
THE RYAN LAW GROUP

June 23, 2022

VIA UPLOAD
CITY'S CITIZEN SELF SERVICE PORTAL

City Council
Manhattan Beach, CA 90266

Re: Appeal of Highrose Project

Dear Members of the City Council:

I am appealing the "Highrose" project located at 401 Rosecrans Avenue (4137-001-031) and 3770 Highland Avenue (4137-001-027) the "Highrose Project."

At the outset, it is important to note that this project is not 100% "ministerial" in nature and the City's hands are not tied. Rather, when it comes to matters of public health and safety the State, in its density bonus laws, has wisely conferred the determination of these issues to local officials in the City by allowing it to make a determination to a "preponderance of the evidence" standard. *Government Code* Section 65589.5 (d)(2) A determination to a "preponderance of the evidence" requires that the City (not the State) weigh both sides of unique public health and safety issues, and then determine to a 50.1% or greater standard whether the proposed development presents such a risk. Obviously, this requires discretion on the part of the City. It makes perfect sense for the City to be the arbitrator of public health and safety issues because it has the localized knowledge and local public safety authorities to assist in such a determination.

CEQA needs to be followed because Density Bonus Laws clearly state that developers do not get a pass on CEQA simply because they are providing extra housing. *Government Code* Section 65589.5(e).

As is discussed below, the developer of the project was informed by an engineering firm that asbestos, PCP, and lead based paints are "likely" to be on the site (or to a preponderance of the evidence) yet the developer did not request that testing be performed for asbestos, PCP, and lead based paints.

The failure to consider the health and safety risks of the project exposes the City to liability under *Government Code* Section 815.6 for the failure to discharge a "mandatory duty" to keep its citizens safe. The "mandatory duty" here arises under Federal law, the Clean Water Act 33 U.S.C. §1251 et seq, which makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained.

Further, it is unclear why the City's planning department initially stated that 36 feet was the "max height" for the project, and the developer building up to 50 feet was "way too high" (Exhibit C.)

A. GROUNDS FOR APPEAL OF THE PROJECT

1. The Citadel Phase I Environmental Report Indicates Asbestos, Lead-based paint (LBP), and Polychlorinated Biphenyls (PCBs) are “Likely” Present in the Buildings Existing at the Site, Yet the Developer Never Requested to Test for these Toxic Materials which will have a *specific, adverse impact on public health pursuant to Government Code Section 65589.5 (d)(2)*

HighRose EIPorto, LLC located at 338 Pier Avenue, Hermosa Beach, CA 90254 commissioned a Phase I Environmental Site Assessment report for the Project dated February 18, 2020 performed by an engineering firm named Citadel. Citadel identifies its point of contact for the project as Frank Buckley with an email of FBuckley@marlinoperations.com. Mr. Buckley is a Director to Marlin Operations Group.^{1 2}

According to the Phase I report:

The current Site building was constructed prior to bans using asbestos-containing building materials (ACBMs), lead-based paint (LBP), and polychlorinated biphenyls (PCBs) in electrical equipment came into effect in 1989, 1978, and 1978, respectively. No testing is known to have been performed to evaluate for the presence of ACBMs, LBP, or PCBs at the Site.” (Exhibit A, Phase I Report, Page v.)

Based on the construction date for the Site building, asbestos-containing building materials (ACBMs) **were likely used in the construction of the Site building.** A survey for ACBMs was not requested or conducted as part of this Phase I ESA. (Exhibit A, Phase I Report, Page 7.)

Based on this Phase I report, the developer and current owner of the property, per Proposition 65 and other California laws (*Health and Safety Code §25915 et seq.*, Cal--OSHA standards 8 CCR 1529, 5194, and 5208) was required to notify occupants of the buildings annually where there was presumed asbestos containing materials, in order to avoid disturbance of the material. There is no evidence the developer has complied with Proposition 65, thus indicating (in combination with the lack of request for testing for asbestos) the developer has not given consideration to avoid the aerosolization of asbestos and other toxic

¹ Marlin Equity Partners, according to its website: “.... is a global investment firm with over \$7.7 billion of capital under management that is focused on providing corporate parents, shareholders and other stakeholders with tailored solutions that meet their business and liquidity needs.” The LLC for the Highrose project is also at the corporate office for Marlin Equity Partners at 338 Pier Avenue, Hermosa Beach, CA 90254.

² “Members of the Operations Group assist Marlin in its operational due diligence, financing and other transactional support for prospective and consummated transactions and in its post-closing operating and other initiatives for portfolio companies, including manufacturing, sales, marketing, finance, tax, technology, debt and equity financing, legal, real estate/facilities management, human resources, acquisition integration and other services. Operations Group members are either employees of Marlin Operations Group, Inc., an exclusive consulting firm affiliated with Marlin Management Company, LLC, or independent contractors, and are not employees of Marlin Management Company, LLC.”
<https://www.marlinequity.com/team/frank-l-buckley/>

chemicals in surrounding neighborhoods. Appropriate asbestos abatement procedures are required by law for any alterations, repair, renovation, and demolition per 8 CCR 1529.

Pursuant to *Government Code Section 65589.5 (d)(2)*, the Highrose Project by a “preponderance of the evidence” (or to a 50.1% or greater possibility) would have an adverse impact upon the “public health” and should not go forward:

(2) *The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety*, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

Government Code Section 65589.5 does allow for “discretionary” review of public health or safety and not simply “ministerial” review by the City.

Thus, the Highrose Project presents an adverse impact on “public health” and should be denied a permit.

2. *The Highrose Project will have a specific, adverse impact on public health pursuant to Government Code Section 65589.5 (d)(2)*

The HighRose Project immediately shares its property line with Chevron Refinery:



According to a September 5, 2019 report to the California EPA, Chevron states:

9. Hydrology and Water Quality

Description of Baseline Environmental Conditions:

The Chevron El Segundo Refinery is located on an approximately one-square mile parcel near the Pacific Ocean. Much of the groundwater underlying the Refinery is impacted by floating petroleum. The Regional Water Quality Control Board (RWQCB) is overseeing the extraction of this free product and overall cleanup of groundwater. The upper-most saturated zone is not used for any domestic purposes. Lower aquifers are used and are part of the barrier project, a system of injection wells designed to prevent salt water intrusion from the Pacific Ocean. The Cities of El Segundo and Manhattan Beach have reported there are no drinking water production wells within one mile of the former landfarm and HWSTF/PCBs Building.

(Exhibit B.)

Clearly, the fact that Chevron in its above report needed to make clear that the “floating petroleum” groundwater is not used for “domestic purposes” and not within a mile of “drinking water production wells” indicates that the groundwater in the area is not safe and should not be disturbed. The fact that this report pertains to only Chevron property does not allow the City to disregard it. The Chevron property line does not contain a subterranean barrier that prevent the petroleum from leaking into the adjacent property that Highrose wants to build upon.

The Highrose Project plans to excavate two stories down for a parking garage, and likely dig much further down for support structures and foundations. Such an excavation will cause the drainage of the groundwater with the “floating petroleum” to end up in the City’s storm drain system and ultimately the beaches and ocean. The “floating petroleum” groundwater could also intrude into nearby properties and also create a threat to public health.

The data that the developer relies upon to claim that soil samples have been taken at the site which show that the soil is safe is based upon older data that does not bore down to the levels of the proposed subterranean garage. The data it relies upon were from 9 boring samples taken in January 2017 to 20-30 feet down. (Exhibit A, Phase I Report, Page 12.) The Chevron Report regarding the floating petroleum is dated September 5, 2019. (Exhibit B.)

Pursuant to *Government Code Section 65589.5 (d)(2)*, the Highrose Project by a “preponderance of the evidence” (or to a 50.1% or greater possibility) would have an adverse impact upon the “public health” and should not go forward:

(2) The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (emphasis added)

Thus, the Highrose Project presents an adverse impact on “public health” and should be denied a permit.

