



# Planning Commission Report

**Meeting Date:** April 10, 2014

**Subject:** **9265-9269 Burton Way**  
**23-Unit Condominium Project**  
Request for a Tentative Tract Map, Development Plan Review, Density Bonus Permit, and R-4 Permit to allow the construction of a 5-story, 23-unit condominium building on the property located at 9265-9269 Burton Way.  
PROJECT APPLICANT: Empire at Burton Way LLC (Craig Berbarian)

**Recommendation:** That the Planning Commission:

1. Adopt resolutions certifying the Final EIR and conditionally approving the project.

## REPORT SUMMARY

The proposed project involves the demolition of all existing structures located at 9265-9269 Burton Way, and construction of a 5-story, 23-unit condominium building in accordance with State Density Bonus standards, which allows for an increase in the allowed density, reductions in parking requirements, and provision of two development incentives. In order to be eligible for the increased density, reduced parking, and development incentives, two of the 23 units would be designated for very low income households. The project was most recently reviewed by the Planning Commission at a duly noticed public hearing on April 10, 2014. At that meeting the Planning Commission directed staff to prepare resolutions certifying the Final EIR and conditionally approving the project. Additionally, the Commission directed staff to investigate the setbacks required for an electrical transformer at the rear of the project in order to determine the minimum rear setback that could be provided for the project. Staff is still researching the setbacks required for the transformer, but expects to have an update by the April 10, 2014 hearing date. Accordingly, draft resolutions memorializing the Commission's findings are provided as Attachments A and B for the Commission's consideration, and an update regarding the electrical transformer will be provided at the hearing.

**Attachment(s):**

- A. Draft CEQA Resolution
- B. Draft Resolution Approving Entitlements

**Report Author and Contact Information:**

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**NEXT STEPS**

It is recommended that the Planning Commission adopt the attached resolutions certifying the Final EIR and conditionally approving the project.

Report Reviewed By:

  
\_\_\_\_\_  
Ryan Gohlich, Senior Planner

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**ATTACHMENT A**

**CEQA RESOLUTION**

**TO BE PROVIDED UNDER SEPARATE COVER**

# **ATTACHMENT B**

## **DRAFT RESOLUTION APPROVING ENTITLEMENTS**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A TENTATIVE TRACT MAP, DEVELOPMENT PLAN REVIEW, R-4 PERMIT, AND DENSITY BONUS PERMIT TO ALLOW THE CONSTRUCTION OF A 23-UNIT CONDOMINIUM PROJECT ON THE PROPERTY LOCATED AT 9265-9269 BURTON WAY.

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Empire at Burton Way, LLC., applicant and property owner (the “Applicant”), has submitted an application for a Tentative Tract Map to allow the units to be sold individually as condominiums, a Development Plan Review to allow the general construction of the Project, an R-4 Permit to allow reduced building modulation and a rooftop bathroom, and a Density Bonus Permit to allow the inclusion of two very low income housing units, all of which are associated with the construction of a 23-unit condominium project on the property located at 9265-9269 Burton Way (the “Project”). The entitlements required to approve the Project may be approved by the Planning Commission if specific findings can be made in support of the Project.

Section 2. The Project site is located along Burton Way, which transitions to S. Santa Monica Boulevard just west of the project site. The project site is immediately bordered by the 8-story L’Ermitage Hotel to the west, a 4-story condominium building to the east, and commercial office uses to the north. Burton Way is a highly trafficked street, with many of the older apartment buildings and duplexes bordering the street having been previously demolished and replaced with larger apartment or condominium buildings. Single-family residential

properties are located across Burton Way to the south; however, Burton Way is wide with a total right-of-way width of 170 feet, which provides a buffer between the different land uses.

The project would involve demolition of four existing one- to two-story buildings (two residential buildings and two accessory buildings), and construction of a new 5-story, 55-foot tall condominium building containing 23 residential units and 48 subterranean parking spaces. The project is proposed to be constructed in accordance with State Density Bonus standards. The project contains approximately 37,800-square-feet of floor area on a site area of 14,232 square feet. The project includes two levels of subterranean parking, five levels of residential units, and a rooftop common area. The project provides a mix of unit types, and two of the 23 units would be designated for “very low income” housing. Access to on-site parking would be provided by one driveway from the existing alley at the rear of the site, which would lead from the alley to the underground parking level, while pedestrians would continue to have direct access to the project site from Burton Way. The Project includes the following components:

