticipates that some properties will recycle and that the intensity of new development will be comparable to what exists today. Supplemental land use goals and policies are provided in the Rancho Master Plan.

(Burbank General Plan, p. 3-16, emphasis added.)

Some have argued that the uses stated in the Land Use Element are not allowed under the General Plan because certain densities allowed in this area require discretionary approval — "20 units per acre with discretionary approval" — and that this language creates the presumption that a General Plan amendment is required to allow these activities. This view of the terms is not consistent with ordinary practice. Ordinary practice would be either to list uses that are not allowed or to remain silent as to such uses. Further, while the General Plan does not define "discretionary approval" per se, it does provide that all discretionary proposals are subject to the California Environmental Quality Act (CEQA) under Program LU-7, as well as sustainability review and noise studies where there is excessive ambient noise. (Burbank General Plan, p. 8-8.) Given that General Plan amendments are not a normal or typical component of discretionary approval, if a General Plan amendment were contemplated, it seems likely that such a requirement would have been mentioned.

While the General Plan does not define discretionary approval, the zoning code does. Although this might not technically be controlling since the zoning code does not restrict the General Plan — rather, the reverse would be the case — the definitions in the zoning code are consistent with ordinary practice and are evidence of the general understanding in the city of the meaning of "discretionary approval." The zoning code provides:

> DISCRETIONARY APPROVAL: Means any entitlement or approval as in Title 10 of the Municipal Code, including but not limited to a Conditional Use Permit, Variance, and subdivision map. Housing Development means one (1) or more groups of projects for residential units constructed or to be constructed in the City for sale or for rent. For the purposes of this Division, "HOUSING DEVELOPMENT" also includes a subdivision, planned unit development, or Condominium Project, the substantial rehabilitation and

> conversion of an existing commercial building to residential use, and the substantial rehabilitation of an existing multifamily dwelling, where the rehabilitation or conversion would create a net increase of residential units.

(Burbank Mun. Code, § 10-1-633.) Thus, any number of approvals might be needed as a discretionary approval, but General Plan amendments are not listed amongst them.

Under the statute, a qualifying project is only subject to applicable "objective standards" in the general plan and zoning code. (See, e.g., Gov. Code, § 65913.4, subd. (a).) Where the objective standards in the general plan and zoning ordinance conflict, Government Code section 65913.4, subdivision (a)(5)(B), provides that the project is deemed consistent if it is consistent with objective standards in the general plan. Here, the standards in the General Plan allow housing (as noted above) and the standards in the zoning code do not. HCD understands that the property is *zoned* Commercial-Recreational (C-R). Burbank Municipal Code section 10-1-501 defines what uses are allowed in various zones. It provides expressly that "uses in all zones are only allowed as described in the use table comprising Section 10-1-502." The Table in section 10-1-502 clearly indicates that residential is not a permitted or discretionary use in C-R zone. In order for the zoning to be consistent with the General Plan, the site would have to be subject to a rezone directly or through a planned development (Burbank Mun. Code, § 10-1-19121 [discussing regulations and standards for the "PD" zone]) to facilitate housing. This seems to present a direct conflict. Thus, the General Plan standards control. The Project appears to be consistent with the objective standards in the General Plan and thus would, by operation of law, be deemed consistent with applicable objective General Plan standards.

In sum:

- The General Plan "allows" residential uses on property with the Rancho Commercial designation, although discretionary approval is required for a maximum density and intensity of 0.60 FAR, 20 units per acre. (Burbank General Plan, p. 3-16.) The zoning code does not. (See, e.g., Burbank Mun. Code, §§ 10-1-501 ["uses in all zones are only allowed as described in the use table comprising Section 10-1-502"], 10-1-502 [residential is not an allowed use in C-R zone].)
- State law allows projects pursuant to densities allowed in the general plan regardless of underlying zoning, because where the two conflict (as here), the objective standards of the general plan prevail. (Gov. Code, § 65913.4, subd. (a)(5)(B).)
- The term "discretionary approval" does not refer to legislative decisions like general plan amendments, but to CEQA review, which is mentioned in the General Plan (Burbank General Plan, p. 8-8), and potentially to things like

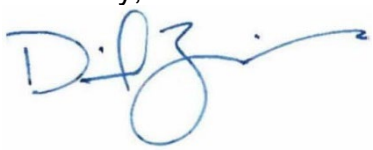
conditional use permits (CUP), which are mentioned in the zoning code. (Burbank Mun. Code, § 10-1-633.) In other words, the term applies to actions that may be taken in an adjudicatory fashion with the appropriate findings. Where a use is not allowed without a general plan amendment, a general plan would, as here, be silent as to the use, as is common practice.

- The purpose of SB 35 was to allow local jurisdictions to control housing development through objective standards, but to eliminate discretionary processes that delay or de facto prohibit housing during the housing crisis. (See, e.g., Gov. Code, § 65913.4, subds. (a)(5), (b).) Neither the statute nor the Streamlined Ministerial Approval Process Guidelines are intended to be so narrowly construed as to apply only to where uses are permitted outright or with a CUP. Rather, SB 35 was intended to streamline discretionary review processes generally.
- It is the policy of the State per Government Code section 65913.4, subdivision (n), that the statute "be interpreted and implemented in a manner to afford the fullest possible weight to the interest of, and the approval and provision of, increased housing supply."

It is HCD's determination based upon the statute and referenced in HCD's Updated Streamlined Ministerial Approval Process Guidelines, that the streamlined ministerial process applies to the Pickwick Gardens Housing Project.

HCD appreciates the opportunity to provide information regarding the eligibility of the Pickwick Gardens Housing Project under Government Code section 65913.4. Please feel free to contact Fidel Herrera, of our staff, at fidel.herrera@hcd.ca.gov with any questions.

Sincerely,



David Zisser
Assistant Deputy Director
Local Government Relations and Accountability