3. *The Highrose Project Exceeds the 20% Modification in Site Development Standards without a City Wide Community Vote*

As you know, Manhattan Beach’s zoning laws impose a strict 30 foot height limitation on all new construction in District III. *Manhattan Beach Code of Ordinances Section 10.12.030*

It appears Manhattan Beach is granting an “incentive” to develop 6 units of low income housing (out of 79 proposed) pursuant to *Manhattan Beach Code of Ordinances Section 10.94.040*, which allows for an “[U]p to twenty percent (20%) in modification of site development standards or zoning code requirements...” which include “increased building height.” *Manhattan Beach Code of Ordinances Section 10.94.040 (C)1(e)*.

A 20% increase in the maximum allowable building height of 30 feet would only allow for the building of 36 feet. Curiously, the Highrose Project is approved for 50 feet.

The City initially agreed with this interpretation. According to marked up plans received pursuant to a Public Records Act Request, the individual reviewing the plans for the City noted that **“You are way over max height”** and “94.050(C)(1)(e) “allows a 20% increase in max height. That means max height is 36 feet above the average of the 4 corners. **You’re over max height.”** (Exhibit C- Excerpts of Documents Received from PRA Request.) It is unclear from the documents received how the Planning Commission reversed the findings and interpretation of the initial plan reviewer and now thinks that a building in excess of 36 feet is allowable.

The March 29, 2022 permit approving the Precise Development Plan for the Highrose Project cites to *California Government Code Section 65915*. There is nothing in *California Government Code Section 65915* which requires that the City provide an approval for more than the 20% increase in building height currently allowed per *Manhattan Beach Code of Ordinances Section 10.94.040 (C)1(e)*.

In fact, Gov’t Code § 65915 (j)(1) states the opposite, mainly that the City does not need to change its zoning laws to provide an “incentive” for the Highrose Project:

The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval.

The City should follow its own zoning laws. Since the City has approved a project which exceeds the maximum allowable height, a “city-wide” election is required pursuant to *Manhattan Beach Code of Ordinances Section 10.12.030*:

This section shall not be amended to increase the standards for maximum height of structures or maximum buildable floor area, or to reduce the standards for minimum setbacks, minimum lot dimensions or minimum lot area per dwelling unit, unless the amendment is first submitted to a city-wide election and approved by a majority of the voters.

Thus, because there has not been a “city wide” election where voters have approved a 50 foot height limit for the Highrose Project, the permit for the project must be denied.

4. *The Affordable Housing Units Only amount to 7.6% of the Overall Project.*

The 6 units of low income housing out of 79 proposed only amount to 7.6% of the proposed development. State and Local ordinances require at least 10% of the development to be set aside for low income housing in order to receive these project “incentives.” *California Government Code Section 65915; Manhattan Beach Code of Ordinances Section 10.94.040.* Thus, the Highrose Project should not be receiving any “incentive” under State and Local laws.

5. *The Highrose Project Grants More Than the Single “Incentive”*

Even if the City chooses to round up its numbers to make a finding that Highrose is providing at least 10% of low income housing units, *Manhattan Beach Code of Ordinances Section 10.94.040* only allows for a single “incentive” for projects falling in that category. The Highrose Project is providing multiple “incentives” including: (1) buildable floor area; (2) height requirements; (3) number of stories; (4) side-yard setback requirement for proposed electrical transformer only; and (5) rear and side setback requirements for building walls over 24-feet in height. The Highrose Project is only entitled to a single incentive (assuming the City is going to round up the total number of low income units), and if the City wants to provide more than a single incentive, a “city-wide” election is required pursuant to *Manhattan Beach Code of Ordinances Section 10.12.030.*

6. *The Highrose Project Should Undergo a Full CEQA Review*

A full environmental study is required for this development by the California Environmental Quality Act *Public Resources Code* Section 21000, et seq. The Density Bonus Laws clearly state that developers do not get a pass on CEQA simply because they are providing extra housing.

Government Code Section 65589.5(e) provides:

(e) Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). ***Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).***

(Emphasis added.)

7. *The Highrose Project Presents a specific, adverse impact on public safety pursuant to Government Code Section 65589.5 (d)(2)*

The nearly two story deep excavation planned for the Highrose Project presents a hazard of collapse to my building, the residence next door to me, and the other residences in

the area. There are also large chemical storage containers on the Chevron property which appear to be less than 100 yards away. Based upon my review of the plans and the expedited permitting documents, it does not appear that an appropriate and thorough geological survey has been performed, especially considering that the soil underneath the project contains “floating petroleum.”

According to documents obtained from the City in a Public Records Act Request, the geological report supporting the alleged safe excavation of the area is dated June 7, 2019, but relies upon reports from Citadel in 2014 and 2017. (Exhibit D, Page 5.) The geological safety of digging down 2 subterranean parking garages is based on the 10, 20 and 30 foot boring samples taken in 2017. (Exhibit A- 2017 Citadel Report.) This project proposes digging down much deeper, and it is unclear from the plans how far below the subterranean garages the project needs to go in order to support the weight of the massive structure.

Thus, this presents a safety hazard, which is further grounds to deny a permit for the Highrose Project pursuant to *Government Code Section 65589.5 (d)(2)*

B. THE CITY’S LIABILITY IN CONNECTION WITH THE PROJECT

The City of Manhattan Beach needs to protect the public health and safety of its citizens, and has a “mandatory duty” to do so. *Government Code Section 815.6* provides:

Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

The “mandatory duty” for Manhattan Beach arises under Federal law and State Law to keep its citizens safe, as well as prevent its citizens from being exposed to toxic materials. For instance, the Clean Water Act 33 U.S.C. §1251 et seq, makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained. Also, appropriate asbestos abatement procedures are required by law for any alterations, repair, renovation, and demolition per 8 CCR 1529. The California Environmental Quality Act, “CEQA” Section 21000 of the Public Resources Code, is a mandatory requirement the City must follow. As stated above, the Density Bonus Laws expressly state that compliance with CEQA is not excused. *Government Code Section 65589.5(e)*. In fact, to ignore CEQA on a project that “likely” contains asbestos, lead, PCBs, and floating petroleum could expose the City to litigation and the potential of overwhelming damages.

The City needs to look at what happened in Quincy, Massachusetts. The City of Quincy was sued by the United States Environmental Protection Agency for allowing toxins to be released into the stormwater systems and as a result was required to settle for \$100 million for remediation of the problem.³

If this project is approved, it is requested that the City agree to and pay for any remediation and all damages to any affected parties pertaining to the discharge of asbestos,


³ <https://www.patriotledger.com/story/news/2021/06/10/quincy-settles-lawsuit-epa-spend-100-million-sewers/7637224002/>

lead based paint, PCBs, and/or petroleum. A further condition of the permit should be that Marlin Equity Partners is required to pay for any remediation and all damages to any affected parties pertaining to the discharge of asbestos, lead based paint, PCBs, and/or petroleum from the Project. Both the City and Marlin should agree to indemnify any aggrieved party for attorney's fees and costs in connection with asserting their rights for damages caused by the Project. Further, appropriate infrared monitoring of the foundations of buildings in the area (including mine) should be paid for by the developer, and if necessary repairs should be paid for by the developer, considering the depth and scope of the proposed excavation, (which, as noted above, is supported by old and incomplete data from 2014 and 2017.) (Exhibit D.)

Again, the City's hands are not tied. It should not rush through the approval of a massive project sponsored by a billion dollar private equity firm in the name of providing 6 low income housing units to a City of over 35,000 people.

Thank you for your consideration in this matter

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Andrew Ryan", with a stylized flourish at the end.

