



# CONSIDERATION OF FIVE APPEALS OF A PRECISE DEVELOPMENT PLAN AND ASSOCIATED ENTITLEMENTS AT 401 ROSECRANS AVENUE & 3770 HIGHLAND AVENUE

AUGUST 16, 2022

CITY COUNCIL



# BACKGROUND

\*Note: This PowerPoint presentation is intended solely as a visual aid to an oral staff presentation of an agenda report topic. In the event of any differences between the presentation and the agenda report, the information in the agenda report prevails.\*

- March 4, 2021 – Applicant applies for Precise Development Plan and associated entitlements.
- January 6, 2022 – Project application is deemed complete.
- March 29, 2022 – Community Development Director issues approval decision.
- April 2022 – Four independent appeals submitted.



# BACKGROUND

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- June 8, 2022 – Planning Commission affirms Director's decision.
- June 2022 – Five independent appeals filed.
- August 16, 2022 – City Council review.



# BACKGROUND

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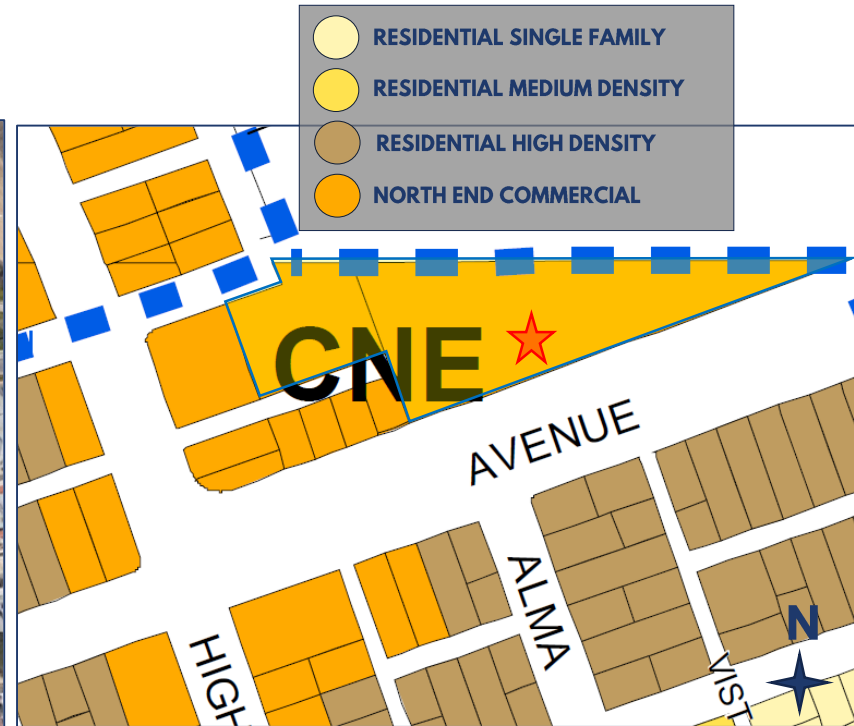
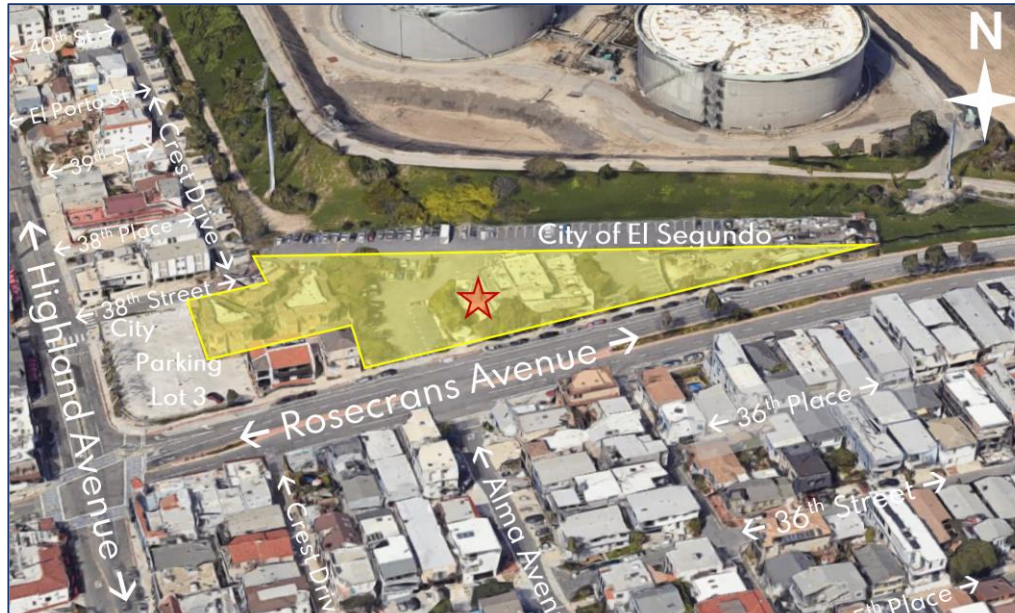
- Two lots; 43,648 square-foot site size
- CNE zone, Area District III (Non-appealable coastal zone)
- Former banquet facility (Verandas- 401 Rosecrans Ave) and commercial building (Tradewinds Vil.- 3770 Highland Ave)





