City Responses to Additional Public Comments

- A public comment states that "*SB-35 prohibits ministerial approval of an affordable-housing project in the coastal zone…*"
  SB-35 does not ***prohibit*** ministerial approval of affordable-housing projects, it states that SB-35 projects cannot be located in the Coastal Zone. Furthermore, SB-35 has no bearing on projects that are not "SB-35 projects." The Highrose project is not an SB-35 project, was not submitted as an SB-35 project, and has not been processed as an SB 35 project. As an aside, the Highrose project is ineligible to qualify as a SB 35 project for at least two reasons: 1) it is in the Coastal zone; and 2) the total number of affordable units is less than 50% of the total number of units. In sum, comments pertaining to SB 35 are not relevant to this agenda item.

- A public comment states that *"On June 8, 2022, the appeal to the planning commission raised the project to a discretionary process that requires environmental review…"*
  This is incorrect. The Highrose project is subject to a Precise Development Plan and associated entitlements. Precise Development Plans are required for residential developments that qualify for a density bonus pursuant to MBLCP Chapter A.94. Pursuant to the City's General Plan, City's LCP, and State regulations, the utilization of density bonus law and the incorporation of affordable housing qualify the Project for a streamlined, administrative, non-discretionary Precise Development Plan review, which subjects all components of the application to a ministerial review process. The ministerial review process requires staff to approve a project if the project complies with applicable provisions of the General Plan, all applicable zoning and building ordinances, State and local subdivision requirements, the Manhattan Beach Local Coastal Program, and State density bonus law.

  When considering an appeal of a density bonus project that is subject to a ministerial review process, the *City Council shall render a decision solely based on whether the project meets objective and applicable development standards*. California Government Code Section 65589.5(h)(8) defines the term "objective" as follows: *". . . '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."* The "uniform benchmark or criterion" the City Council must reference in reviewing the appeals include objective, applicable standards of the City's General Plan and 5th Cycle Housing Element (2013-2021), State density bonus law (California Government Code Sections 65915 – 65918), Manhattan Beach Local Coastal Program (MBLCP), Manhattan Beach Municipal Code (MBMC), and Subdivision Map Act. Accordingly, an appeal does not convert a non-discretionary action into a discretionary action: the standard for a decision for appeals is identical to the standard at the initial approval.

City Responses to Additional Public Comments

- A public comment states that "*environmental review required if the concession or incentive would have a specific, adverse impact on the "physical environment. [Government Code ["GOV"] § 65915(d)(1)(B) & § 65589.5(d)(2)]*" The comment does not identify what that specific, adverse impact might be. Moreover, the commenter misinterprets state law. California Government Code Section 65915(d)(1)(B) does not state that environmental review is required if the concession or incentive would have a specific, adverse impact on the physical environment. Rather, California Government Code Section 65915(d)(1) states that: An applicant for a density bonus may submit to a city a proposal for incentives or concessions; and the city "shall grant the concession or incentive" unless the city makes a written finding, based upon substantial evidence, of any of the following:

  (A) The concession or incentive does not result in identifiable and actual cost reductions, to provide for affordable housing costs.
  (B) The concession or incentive would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety ... for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households.

  An "adverse impact" is defined by California Government Code Section 65589.5 as "a **significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions [emphasis added] as they existed on the date the application was deemed complete**." As mentioned in California Government Code Section 65589.5, "inconsistency with the zoning ordinance or general plan land use designation" shall "not constitute a specific, adverse impact upon the public health or safety." Neither Staff nor any appellant identified any written public health or safety standards, policies, or conditions of a significant, quantifiable, direct, and unavoidable impact.

- A public comment references, *"CEQA Factor VIII(d)", "Appendix 4", and "other records" in reference to hazardous materials.*
  Appendix 2 to the public comment contains a document titled "Environmental Factors" constituting an incomplete CEQA checklist usually performed in preparation for a Negative Declaration or an Environmental Impact Report. As stated above, the City has reviewed the proposed project for compliance with CEQA and has determined that pursuant to Section 21080 of the California Public Resources Code, no environmental review is required.

City Responses to Additional Public Comments

Appendix 4 of the public comment pertains solely to the Chevron property and does not provide any environmental analysis for the subject project site, and thus is not evidence containing a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions of this Project or its concessions or waivers, in effect at the time the application was deemed complete. As part of a Phase II Environmental Site Assessment (ESA), Environ Phase Consulting Company 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)." By report dated February 20, 2020, another environmental consulting group - Citadel EHS - performed a Phase I Environmental Site Assessment Report for the property. The ESAs outlined the current and historical uses of the site in order to determine if these uses have impacted the soil or groundwater beneath a property, and whether these impacts pose a threat to human health and/or the environment. After taking soil samples and reviewing relevant databases, the Phase I and Phase II ESAs concluded that there were no conditions detected on the site that pose a threat to the environment and/or human health. Based upon the Phase I and Phase II ESAs, Citadel concludes that "the [Chevron] Refinery is not considered to represent a significant environmental concern to the Site at this time."