ANDREW T. RYAN

cc:

California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

California Environmental Protection Agency
1001 I St
Sacramento, CA 95814

United States Environmental Protection Agency
Office of Section 404 of the Clean Water Act
Mail code: 4504T
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Exhibit A

EXECUTIVE SUMMARY

Project Summary

Client Name/User:	HighRose El Porto, LLC	Property Visit Date:	February 18, 2020
Client Contact:	Frank Buckley	Construction Date:	1971 (401 Rosecrans Avenue); 1977 (3770 Highlands Avenue)
Phone Number:	(310) 744-6307	No. Buildings/No. Units:	Four buildings
Email Address:	FBuckley@marlinoperations.com	No. of Stories:	Two-stories
Property Name:	Verandas Beach House and Tradewinds Village	Bldg. Square Footage:	7,178 SF (401 Rosecrans Avenue); 5,909 SF (3770 Highlands Avenue)
Property Address:	401 Rosecrans Avenue and 3770 Highland Avenue	Property Acreage:	1.01 acres
Property City, State, Zip:	Manhattan Beach, California 90266	Property Use:	Event space, restaurant, bar, hair salon, chiropractor's office, therapist office, nail salon, and offices
Property Identification:	4137-001-027 and -031	Property History:	Restaurants and bars, hair salons, chiropractor's office, physician's laboratory, and professional offices for productions, photography, law offices, and realtors

Other Improvements: Asphalt-paved parking areas, and associated landscaping

SUMMARY OF FINDINGS

Report Section	No Further Action	REC	HREC	CREC	Non-ASTM Scope	Recommended Action
2.2 Site Description	X					
2.3 Adjacent Properties	X					
5.0 Historical Review	X					
5.6 Previous Reports	X					
6.1 Regulatory Review	X					
6.2 Vapor Encroachment	X					
4.1 USTs/ASTs	X					
4.1 PCBs	X					
4.1 Chemicals/Hazardous Materials/Raw Materials	X					
4.2 ACMs/ACCMs					X	ACM Survey
4.2 Lead-Based Paint					X	LBP Survey
4.2 Lead in Drinking Water	X					
4.2 Radon	X					
4.2 Methane	X					
4.1 Other	X					

Citadel EHS (Citadel) was contracted by HighRose El Porto, LLC (Client) to perform a Phase I Environmental Site Assessment (Phase I ESA) of the property located at 401 Rosecrans Avenue and

caused by the release of vapors from contaminated soil or groundwater or both either on or near the target property as identified by Tier 1 or Tier 2 procedures. The purpose of Tier 1 is to conduct a screen using Phase I ESA-type information to determine if a VEC exists at the target property. If the Tier 1 screen cannot rule out the possibility of a VEC existing at the target property, then a Tier 2 screen can be conducted. Tier 2 applies numeric screening criteria to existing or newly collected soil, soil gas, and/or groundwater testing results to evaluate whether or not a VEC can be ruled out. Tier 2 has two data collective components: non-invasive and invasive.

Based on our review of these databases, reported release incidents that would represent RECs in connection with the Site or a source of a release that would be likely to contribute to a VEC were not identified. Based on these reviews, no evidence for designating the Site as a REC, HREC, or CREC from reviews of historical documents and present Site conditions was found.

NON-ASTM SCOPE CONSIDERATIONS

The current Site building was constructed prior to bans using asbestos-containing building materials (ACBMs), lead-based paint (LBP), and polychlorinated biphenyls (PCBs) in electrical equipment came into effect in 1989, 1978, and 1978, respectively. No testing is known to have been performed to evaluate for the presence of ACBMs, LBP, or PCBs at the Site.

The California Bureau of Mines and Geology and California Department of Public Health (CADPH) participated in the United States EPA's State Radon Survey, a Federal survey to measure levels of indoor radon in all states. Based on the results of this survey, CADPH predicted that approximately 0.5% of homes in Region 9 would have radon concentrations over the EPA action level of 4.0 picoCuries per liter (pCi/L).

The Federal EPA Radon Zone for Los Angeles County is Zone 2, which indicates an average indoor concentration greater than or equal to 2.0 pCi/L of air and less than or equal to 4.0 pCi/L. In a survey, 52 tests were performed within the 90266 zip code for the presence of radon. Of these, one test was found to contain radon in excess of 4.0 pCi/L. Site-specific radon values were not available and were not a part of this ASTM Phase I ESA.

A potable well was not observed on-Site and the Site does not lie within a known or potential flood zone or wetlands.

pulverized or reduced to powder by hand pressure), non-friable ACM must occur prior to the commencement of demolition or renovation activities.

Based on the construction date for the Site building, asbestos-containing building materials (ACBMs) were likely used in the construction of the Site building. A survey for ACBMs was not requested or conducted as part of this Phase I ESA.

LEAD-BASED PAINTS

Lead-based paint (LBP) is defined as any paint, varnish, stain, or other applied coating that has greater than or equal to one milligram per square centimeter (mg/cm^2) (5,000 microgram per gram ($\mu\text{g}/\text{g}$) or 5,000 parts per million (ppm)) of lead by federal guidelines; state and local definitions may differ from the federal definitions in amounts ranging from $0.5 \text{ mg}/\text{cm}^2$ to $2.0 \text{ mg}/\text{cm}^2$. The US Consumer Product Safety Commission (16 Code of Federal Regulations CFR 1303) banned paint containing more than 0.06% lead for residential use in 1978. Buildings built before 1978 are much more likely to have LBP.

Based on the construction date for the Site building, lead-based paints were likely used within the Site building. A survey for lead containing materials was not requested or conducted as part of this Phase I ESA.

DRINKING WATER

The Site is supplied with municipal drinking water by the City of Manhattan Beach. An assessment of lead in drinking water was not requested or conducted as part of this Phase I ESA.

RADON

The California Bureau of Mines and Geology and California Department of Public Health (CADPH) participated in the United States EPA's State Radon Survey, a Federal survey to measure levels of indoor radon in all states. Based on the results of this survey, CADPH predicted that approximately 0.5% of homes in Region 9 would have radon concentrations over the EPA action level of 4.0 picoCuries per liter (pCi/L).

The Federal EPA Radon Zone for Los Angeles County is Zone 2, which indicates an average indoor concentration greater than or equal to $2.0 \text{ pCi}/\text{L}$ of air and less than or equal to $4.0 \text{ pCi}/\text{L}$. In a survey, 52 tests were performed within the 90266 zip code for the presence of radon. Of these, one test was found to contain radon in excess of $4.0 \text{ pCi}/\text{L}$. Site-specific radon values were not available and were not a part of this ASTM Phase I ESA.

METHANE

In March 2004, Ordinance Number 175790 was adopted into the Los Angeles Municipal Code (Section 91.106.4.1 and Division 71, Chapter IX) to establish citywide methane mitigation requirements, and included updated construction standards to control methane intrusion into buildings. This ordinance established defined geographic areas as Methane Zones and Methane Buffer Zones, which relate to specific assessment and mitigation requirements per area, and set forth a standard of assessment and mitigation in the planning stages of all new construction in these areas.

Chevron, El Segundo Refinery on March 29, 1995, which became effective on May 2, 1995. In addition to imposing conditions on the operating portion of the refinery, the permit includes post closure monitoring and maintenance requirements for the landfarm. Based on distance and closure status, Citadel determined that this property was not considered a significant environmental concern.

Citadel determined that none of these properties were considered a significant environmental concern. No evidence for designating the Site or adjoining properties as a recognized environmental condition (REC), controlled recognized environmental condition (CREC), or historical recognized environmental condition (HREC) from reviews of historical documents and present Site conditions was found. However, Citadel recommended that methane testing be conducted should the Site be redeveloped.

Citadel reviewed the *Preliminary Environmental Site Investigation (Phase II)*, 401 Rosecrans Avenue, 3770 Highland Avenue, Manhattan Beach, California 90266, prepared by Environ Phase Consulting Company, dated January 23, 2017.