# VICINITY & ZONING MAPS

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- North of Rosecrans Ave., East of Highland Ave.,
- Surrounding by public parking, high density residential, commercial, City of El Segundo



# GOVERNING REGULATIONS

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- General Plan, including 5th Cycle Housing Element
- State Density Bonus Law
- Manhattan Beach Local Coastal Program
  - MBLCP Chapter A.16
  - MBLCP Section A.84.010
  - MBLCP Chapter A.94
- Subdivision Map Act and MBMC Chapter 11 Subdivisions



# GENERAL PLAN & HOUSING ELEMENT

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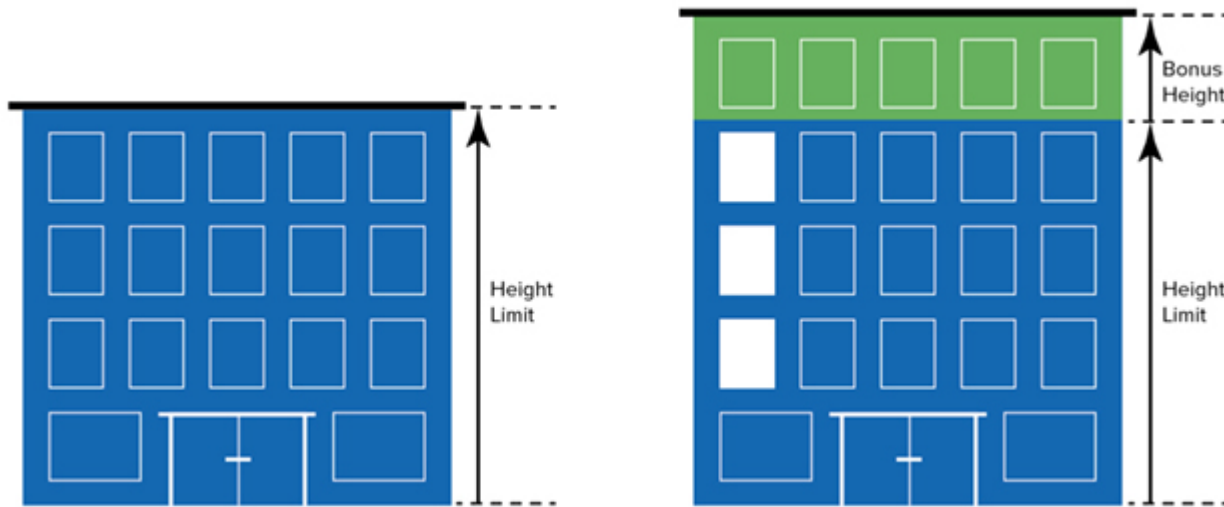
- General Plan- North End Commercial
  - High density residential allowed
- 5th Cycle Housing Element
  - Goals, policies, programs
    - Housing Element Program 3b: Facilitate multi-family residential development in the CL, CD, and CNE commercial districts.
    - Housing Element Program 5a. Provide incentives for housing affordable to low-income households and senior housing.