- Density Increase: Density Bonus standards allow for a certain percentage increase in density, which is based on the percentage of “total units” (the maximum number of units allowed under General Plan density standards, without the inclusion of bonus units) that are designated for very low income households. In this case, the number of base units that could be built under the City’s General Plan is 17 units, and the number of very low income units proposed is two. Therefore, 11.8% (two divided by 17) of the base units would be very low income. The Density Bonus standards state that whenever 11% or more of the “total units” are designated for very low income, a 35% increase in density shall be provided. Further, all density calculations are required to be

rounded up to the next whole number. Therefore, approval of the Density Bonus Permit, with the inclusion of two very low income units, would allow for a maximum density of 23 units.

- **Development Incentives:** Pursuant to the State Density Bonus statute, development projects where at least 10% of the base units are designated for very low income households are eligible to request two development incentives. In the case of the proposed project, 11.8% of the base units are designated for very low income households, so the project is eligible to receive two development incentives. The incentives requested by the applicant are as follows:

- o **Reduced Front Setback (incentive):** The City's zoning code requires a front setback of 15'. The applicant requests a density bonus incentive to allow a 5' reduction in the required setback, resulting in a 10' front setback along Burton Way.

- o **Reduced Rear Setback (incentive):** The City's zoning code requires a rear setback of 15'. The applicant requests a density bonus incentive to allow a 1'-6" reduction in the required setback, resulting in a 13'-6" rear setback along the rear alley.

- **Parking:** Standard parking requirements set forth in the Municipal Code are based on the number of bedrooms in each unit; however, state law provides that parking requirements set forth in the Density Bonus Statute prevail over local requirements, and the state parking requirements are less stringent than those set forth in the Beverly Hills Municipal Code. Therefore, the applicant requests that the project be subject to the State Density Bonus parking requirements, which require a maximum of

one space for studio and one-bedroom units, and a maximum of two spaces for two- and three-bedroom units (inclusive of guest parking). 39 parking spaces are required for the Project pursuant to the Density Bonus Statute, and the Applicant proposes to provide 48 parking spaces.

Section 3. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. The City has prepared an Environmental Impact Report for the Project, and the Planning Commission, in its independent judgment, adopted Planning Commission Resolution No. \_\_\_\_\_, making environmental findings and certifying the Final Environmental Impact Report. Pursuant to the certified Final Environmental Impact Report, the Project will not result in any significant and unavoidable environmental impacts.

Section 4. Notice of the Project and public hearings was provided at various times throughout the course of the Project in accordance with state and local regulations, including mailed notice on April 19, 2013 and March 17, 2014 to all single-family property owners within a 500-foot radius of the Project, and to all owners and occupants within a 300-foot radius of the Project. On May 9, 2013, March 27, 2014, and April 10, 2014 the Planning Commission considered the application at duly noticed public hearings. Evidence, both written and oral, was presented at the meetings.

Section 5. In reviewing the request for a Tentative Tract Map, the Planning Commission considered whether it could make the following findings in support of the Project:

1. Whether the proposed tentative parcel map and the design or improvement of the proposed subdivision are consistent with the General Plan of the City;

2. Whether the site is physically suitable for the type of development and the proposed density;

3. Whether the design of the subdivision and the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

4. Whether the design of the subdivision or type of improvements are likely to cause serious public health problems and that the design of the subdivision or the type of improvements will not conflict with any public easements; and

5. Whether the discharge of waste water from the proposed subdivision into the existing sewer systems will result in a violation of existing requirements presented by the California Water Quality Control Board.

Section 6. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Tentative Tract Map:

1. As conditioned, the proposed project and its design and improvements are consistent with the General Plan of the City. The proposed project is compatible with the objectives, policies, general land uses, and programs specified in the General Plan. The General Plan designation for the proposed site is "multi-

family residential." The proposed project will consist of a 23-unit residential condominium structure, and condominium developments are permitted by right under the General Plan land-use designation for the project site.

2. As conditioned, the site is physically suitable for the type of development and the proposed density. The site is zoned R-4 and is currently developed with two, two-story apartment buildings containing 10 units. Under the State Density Bonus Statute, the project site can be developed with a maximum density of 23 units; therefore, the development of 23 units is within the permitted density for the subject property. Because of the existing development on the site and the surrounding area, adequate public facilities exist to serve a 23- unit residential condominium structure.