Environ Phase Consulting Company (EPC) performed a subsurface investigation at the Site in January 2017, to define potential on-site petroleum hydrocarbon and volatile organic compounds (VOCs) encroachment concerns from off-Site sources (Chevron Oil refinery and a former dry cleaners). A total of nine soil borings were advanced to depths of 20 or 30 feet bgs along the north property border line and near the Site buildings. Soil samples were collected at five-foot intervals. Soil gas vapor probes were set at four feet bgs in three borings. A total of 21 soil samples (collected at 10, 20, or 30 feet bgs) and three soil vapor samples were submitted and analyzed for VOCs by EPA Method 8260B and total petroleum hydrocarbons (TPH) by EPA Method 8015M; four soil samples (collected at 10 feet bgs) were analyzed for CAM Metals by EPA Method 6010B.

TPH and VOCs were not detected above method detection limits (MDLs) in the soil samples analyzed with the exception of toluene, which was detected at a concentration of 1.0 microgram per kilogram ($\mu\text{g}/\text{kg}$), below the residential regional screening level (RSL) of 490 milligram per kilogram (mg/kg). Concentrations of heavy metals were detected below their RSLs and California Human Health Screening Levels (CHHSLs). TPH and VOCs were not detected above the MDLs in the soil vapor samples analyzed. EPC concluded that the results of the investigation indicated no further action.

A copy of the reviewed reports can be found in Appendix G.

5.7 HISTORICAL TOPOGRAPHIC MAPS

Historical topographic maps were provided by EDR in order to identify natural features and changes in development over a long period of time. The topographic maps provides the user with a regional view of changes to the Site and vicinity that other historical databases such as aerial photographs may not provide. Below are brief descriptions of observations made from the topographic maps of the Site and vicinity.

Exhibit B

CALIFORNIA ENVIRONMENTAL QUALITY ACT ENVIRONMENTAL INFORMATION FORM

The following information is requested pursuant California Code of Regulations, Title 14, Section 15063(e). This information will be used by the Department of Toxic Substances Control (DTSC) in conducting an Initial Study to determine if the proposed project may have a significant effect on the environment. The findings of the Initial Study will assist DTSC in determining whether an Environmental Impact Report, Negative Declaration or other environmental document should be prepared pursuant the California Environmental Quality Act (CEQA).¹

Instructions:

Provide the information requested below and within each of the environmental resource categories (use additional sheets, if necessary). If the item is not applicable to the project, include a brief explanation as to why it would not be applicable. Include the name, title and page numbers for all reference documents used in support of the information provided. If an individual is used as a reference, please include name, title, employer, and date of the interview. Attach copies of all references.

PROJECT TITLE:

Chevron Products Company Post-closure and Operating Permit Renewal

PROJECT ADDRESS:

324 West El Segundo Blvd.

CITY:

El Segundo

COUNTY:

Los Angeles

PROJECT SPONSOR:

Chevron Products Company

CONTACT:

Nancy Girten

PHONE:

(310) 615-5091

PROJECT DESCRIPTION:

This Project is the renewal of existing Post-Closure and Operating Permit for Chevron Products Company pursuant to the Health and Safety Code, section 25200. The owner of the facility is Chevron U.S.A. Inc. and the operator is Chevron Products Company (Chevron). The area of the entire Chevron El Segundo Refinery (Refinery) is approximately one and one-half square miles. The Los Angeles Regional Water Quality Control Board oversees other activities such as free-product removal. This project involves the former landfarm, an impoundment that has been closed and is now subject to post-closure care and the operating permit for the existing Hazardous Waste Storage and Treatment Facility (HWSTF) and Polychlorinated Biphenyl (PCBs) Storage Building. These units occupy approximately 11 acres of the 890 acres that make up the entire Refinery. Figure 1 is a Regional Location Map. Figure 2 is a site location map. Figure 3 shows the location of the landfarm and HWSTF/PCBs Building within the Refinery boundary. Figure 4 is a plot plan of the existing operating HWSTF/PCBs Building, Figure 5 is a plot plan of the former landfarm, Figure 6 shows the location of the El Segundo blue butterfly preserve, Figure 7 is a Zoning Map of the City of El Segundo, and Figure 8 shows the locations of the nearest parks to the former landfarm and HWSTF/PCBs Building.

Renewal of existing Post-Closure and Operating Permit for Chevron: The entire Chevron El Segundo Refinery is approximately one and one-half square miles. The Regional Water Quality Control Board, Los Angeles Region oversees other activities such as free product removal.

History: Prior to El Segundo's incorporation in 1917, this area was part of "Rancho Sausal Redondo" ("Ranch of the Round Clump of Willows"), a rancho with a land mass of nearly 25,000 acres which extended from the areas as far west of what is now Playa del Rey, as far east as Inglewood, and as far south as Redondo Beach. The land consisted of wheat and barley fields on which cattle and sheep grazed.

In May 1911, five men representing the Standard Oil Company arrived here: Richard J. Hanna and J.E. Howell of the Eclipse refinery of Franklin, Pennsylvania and John Black, Henry Foster and William Rheem from the Standard Oil refinery in Point Richmond (a city 18 miles east of San Francisco). They were surveying the area as a potential site for their next oil refinery. What was required was an area adjacent to the seashore so their tankers could have appropriate access. The undeveloped nature of the site appealed to them because land costs had to be kept to a minimum. Also, the site had to be close to populated areas so it could attract enough employees. The "clump of willows" was just what Mr. Hanna's team was looking for.

Lastly, this new site needed a name. Richard Hanna's wife, Virginia, deemed this expanse as "El Segundo", (Spanish for "the second one,") because the site was to be Standard Oil's second oil refinery in California (The Point Richmond

¹ Pub. Resources Code, div. 13, § 21000 et seq

<http://www.aqmd.gov/home/research/documents-reports/lead-agency-permit-projects/permit-project-documents---year-2012>.

U.S. Environmental Protection Agency. *Test Methods for Evaluating Solid Waste. SW846, Third Edition, Update III Revision 2, December 1996.*

9. Hydrology and Water Quality

Description of Baseline Environmental Conditions:

The Chevron El Segundo Refinery is located on an approximately one-square mile parcel near the Pacific Ocean. Much of the groundwater underlying the Refinery is impacted by floating petroleum. The Regional Water Quality Control Board (RWQCB) is overseeing the extraction of this free product and overall cleanup of groundwater. The upper-most saturated zone is not used for any domestic purposes. Lower aquifers are used and are part of the barrier project, a system of injection wells designed to prevent salt water intrusion from the Pacific Ocean. The Cities of El Segundo and Manhattan Beach have reported there are no drinking water production wells within one mile of the former landfarm and HWSTF/PCBs Building.

Groundwater is impacted under the HWSTF/PCBs Building. These facilities are not subject to environmental monitoring. All environmental monitoring in this area of the Refinery is conducted under the oversight of the RWQCB. The proposed project will not involve increased water consumption nor increased wastewater generation; thus, the potential does not exist for significant adverse impacts on either water supplies or water quality. Under the former landfarm, where DTSC is overseeing the monitoring of groundwater quality, there is the possibility of releases from impounded waste, although no release of significance has been detected in groundwater.

The HWSTF/PCBs Building are equipped with impound basins that can be emptied into the Refinery's wastewater treatment system or collected and managed as needed. The HWSTF has been built with concrete containment areas that prevent potential spills from reaching the environment.

- a. Identify and describe any water quality standards or waste discharge requirements that may apply to the proposed project. If applicable, include the name of the applicable Regional Water Quality Control Board responsible for project oversight.

There are no waste discharge requirements associated with this project. This project will have no effect on water quality because no change will occur in current operational practices. The groundwater will continue to be sampled as required by the RWQCB.