# STATE DENSITY BONUS LAW

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- CA Government Code Section 65915 – Incorporate affordable units into your residential project = build more total units



State > Local

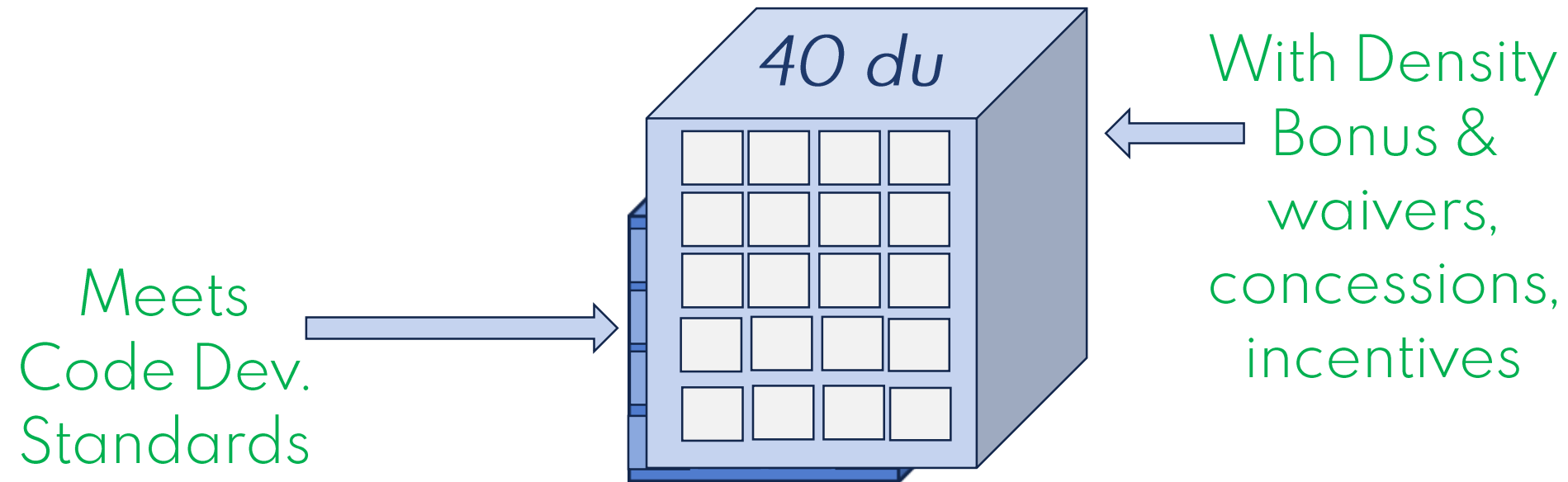




# STATE DENSITY BONUS LAW

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## WAIVERS, CONCESSIONS & INCENTIVES



■ = Standard Sized Unit



# LOCAL COASTAL PROGRAM

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- MBLCP Chapter A.16- C Commercial Districts > A.12
  - Lot Consolidation Bonus ( A.12.030 (T) )
- MBLCP Chapter A.94 Affordable Housing Density Bonus and Incentive Program



# LOCAL COASTAL PROGRAM

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- MBLCP Section A.84.010 Purposes
  - “Precise development plans are intended to encourage the development of affordable housing through a streamlined permitting process. Projects that qualify for a density bonus pursuant to Chapter A.94 shall be eligible for an administrative non-discretionary precise development plan.”



# PROJECT OVERVIEW

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- Precise Development Plan
  - Coastal Development Permit
  - Tentative Parcel Map
- Demolition of existing structures
- Merger of two lots (Tentative Parcel Map No. 083628)
- Construction of new 96,217 square-foot multi-family structure



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# PROJECT OVERVIEW

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- 79 units, with six units set aside for “very low income”
- Four stories at tallest point
- 37-50 feet in height
- Mix of studio, one, two, and three-bedroom units