3. As conditioned, the Project will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The project will not significantly impact the area based upon the increase in the number of residential units at the site. Due to the urban location of the project and the developed state of the project site and vicinity, there are no fish or wildlife, or their respective habitats, in the vicinity of the project site that could be potentially impacted by the proposed development.

4. The design of the subdivision and the type of improvements will not cause serious public health problems, and will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. The project site will meet City health code standards.

Moreover, the project design respects existing easements and will not conflict with any existing easements maintained by the City.

5. The discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the California Regional Water Quality Board. The project will be required to comply with all applicable requirements of the City's Storm Water and Urban Runoff Pollution Control Ordinance and the City's current National Pollutant Discharge Elimination System ("NPDES") permit and, therefore, implementation of the project will not result in a violation of existing requirements prescribed by the California Regional Water Quality Board. Implementation of the project will not significantly increase the amount of impermeable land or result in changes in absorption rates that would increase the amount of storm water runoff from the project site. Accordingly, approval of the project will not result in a violation of existing requirements prescribed by the California Regional Water Quality Board.

Section 7. In reviewing the request for a Development Plan Review and Density Bonus Permit, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area;
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;

4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

5. The proposed plan will not be detrimental to the public health, safety or general welfare.

Section 8. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the Development Plan Review and Density Bonus Permit:

1. The Project, as authorized by the State Density Bonus Statute, meets all zoning requirements and has been determined to be consistent with the requirements and guidance of the General Plan for residential uses located within the multi-family residential R-4 zone. The subject site is surrounded by residential and commercial development, and the proposed project would therefore be a harmonious addition to the area. Additionally, the Project is not located within any specific plans adopted for the area.

2. The Project, as authorized by the State Density Bonus Statute, is consistent with the development standards established in the City's Municipal Code and General Plan. Existing development along Burton Way consists of an 8-story

hotel, and apartment and condominium buildings that are typically between two and five stories in height. Construction of the Project, which is a multi-family residential use consistent with surrounding uses, is not anticipated to adversely affect existing and anticipated development on the adjacent, residentially- or commercially-zoned properties, and is therefore considered to be a harmonious addition that would help to provide additional housing opportunities within the City, including the provision of two units reserved for very low income households. Furthermore, the Final Environmental Impact Report prepared for the Project concludes that the Project will not result in any significant and unavoidable environmental impacts.

3. The Project is residential in nature and does not include any commercial uses.

4. Traffic analysis was conducted as a part of the Final Environmental Impact Report certified by the Planning Commission, and the Final Environmental Impact Report found that, based on existing traffic volumes and infrastructure capacities, the Project would not generate any significant impacts related to traffic. Site access is provided via the alley at the rear of the Project site in order to minimize traffic safety hazards, pedestrian-vehicle conflicts, and pedestrian-safety hazards. Therefore, the Project is not anticipated to result in any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards.

5. The Project has been designed to be consistent with surrounding development while still being able to accommodate the additional residential units authorized by the State Density Bonus Statute, and is compatible with the existing

residential uses along Burton Way. Because the Project has been designed as a harmonious addition to the neighborhood, and based on the discussions and analysis in Findings 1-4 above, the Project will not be detrimental to the public health, safety, or general welfare.

Section 9. In reviewing the request for an R-4 Permit, the Planning Commission considered whether it could make the following findings in support of the Project:

1. The proposed development, as modulated, does not have an adverse impact on the scale and massing of the streetscape; and
2. The rooftop bathroom will not adversely affect the privacy of neighboring properties or access of neighboring properties to light, nor will the subject structures significantly increase noise to adjacent properties.

Section 10. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the R-4 Permit:

1. The subject property is located between an 8-story hotel and a 4-story condominium development, both of which have varying degrees of modulation. The standard modulation requirement for the Project would be 1,500 square feet (with modulation a minimum of 10' in depth), whereas the proposed Project provides approximately 1,454 square feet of modulation (with varying depths, often less than 10'). The reduction in modulation area and depth is a negligible reduction, and the Project remains compatible with surrounding development without appearing unduly massive. Based on the limited reduction in modulation, as well as the scale and

massing of surrounding development, the reduction in building modulation will not adversely impact the scale and massing of the streetscape.

2. The rooftop bathroom is centrally located on the roof, which will limit visual impacts on adjacent properties and the street. Furthermore, a landscape planter is proposed to surround the accessible portions of the rooftop deck adjacent to the bathroom, which will help to reduce privacy impacts to the adjacent condominium building to the east, as well as screen any rooftop activities. Based on the proposed design and the conditions of approval set forth in this resolution regarding rooftop use and activities, the rooftop bathroom will not adversely affect the privacy of neighboring properties or access of neighboring properties to light, nor will the subject structures significantly increase noise to adjacent properties.