- b. Indicate if the site is located over a known groundwater aquifer, and describe those aspects of the project that may require the extraction or recharge of groundwater.

The El Segundo area is underlain by the Gage and Silverado aquifers. A saltwater intrusion barrier system is in place from Los Angeles Airport to the Palos Verdes Peninsula along the Santa Monica Bay. There are no drinking water production wells within one mile of the former landfarm and existing HWSTF/PCBs Building. Depth to groundwater in the area is approximately 105 feet. No significant amount of water will be pumped from the groundwater wells that are part of this post-closure project of the former landfarm and no groundwater is produced from the HWSTF/PCBs Building.

- c. Describe any site drainage features, including streams or rivers, and the capacity of existing or planned storm water drainage.

No change in topography will occur as a result of the project. No streams or rivers are located in the vicinity (within one mile) of the Refinery. The Refinery contains storm water from within its boundaries and processes it through on-site wastewater treatment facilities. The HWSTF/PCBs Building are equipped with berms to prevent run-on into the facility. No construction activities are associated with the project, so no impact on storm water drainage is expected.

- d. Indicate if the site is located within a 100-year flood hazard area.

The Part B Permit Application contains floodplain maps indicating no portion of the Chevron Refinery is located in a 100-year flood plain. All activities will be conducted on site.

- e. Indicate if the site is located in an area subject to inundation by seiche (resonant oscillation of water), tsunami or mudflow.

No new or expanded storm water facilities will be required. There will be no change in the site topography.

- d. Identify water supplies that are available to serve the project from existing entitlements and resources, or if new or expanded entitlements are needed.

The project will not increase water use over existing use. Therefore, no determination by a water provider is necessary.

- e. Identify the wastewater treatment provider that serves or may serve the project, and indicate whether or not it has adequate capacity to serve the projects projected demand in addition to the providers existing commitments.

The Refinery operates an on-site industrial wastewater treatment system and under the jurisdiction of the RWQCB and does not require any modifications due to the project; therefore no determination by a wastewater provider is necessary.

- f. Describe those aspects of the project that would require disposal of materials at a landfill, identify the landfill to be utilized, and indicate if the landfill has sufficient permitted capacity to accommodate the projects solid waste disposal needs.

All hazardous waste from the HWSTF/PCBs Building that is hazardous waste will be disposed off site as such. The small volume will have no impact on over capacity of such off-site facilities.

Based on the above information, no significant changes in nor significant impacts to utilities and service systems are expected.

References Used:

CEQA Final Environmental Impact Report prepared for Chevron Products El Segundo Refinery Coke Drum Reliability Project, Appendix A, South Coast Air Quality Management District, November 2012 available at <http://www.aqmd.gov/home/research/documents-reports/lead-agency-permit-projects/permit-project-documents---year-2012>.

http://www.sce.com/NR/ronlyres/FAF1EDF8-B2B3-45BC-979D-A8B6F596BDCD/0/QF_Status_Report.pdf

http://elsegundo.org/living/moving_in/utilities/default.asp (see link to utilities, specifically water service)

Certification:

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.



Preparer's Signature

09/05/19

Date

Marcia Berman

Preparer's Name

Project Manager, Environmental Audit, Inc.