# PROJECT OVERVIEW

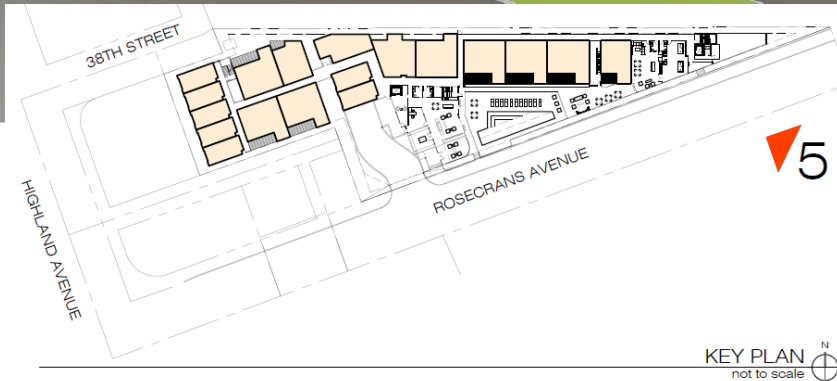
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- Parking
  - 114 standard-sized parking
    - 48 tandem parking spaces
  - 13 compact-sized parking
  - 7 motorcycle parking
  - 27 bicycle parking
- State density bonus law requires 103 parking spaces
  - Tandem spaces are supported by State law



# PROJECT OVERVIEW

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KEY PLAN  
not to scale



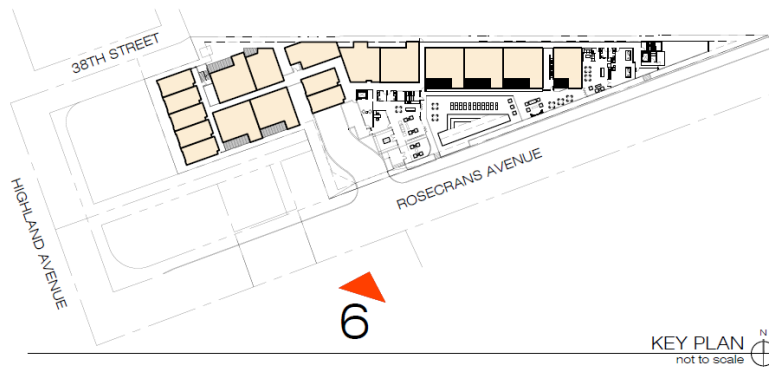
CITY OF  
MANHATTAN BEACH

**CONSIDERATION OF FIVE APPEALS OF A PDP AT 401  
ROSECRANS AVENUE/3770 HIGHLAND AVENUE**

CITY COUNCIL MEETING  
**AUGUST 16, 2022**

# PROJECT OVERVIEW

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# PROJECT OVERVIEW- FACING NORTH

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BUILDING FACADE 80 FEET FROM ROSECRANS AVE, 90 FEET FROM HIGHLAND AVE

BUILDING FACADE 80 FEET FROM ROSECRANS AVE

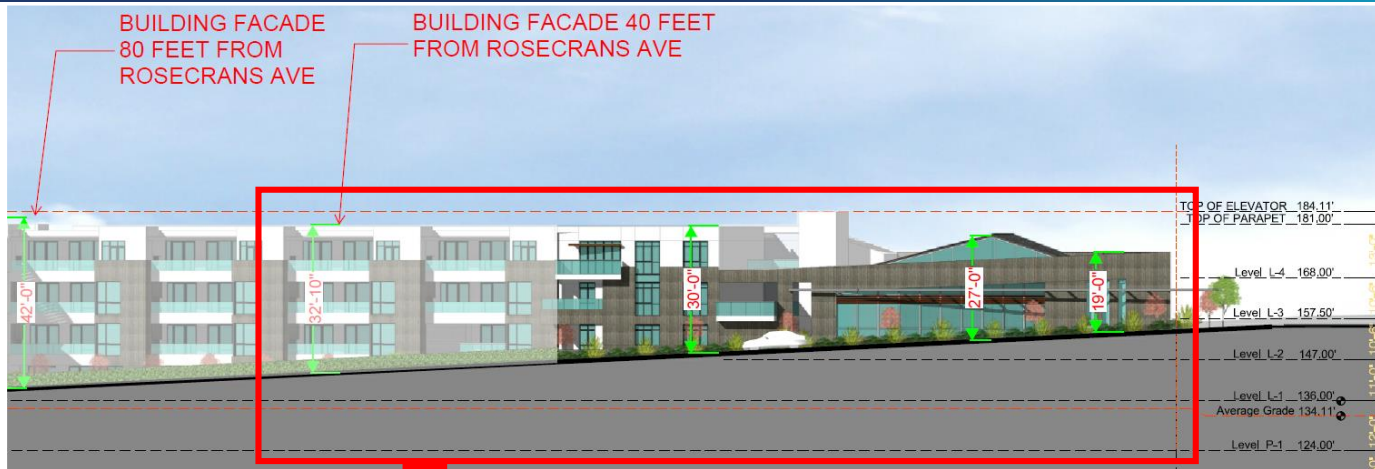
BUILDING FACADE 40 FEET FROM ROSECRANS AVE