Section 11. Based on the foregoing, the Planning Commission hereby grants the requested Tentative Tract Map, Development Plan Review, R-4 Permit, and Density Bonus Permit, subject to the following conditions:

1. Rooftop bathrooms shall not exceed ten feet in height and shall have a maximum floor area of 200 square feet.
2. The project shall be subject to the review and approval by the Architectural Commission.
3. To mitigate potential noise impacts to neighboring residents, use of the roof deck areas shall be limited to between the hours of 7:00 a.m. to 10:00 p.m., daily, and signage indicating such restrictions shall be installed on the rooftop.
4. Amplified music shall be prohibited on the rooftop.

5. Six (6) of the compact parking spaces within the subterranean garage shall be designated for use by visitors of the building.

6. The applicant shall provide signage in the subterranean parking garages to direct visitors to the visitor parking spaces in the garage. Directional signs and visitor parking space identification shall be designed and installed to the satisfaction of the Director of Community Development.

7. In accordance with the provisions of Section 10-2-704 of the Beverly Hills Municipal Code, prior to approval of the Final Map, the applicant shall submit a copy of the proposed covenants, conditions and restrictions (CC&Rs) for the project to the City Attorney for review and approval.

8. The applicant shall submit a Construction Management Plan to the Departments of Building and Safety, Public Works, and Transportation for review and approval prior to issuance of a building permit. The Construction Management Plan shall include, at a minimum~ the following:

- a. Written information about the construction parking arrangements, and hauling activities at different stages of construction to be reviewed and approved by the Engineering Division of Public Works and the Building & Safety Department.
- b. Information regarding the anticipated number of workers, the location of parking with respect to schedules of the construction period, the arrangements of deliveries, hauling activities, the length of time of operation, designation of

construction staging area and other pertaining information regarding construction related traffic.

- c. The proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.

9. The Project shall be constructed in substantial compliance with the plans and specifications approved by the Planning Commission on April 10, 2014.

10. APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.

11. RECORDATION. The resolution approving a Tentative Tract Map, Development Plan Review, R-4 Permit, and Density Bonus Permit shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of the resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this

resolution approving the Project shall be **null and void** and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state, or local law that would affect the Project.

12. EXPIRATION. Tentative Tract Map: The exercise of rights granted in such approval shall be commenced within two (2) years after the adoption of such resolution.

13. EXPIRATION. Development Plan Review, R-4 Permit, and Density Bonus Permit: The exercise of rights granted in such approval shall be commenced within three (3) years after the adoption of such resolution.

14. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in a termination of the entitlements granted herein.

15. This approval is for those plans submitted to the Planning Commission on April 10, 2014, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in these conditions of approval.

16. Minor amendments to the plans shall be subject to approval by the Director of Community Development. A significant change to the approved Project shall be subject to Planning Commission Review. Construction shall be in conformance with the plans approved herein or as modified by the Planning Commission or Director of Community Development.

17. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

18. APPROVAL RUNS WITH LAND. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

19. Prior to the issuance of a building permit, all applicable Park and Recreation Facilities Taxes required by the Municipal Code shall be paid.

20. The Project shall operate at all times in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking, or other actions.

21. The Project shall operate at all times in compliance with Municipal Code requirements for Noise Regulation.

22. The Applicant shall remove and replace all public sidewalks surrounding the Project site that are rendered defective as a result of Project construction.

23. The Applicant shall remove and replace all curbs and gutters surrounding the Project site that are rendered defective as a result of Project construction.

24. The Applicant shall protect all existing street trees adjacent to the subject site during construction of the Project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the

preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is first obtained.

25. Removal and/or replacement of any street trees shall not commence until the Applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

26. The Applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The Applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.

27. The Applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.

28. The Applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.

29. The Applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.

30. The Applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type, and location of the water service meter installation will also require approval from the City Engineer.

31. The Applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., for construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the Project.

32. The Applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

33. Condensation from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

Section 12. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: April 10, 2014

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Brian Rosenstein  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

Approved as to content:

\_\_\_\_\_  
David M. Snow  
Assistant City Attorney

\_\_\_\_\_  
Jonathan Lait, AICP  
City Planner 