Preparer's Title

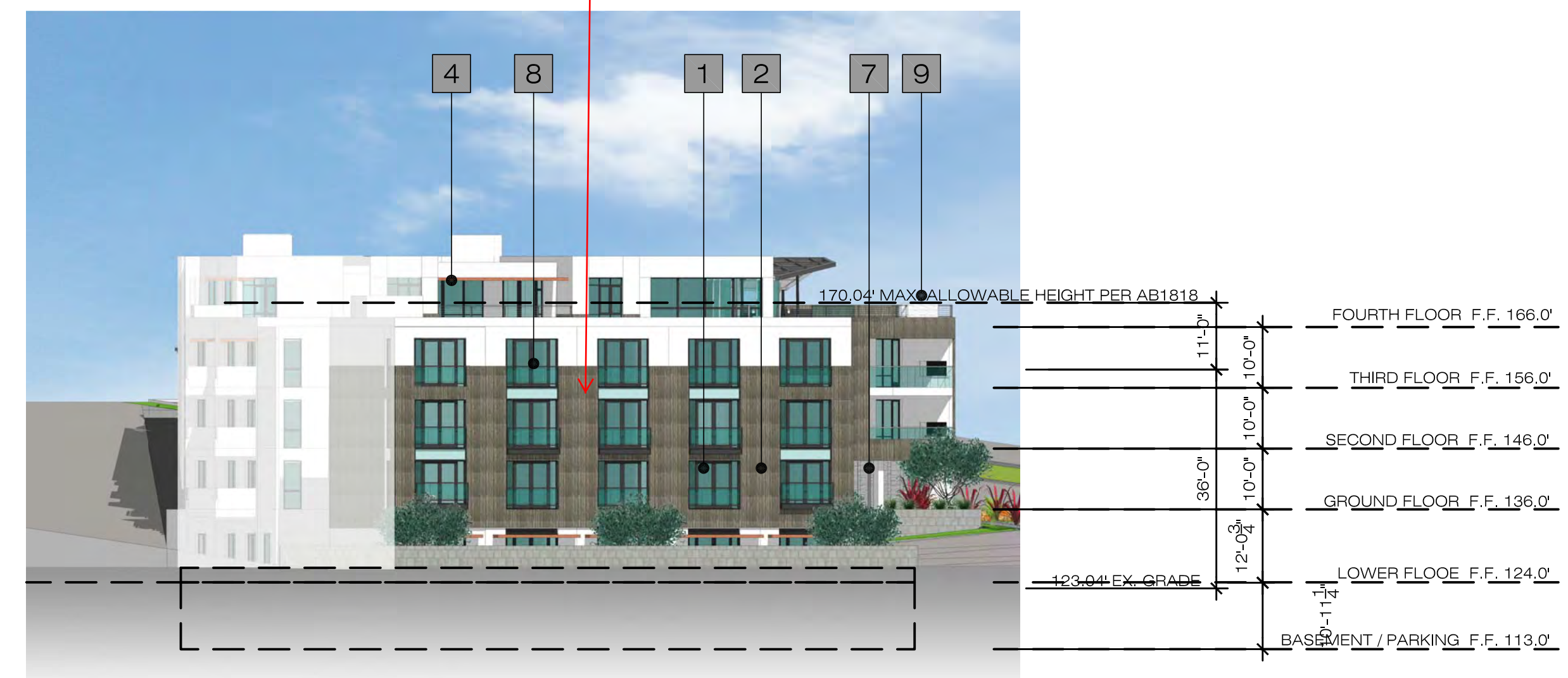
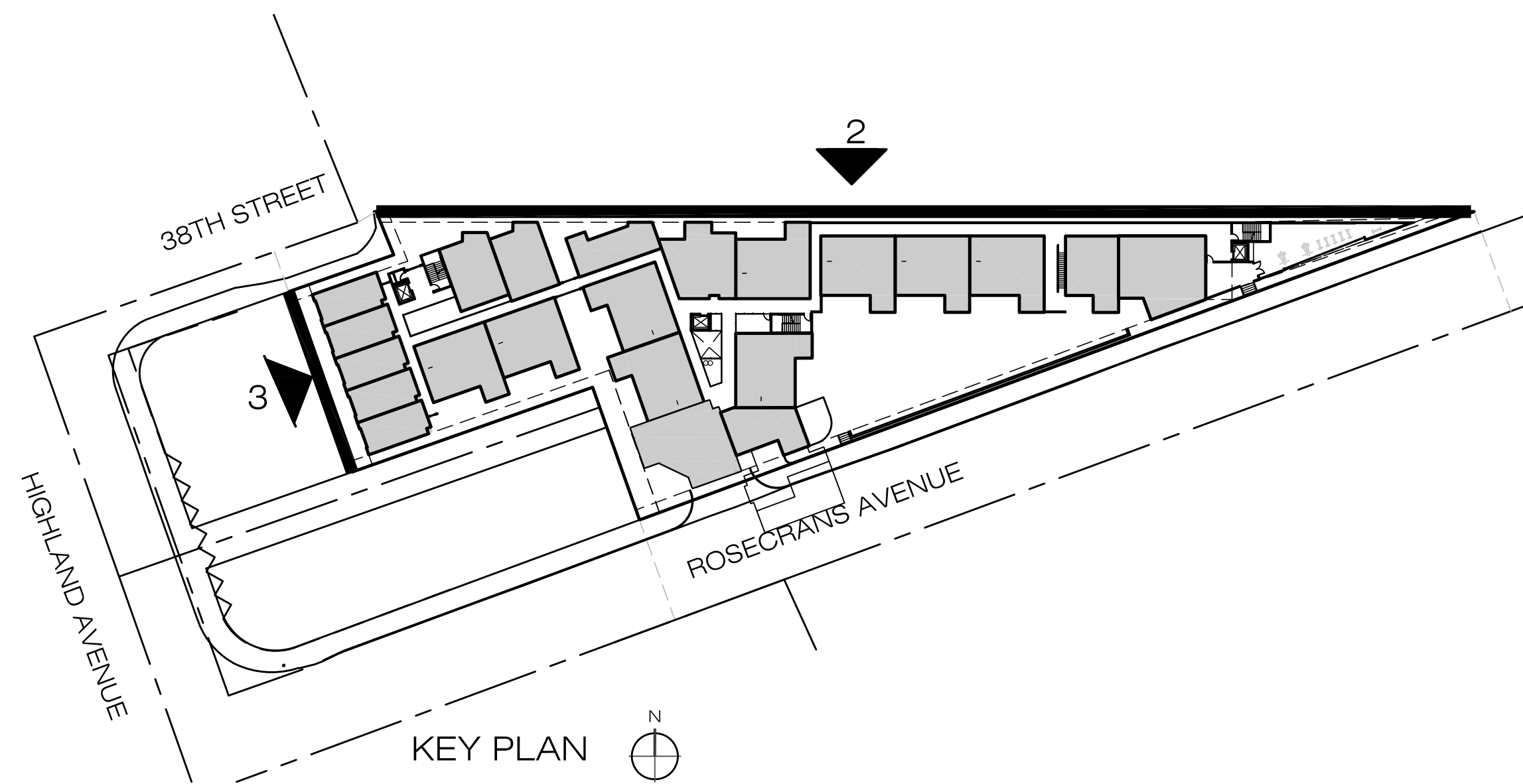
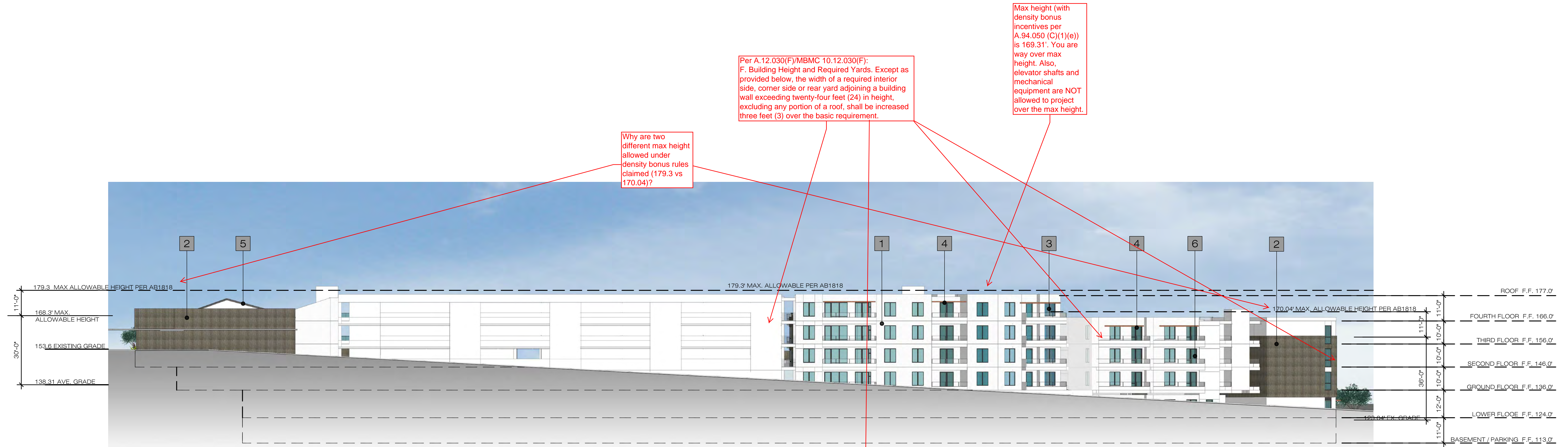
714-632-8521 x 237

Phone #

The CEQA Guidelines Checklist was updated in January 2019, the items below address the topic not previously discussed in the CEQA Guidelines Checklist. There were some changes in January 2019 to the checklist that asked the same question in a slightly different form or location, but would not alter the response to the question. Only the topic that is new is presented below.

Energy. The Refinery produces electricity from on-site cogeneration plants and purchases supplemental electricity from Southern California Edison. The existing HWSTF/PCBs Building are served by the Refinery electrical system. No change to the electricity demand at the HWSTF/PCBs Building is proposed. Therefore, the project does not have a significant environmental impact that would be wasteful, inefficient, or unnecessary consumption of energy resources. Cogeneration is an energy efficient method of generating electricity. By generating electricity on-site, the Refinery does not obstruct state renewable energy plans.

Exhibit C



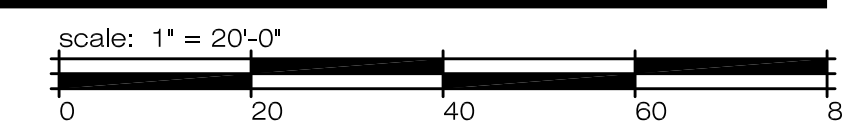
- LEGEND
- 1 STUCCO
 - 2 CEMENT PANEL SIDING
 - 3 VINYL WINDOWS
 - 4 METAL CANOPY
 - 5 METAL SEAM ROOF
 - 6 METAL RAILING
 - 7 STACKED STONE VENEER
 - 8 GLASS RAILING
 - 9 FIRE PLACE

SOUTH ELEVATION

VERANDAS

HIGHROSE EL PORTO, LLC

CITY OF MANHATTAN BEACH, CA



WITHEE MALCOLM ARCHITECTS, LLP

2251 West 190th Street Torrance, CA 90504
t. 310. 217. 8885
f. 310. 217. 0425

JOB. C0034 February 12, 2020
PRINTED: February 12, 2021

SHEET

11

PROJECT SUMMARY

PROPERTY ADDRESS: 3770 HIGHLAND AND 401 ROSECRANS, MANHATTAN BEACH, CA.
ZONING: CNE NORTH END COMMERCIAL DISTRICT AREA III
PROPERTY AREA: TRADEWINDS PARCEL: 11,512 SF
VERANDA PARCEL: 32,812 SF
TOTAL: 44,324 SF = 1.01 ACRES

DENSITY : ALLOWED BY RIGHT= 850 SF/UNIT =52.14
10% ADD'L DENSITY FOR AFFORDABLE PER M.B. CODE: 53 X 1.1 % = 58.30
CALIF.STATE DENSITY BONUS APPLIED = 59 X1.35=79.65 = 80 DU

SETBACK : REQUIRED PROPOSED
FRONT 5' 5'
REAR 5' 5'
SIDE 10' 10'