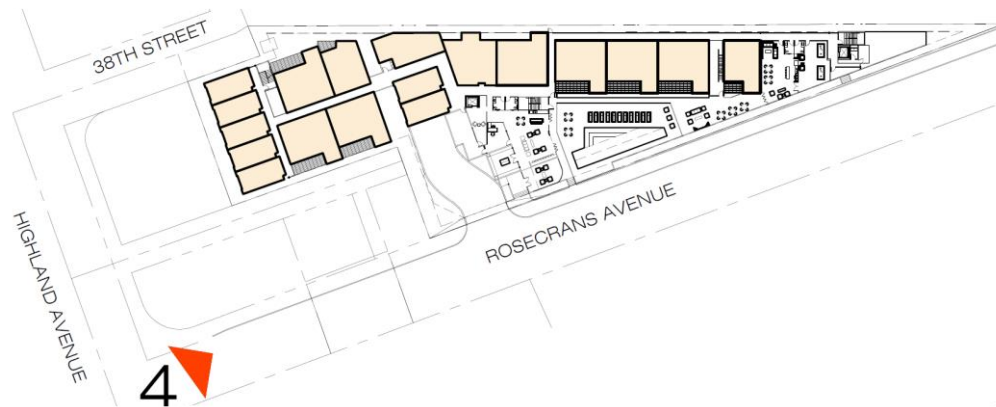
# PROJECT OVERVIEW- FACING NORTH

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# PROJECT OVERVIEW- FACING NE

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# PROJECT OVERVIEW

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- Waivers per State density bonus law
  - Buildable floor area
  - Height requirements
  - Number of stories
  - Side-yard setback requirement (for electrical transformer only)
  - Rear and side yard setback requirements for building walls over 24-feet in height
- Concession
  - Maximum wall/fence height in setbacks



# CRITERIA FOR REVIEW

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- “Administrative non-discretionary” review (MBLCP Section A.84.010)- based on compliance with objective and applicable development standards.
- CA Government Code Section 65589.5(h)(8):
  - “... ‘objective’ means involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”



# CRITERIA FOR REVIEW

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- “Uniform benchmark criteria”:
  - City’s General Plan and 5th Cycle Housing Element
  - State density bonus law
  - MBLCP and MBMC
  - Subdivision Map Act





## Section 15357 (Discretionary Project) of State CEQA Guidelines...

*Discretionary project means a project which requires the exercise of judgment... when the public agency... decides to approve or disapprove a particular activity, as distinguished from situations where the public agency... merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards..."*



# NON-DISCRETIONARY/ MINISTERIAL

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Section 15369 (Ministerial) of State CEQA Guidelines...

*“Ministerial” describes a governmental decision involving little or no personal judgment by the public official ... The public official merely applies the law to the facts as presented but uses no special discretion... in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out...”*



# GENERAL PLAN CONSISTENCY

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- High density residential allowed in North End Commercial district
- Compatible with use of surrounding properties, many of which are multi-family residential structures
- Housing Element goals, policies, and programs



# GENERAL PLAN CONSISTENCY

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- *Housing Element Goal II. Provide a variety of housing opportunities for all segments of the community, including various economic segments and special needs groups.*
- *Housing Element Policy 3. Provide adequate sites for new housing consistent with the RHNA and the capacity of roadways, sewer lines, and other infrastructure to handle increased growth.*
- *Housing Element Program 3b. Facilitate multi-family residential development in the CL, CD, and CNE commercial districts.*



# GENERAL PLAN CONSISTENCY

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- *Housing Element Program 3d. Ensure that development standards for residential uses in the CD and CNE Districts do not pose unreasonable constraints to housing.*
- *Housing Element Policy 5. Encourage the development of additional low- and moderate-income housing.*
- *Housing Element Program 5a. Provide incentives for housing affordable to low-income households and senior housing.*
- *Housing Element Program 5b. Streamline the development process to the extent feasible.*





# DEVELOPMENT STANDARDS

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Development Standard	Project Proposal	LCP Requirement*
Height	49.9 feet maximum	30 feet maximum
Number of Stories	Four	Three maximum
Buildable Floor Areas	96,217 sq. ft.	74,033 sq. ft. maximum
Setbacks:		
Front	5 feet	5 feet minimum
Rear	5 feet	5 feet minimum
Side	2 feet	10 feet minimum**
Parking	114 standard spaces 13 compact spaces 7 motorcycle spaces 27 bicycle spaces	103 spaces minimum per State Gov. Code 65915
Open Space	20,444 sq. ft.	17,380 sq. ft. minimum



# SUBDIVISION REQUIREMENTS

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- Consistent with applicable General Plan policies
- Physically suitable site for development
- Unlikely to cause environmental damage or serious public health problems
- No conflicts with easements or coastal access



# LOCAL COASTAL PROGRAM

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- North End Commercial district land use designation
- Coastal Access policies
  - Maintain vertical and horizontal accessways
  - Preserve pedestrian access systems
  - Access is enhanced with improved sidewalk on 38th Street



# PLANNING COMMISSION

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- Four independent appeals of Director's March 28, 2022 approval
- June 8, 2022- Planning Commission Meeting
  - Planning Commission unanimously affirms Director's approval



# APPEALS

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- Five independent appeals of Planning Commission's decision
  - Donald McPherson
  - Robert Schendel
  - George Bordokas
  - Mark Burton
  - Andrew Ryan
- MBLCP Section A.96.160 requires the Planning Commission to consider appeals of Community Development Director's decision





# APPEAL #1: MCPHERSON

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- *Planning Commission/City Council review of the project makes the project discretionary and therefore subject to CEQA*
  - Ministerial decisions do not become discretionary once reviewed by Planning Commission and/or City Council
- *Single-program EIR required for project that accounts for 406 affordable housing units as required by 6th Cycle Housing Element*
  - 6th cycle Housing Element is not the project
  - Project is under the 5th Cycle Housing Element



# APPEAL #2: SCHENDEL

\*Note: This PowerPoint presentation is intended solely as a visual aid to an oral staff presentation of an agenda report topic. In the event of any differences between the presentation and the agenda report, the information in the agenda report prevails.\*

- *Project is feasible without height waiver if the project is 100% studio units*
  - MBMC and MBLCP have no regulations for unit mix
  - City has no authority to require certain mixes of units
- *Height waiver should not be granted because additional units would bring health, safety, and environmental problems*
  - Strict thresholds on when/how a waiver can be denied
  - Statutory requirements not met for demonstrating “adverse impact”



# APPEAL #2: SCHENDEL

\*Note: This PowerPoint presentation is intended solely as a visual aid to an oral staff presentation of an agenda report topic. In the event of any differences between the presentation and the agenda report, the information in the agenda report prevails.\*

- *Applicant's calculation has errors. The assumed utilization rate is 72%, project uses 76%. Open space should be subtracted before utilization rate, not after as proposed.*
  - 75.8% is proposed utilization rate- average unit comes out to 528 sq ft
  - 528 sq ft < 666 sq ft average studio size per revised market study
  - Open space is subtracted *after* utilization rate, as open space is based off of each unit's living area
    - Open space is not based on common area square footage, etc.



# APPEAL #3: BORDOKAS

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- *Staff should ask for more/better “reasonable documentation” to justify the height waiver*
  - Applicant provided evidence to show that 30-foot height limit physically precludes the building of housing
  - Revised market study further documents unit size data



# APPEAL #4: BURTON

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- *Project violates General Plan by not preserving “small town community feel”*
  - General Plan has several goals and policies that promote the production of housing
  - “Balancing development with broader community aims”





# APPEAL #4: BURTON

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- *Does not maintain vibrant commercial areas*
  - General Plan specifically identifies CNE zone as location for housing
  - Multi-family residential uses allowed in the CNE zone
  - Net gain of residents → increased commercial patrons
  - “...The policies throughout all [General Plan] elements are interrelated and should be examined comprehensively.”