STRUCTURE HEIGHT: ALLOWABLE
WESTERN CORNER 30' +20'+11' = 47' ABOVE LOWEST EXISTING GRADE

EASTERN CORNER 30' +11' = 41' ABOVE AVERAGE GRADE (26' ABOVE HIGHEST EX.GRADE)

BUILDING SUMMARY:

QY	SYM	DESCRIPTION	AREA	TOTAL AREA
20	S1	STUDIO	512 S.F.	10,240 S.F.
2	S2	STUDIO	691 S.F.	1,382 S.F.
22 STUDIO 27%			AREA: 11,622 S.F.	
8	A1	ONE BEDROOM /ONE BATH	767 S.F.	6,136 S.F.
4	A2	ONE BEDROOM /ONE BATH	658 S.F.	2,632 S.F.
2	A3	ONE BEDROOM /ONE BATH	796 S.F.	1,592 S.F.
14 ONE BEDROOM 17%			AREA: 10,360 S.F.	
35	B1	TWO BEDROOM /TWO BATH	1,073 S.F.	37,555 S.F.
4	B2	TWO BEDROOM /TWO BATH	1,011 S.F.	4,044 S.F.
39 TWO BEDROOM 49%			AREA: 41,599 S.F.	
3	C1	THREE BEDROOM /TWO BATH	1,359 S.F.	4,077 S.F.
2	C2	THREE BEDROOM /TWO BATH	1,261 S.F.	2,522 S.F.
5 THREE BEDROOM 7%			AREA: 6,599 S.F.	

TOTAL: 80 DU TOTAL AREA = 70,180 S.F.

PARKING:	REQUIRED PER SB1818:	PROPOSED
1 SPACE STUDIO & ONE BEDROOM	36X1=36	
1.5 SPACE TWO & THREE BEDROOMS	44X1.5=66	
TOTAL	102 STALLS	128 STALLS

OPEN SPACE REQUIRED: 220 S.F. PER UNIT X 80 = 17,600 S.F.

OPEN SPACE PROVIDED: 16,732 S.F.
FIRST TWO LEVELS: 9,991 S.F.
UPPER LEVELS: 6,741 S.F.

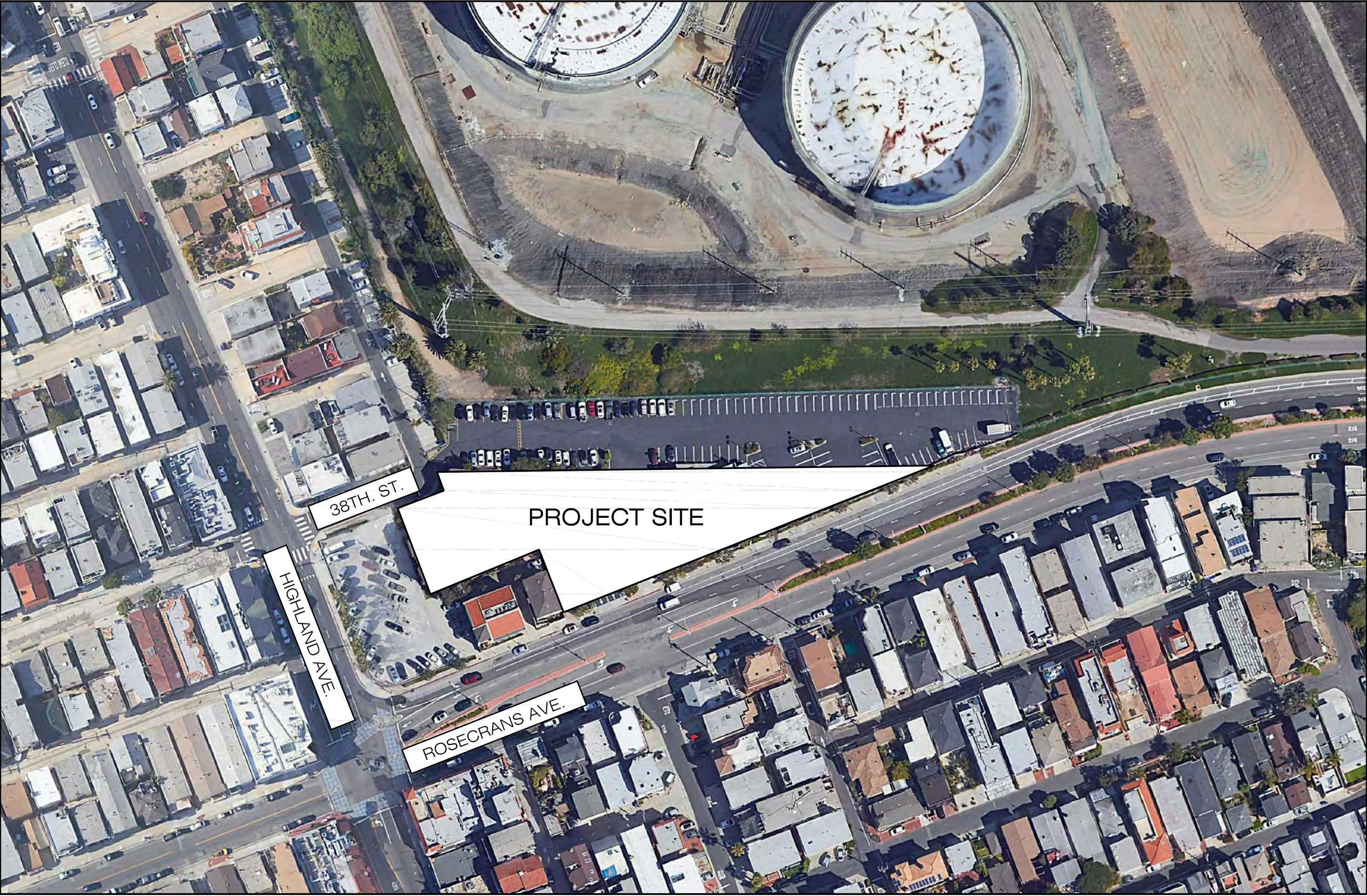
ALLOWED 1:1.7 = 44,324 SF X 1.7 = 75,371

PROPOSED B.F.A.:

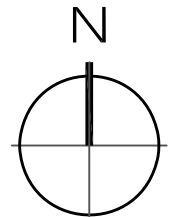
RESIDENTIAL AREA = 70,180 S.F.
CORRIDORS, STAIRS, LOBBIES, TRASH: 22,254 S.F.
STORAGE AT FIRST FLOOR: 1,006 S.F.
ENCLOSED AMENITY SPACES: 3,941 S.F.
TOTAL ENCLOSED BUILDING AREA (NIC PARKING) 97,381 S.F.

Max Height Info needs to be shown as follows:
E: 153.60'
NW: 126.11
W: 123.02 [(122.64 + 123.40)/2]
SW: 130.49' [(128.2 + 132.78)/2]
533.22/4 = 133.31
133.31 + 30= 163.31 (Max Height)
133.31 + 36= 169.31 (Max Height w/ Density Bonus Rules)
A.94.050 (C)(1)(e) allows a 20% increase in max height. That means max height is 36 feet above the average of the four corners. You're over max height.