# APPEAL #4: BURTON

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- *Project does not safeguard picturesque vistas*
  - Height regulations implement the goal of protecting views
  - Housing Element and Density Bonus Laws, including waiver and concessions, supersede all local regulations, including height limits
- *Project does not preserve the scale of existing residential, low-profile neighborhoods.*
  - Applicant applied for waiver from height limit
  - Applicant has provided substantial evidence to justify their waiver request



# APPEAL #5: RYAN

\*Note: This PowerPoint presentation is intended solely as a visual aid to an oral staff presentation of an agenda report topic. In the event of any differences between the presentation and the agenda report, the information in the agenda report prevails.\*

- *Project's Phase I study indicates asbestos, lead-based paint, etc is on site and requires proper disposal... represents an adverse impact.*
  - State law has strict asbestos abatement requirements that apply to all projects
  - AQMD Rule 1403
  - County and State agencies regulate disposal of lead based paints and PCBs



# APPEAL #5: RYAN

\*Note: This PowerPoint presentation is intended solely as a visual aid to an oral staff presentation of an agenda report topic. In the event of any differences between the presentation and the agenda report, the information in the agenda report prevails.\*

- *Project's proximity to Chevron site creates an "adverse impact" on public health*
  - "Adverse impact" defined by CA Govt Code 65589.5 as "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"
  - Statutory requirements for demonstrating "adverse impact" not met



# APPEAL #5: RYAN

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## *Cont'd*

- Initial Study of Chevron site does not analyze project site and cannot be used to determine project's environmental impacts
- Phase I Environmental Site Assessment
  - No conditions detected on the site that pose a threat to the environment and/or human health





# APPEAL #5: RYAN

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- *The City cannot grant an “incentive” to allow a building’s height to exceed 20% of the 30-foot maximum height limit*
  - Applicant has requested a waiver from the building height, not an incentive/concession
  - Waivers differ from incentives



# APPEAL #5: RYAN

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- *A City-wide election is required for a building that exceeds the maximum height*
  - Referendum required for changes to development standards that affect entire zoning district
  - Does not apply when State/local law explicitly allows for increases in development standards, like density bonus projects or variances
  - City is not proposing to change height requirements for CNE zoning district



# APPEAL #5: RYAN

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- Project does not provide the minimum number of affordable housing units to obtain a 35% density bonus*

	Number of Units	Number of Units Rounded Up
Base Density (lot size/850)	51.23	52
Base Density + 10% Lot Consolidation Bonus (LCB)	57.2	58
Base Density + LCB + 35% Density Bonus for Very Low Income Housing	78.3	79
Total Units Allowed per Density Bonus Law		79

52 units x 11% = 5.72 or 6 very low income units



# APPEAL #5: RYAN

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- *MBMC Section 10.94.040 only allows for a single “incentive”, not multiple incentives*
  - Applicant only requesting one incentive/concession
    - State law allows for two incentives/concessions
  - Waivers differ from incentives/concessions
- *Two-story deep excavation presents a hazard and therefore poses an “adverse impact” on public safety*
  - If approved, project goes through “plan check”
  - Appellant has not met statutory requirements for demonstrating “adverse impact”



# PUBLIC NOTIFICATION/OUTREACH

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- Notice mailed on August 4, 2022 for City Council meeting
- Courtesy ad in The Beach Reporter- August 4, 2022
- Webpage-  
[www.manhattanbeach.gov/highrose](http://www.manhattanbeach.gov/highrose)
- Interested parties email list
  - Over 470 email addresses





# PUBLIC COMMENT

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- June 9, 2022 – August 3, 2022
  - Over 180 comments
  - Mostly against, some in favor
- August 4 – August 9, 2022
  - 16 public comments, all opposed
- Received after August 10, 2022



- Section 21080 of CA Public Resources Code
- CEQA does not apply to ministerial projects
  - No environmental review is required

# RECOMMENDATION

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- Review project for compliance with applicable and objective State and local regulations.
- Adopt Resolution affirming the Planning Commission's decision to approve the project.





# CONSIDERATION OF FIVE APPEALS OF A PRECISE DEVELOPMENT PLAN AND ASSOCIATED ENTITLEMENTS AT 401 ROSECRANS AVENUE & 3770 HIGHLAND AVENUE

AUGUST 16, 2022

CITY COUNCIL