PROPOSED
47' ABOVE LOWEST EXISTING GRADE
40'-8" ABOVE AVERAGE GRADE (25'-8" ABOVE EX. GRADE)
STRUCTURE AT EASTERN CORNER ALONG ROSECRANS IS 15'-8" ABOVE THE EXISTING GRADE



VICINITY MAP



SHEET INDEX

ARCHITECTURE

- 01 PROJECT DIRECTORY
- 02 SITE PLAN
- 03 BASEMENT / PARKING - LEVEL 113.0'
- 04 LOWER FLOOR - LEVEL 124.0'
- 05 GROUND FLOOR - LEVEL 136.0'
- 06 SECOND LEVEL - LEVEL 146.0'
- 07 THIRD FLOOR - LEVEL 156.0'
- 08 FOURTH FLOOR - LEVEL 166.0'
- 09 ROOF PLAN - LEVEL 177.0'
- 10 ELEVATIONS
- 11 ELEVATIONS
- 12 SECTIONS
- 13 UNIT PLANS
- 14 UNIT PLANS
- 15 UNIT PLANS
- 16 PERSPECTIVE
- 17 PERSPECTIVE
- 18 PERSPECTIVE

PROJECT TEAM

OWNER

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PROJECT DIRECTORY

VERANDAS
HIGHROSE EL PORTO, LLC

CITY OF MANHATTAN BEACH, CA



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f. 310. 217. 0425

JOB: C0034 February 12, 2020
PRINTED: March 15, 2021

SHEET

01

Exhibit D



June 7, 2019

SPC 8596-01

HIGHROSE LLC

Attn: Mr. Frank L. Buckley
338 Pier Avenue
Hermosa Beach, CA 90254

Subject: PRELIMINARY GEOTECHNICAL DOCUMENT REVIEW
Proposed Commercial Development
401 Rosecrans Avenue
Manhattan Beach, CA 90266

Dear Mr. Buckley:

Per your request, we have performed a preliminary geotechnical document review in accordance with our proposal dated May 27, 2019. This document review is intended to focus on geotechnical conditions of this particular site, and is not intended to review regional geologic hazards.

We understand that a commercial development including two to three stories of subterranean garage is proposed for the project site. In summary, our findings indicate that based on the available documentation, there are no reported adverse conditions that would significantly impact the site development from a geotechnical standpoint beyond what is expected for this geologic setting.

Scope of Services

The scope of services provided as part of this consulting agreement has included the following:

1. Review of documents provided by you;
2. On-site research at the City of Manhattan Beach Building Department for available relevant documents;
3. Review of available published and unpublished maps, plans, and reports pertinent to the site;
4. Review of in-house files;

5. Review of various aerial photographs;
6. Engineering evaluation and analyses of the data collected;
7. Preparation of this letter of preliminary findings and conclusions.

List of References

The following references were reviewed as part of this engineering evaluation:

1. Bryant and Hart, 2007, "Fault Rupture Hazard Zones in California." Alquist-Priolo Earthquake Fault Zoning Act.
2. California Division of Mines and Geology (CDMG), 1998, "Seismic Hazard Zone Report for the Venice 7.5 Minute Quadrangle, Los Angeles County, California."
3. California Geological Survey (CGS), 1999, "Earthquake Zones of Required Investigation, Venice Quadrangle, scale 1:24,000."
4. Citadel Environmental Services, October 24, 2014, "Phase I Environmental Site Assessment."
5. Environ Phase Consulting, January 23, 2017, "Preliminary Environmental Site Investigation (Phase II)."
6. Nearmap – various aerial photographs.
7. Pictometry – various aerial photographs.
8. Sladden Engineering, June 1, 1979, "Soils Investigation, Orville & Wilbur's Restaurant, 401 Rosecrans Avenue, Manhattan Beach, California"
9. SPC Geotechnical, Inc., In-House Files
10. Trihydro, January 8, 2016, "Location of Groundwater Monitoring Wells in the Groundwater Monitoring Program, Chevron Products Company."

Document Review Summary

Site History

As we understand, the site for the proposed development consists of 10 parcels in an irregular, triangular shape. The site was developed as early as 1928 with residential structures. Since then, the site has been occupied by residential, commercial, and parking structures. Currently, the site is occupied by a two-story restaurant, a two-story parking structure, a two-story retail/commercial structure, a two-story commercial structure, and a two-story residential structure. There is a Chevron easement with a pipeline bordering the north portion of the site.

Environmental Site Assessment (ESA) Phase I & II Reports

ESA Phase I Report

The ESA Phase I report (Citadel, 2014) was reported to be compliant with the current ASTM Standard, and addressed the 317 and 401 Rosecrans Avenue, 324 Rosecrans Place, 3714 and 3770 Highland Avenue, and vacant parcels. The report concludes that no evidence of current or historical recognized environmental conditions was found onsite. The report also notes the existence of potential environmental concerns related to leaking underground storage tanks and a former dry cleaning business on nearby properties. The report specifically recommends that a methane gas survey of the property be performed if the site was to be re-developed, and recommends lead and asbestos surveys be performed prior to demolition of the existing buildings.

ESA Phase II Report

The scope of the investigation for the ESA Phase II report (Environ, 2017) was limited to the 401 Rosecrans Avenue and 3770 Highland Avenue properties, and was to define the presence or absence of hydrocarbon and volatile organic compounds (VOCs) identified in the 2014 Citadel report. Nine direct-push borings were advanced to obtain soil samples for laboratory chemical analysis. The consultant concluded that no further action was required since no contaminants of concern were detected above generally accepted regulatory action levels.

City of Manhattan Beach Building Department

Only one geotechnical report (Sladden, 1979) was available at the City Building Department for the site, which was produced for a two-story addition to the existing restaurant at 401 Rosecrans Avenue. The report included one 10-foot-deep soil boring, which reported three feet of fill soil over sandy soil, with caving of the hole below a depth of six feet.

No other information regarding subsurface geotechnical conditions of the site was available for review.

Online Research

Several monitoring well borings for the Chevron Refinery to the north were available for review. The borings, ranging from 350 to 2,700 feet from the site, indicated that neighboring soil in the upper 100 feet is consistent with modern dune and older alluvial deposits.

In-House Review

Geologic maps reviewed indicate that the site is underlain by modern eolian (dune) deposits (CDMG, 1998). The historical high groundwater level is reported to be about 40 feet below the ground surface (CGS, 1999). There are no active or potentially active faults known to pass through the site or the immediate site vicinity. The site is not within an Alquist-Priolo Special Studies Earthquake Fault Zone, as defined by the State of California (Bryant & Hart, 2007). The site is not located within an area designated by the State of California as having the potential to be impacted by ground displacements resulting from seismically induced liquefaction (CGS, 1999).

Findings & Conclusions

The environmental Phase I report (Citadel, 2014) concluded that there was no evidence of current or historic recognized environmental conditions found on the site. The environmental Phase II report (Environ, 2017) recommended no further action based on their subsurface investigation, soil testing, and findings.

Based on the available geotechnical and geological documentation, we conclude that the site is underlain by modern eolian (dune) deposits, and is considered feasible for the proposed development. It should be noted that eolian deposits may be prone to hydro-collapse upon wetting or caving of unsupported excavations. The site is not located within an Alquist-Priolo Fault Zone, and is not located within a state-designated Liquefaction Hazard Zone.

Based on the available documentation, there are no adverse conditions beyond what is expected for this geologic setting that would significantly impact the site development from a geotechnical standpoint. A subsurface geotechnical investigation should be performed to develop design parameters and recommendations for the proposed development.

CLOSING REMARKS

This report has been prepared solely for the use of our client. The conclusions reached in this report are limited in nature and are the opinions of this consultant. Our conclusions are based on engineering evaluation and professional experience and judgment. It should be recognized, however, that other features not readily apparent may exist and may not have been identified. No warranty is either expressed or implied with respect to the future performance of the site. The findings expressed in this report are based on the information reviewed thus far. We reserve the right to change our findings should more information become available.

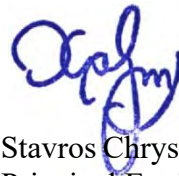
The opportunity to be of service is sincerely appreciated. Should you have any questions or need further assistance, please call.

Respectfully submitted,

SPC Geotechnical, Inc.



Taki S. Chrysovergis, M.S., P.E.
Project Engineer



Stavros Chrysovergis, Ph.D., M.S., P.E., G.E.
Principal Engineer