The public comment does not identify what *"other records"* refers to. As such, the comment does not constitute evidence that the Project would create a specific, adverse impact upon the public health or safety, defined under State law 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...."

- A public comment references a *"forty-foot retainer wall"* allowed by a waiver. This is a mischaracterization of the requested waiver. The requested waiver is for a reduction of rear and side setbacks for the building walls. Furthermore, the public comment states "*The fifth waiver duplicates the concession.*" This is incorrect; the concession requests to allow the proposed retaining wall within the front setback to exceed the maximum wall height requirement of 42-inches. To further clarify, there is no forty-foot retaining wall proposed.

- A public comment states that *"65915. (e) (1) requires a waiver when construction of 79 units is precluded by code such as height limitation. It does not require such a waiver just because developer wants larger units... The allowed 79 units is a maximum, not a requirement, and is not intended to limit the developer's options... However, this does not mean developer can only build smaller units or in our case 79 singles. He still has the*

option of building any mix of units he wishes. Obviously, with larger units in the mix, the total units that can be built without the waiver would be reduced. The allowed 79 units is a maximum, not a requirement, and is not intended to limit the developer's options."

The appellant acknowledges that the applicant "has the option of building any mix of units he wishes." Local and State regulations allow the applicant to propose up to 79 units on the site. The City cannot require the applicant to construct fewer than 79 units; nor can the City require that the applicant alter the proposed unit mix.

- A public comment states that *"pursuant to the Manhattan Beach Municipal Code, the development is discretionary with a conditional use permit required."*
  The City's 5th cycle Housing Element and Section A.84.010 of the LCP require an administrative non-discretionary Precise Development Plan process for a density bonus project pursuant to Chapter A.94 of the LCP. This streamlined permitting process is specifically outlined in the General Plan and LCP as an incentive to encourage the development of affordable housing.

- A public comment states that *"since the development is located on a site in the coastal zone, the project is not eligible for the streamlined, ministerial approval process.*
  This statement is incorrect. A.84.010 of the Local Coastal program (LCP) states - 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. (Such language was certified by the Coastal Commission).

- A public comment states that *"since the development is not located on a site in a residential zone but in the North End Commercial Zone on two lots that have been, and were intended to be, commercial uses only, the development is not eligible for the streamlined, ministerial approval process. Just imagine 4-Story Luxury Apartments being built where Ponchos is located. All four corners of the intersection of Highland Avenue and Rosecrans Boulevard are zoned commercial, and they were all intended to remain zoned for commercial uses."*
  This statement is incorrect. Current and historic versions of the General Plan and Code (LCP & Municipal Code) allow residential uses in commercial zoning districts, specifically the CNE zone.

- A public comment states that *"contrary to the California Coastal Act and our Local Coastal Program, the development is out of step with the unique character of El Porto and North MB with its requirements for low-profile development. This 4-story behemoth*

of a luxury apartment building will dwarf the surrounding 2-story commercial and residential buildings."

This statement is subjective. The proposed project is required to be evaluated with all applicable, objective local and State criteria, as outlined in the staff report.

- A public comment states that *"the development's proposed height and mass at the site is contrary to the low-profile development commitment in both the City's General Plan and Local Coastal Program. Specifically, the development does not maintain a small-town feel that preserves the unique characteristics of the surrounding neighborhood; the development does not safeguard picturesque vistas of the ocean; the development does not maintain the low-profile development and small-town atmosphere; and the development does not limit height to two stories and does not preserve our low-profile image."*
  Density Bonus laws, inclusive of waivers and concessions, supersede local height limits. Furthermore, the General Plan Housing Element policies specifically encourage high-density, multi-family development and application of density bonus regulations on CNE-zoned sites.

- A public comment states that *"the Density Bonus statute does not establish an exemption from CEQA requirements and the obligation to complete an EIR. The regulatory concessions that must be offered for a qualifying development cannot include non-compliance with CEQA, which would violate state law."*
  State density bonus law requires expeditious processing of a density bonus project application. Accordingly, the City's LCP identifies the non-discretionary, administrative Precise Development Plan process as the vehicle for the expeditious review of density bonus projects in the Coastal Zone, and mirrors language in the City's General Plan identified in the staff report. This, in turn, deems the project ministerial pursuant to CEQA. In addition, the Density Bonus Law affects the scope of City's ministerial review, however, by eliminating several development standards that might otherwise apply to the project.

- A public comment states that *"the 15 -bill housing package adopted in 2017, including the density bonus bill, was intended to replace the discretionary conditional use permit process with a 'streamlined, ministerial review process'. The problem the California legislature was trying to fix were the delays caused by Planning Commissions and City Councils with the discretionary conditional use permit hearing process. Time and again, deserving low-income housing projects with completed EIRs were denied CUPS by Planning Commissions and City Council's."*
  As described in the staff report and above, the City's local Precise Development Plan process deems this project administrative and non-discretionary in both the General Plan

and LCP, and thereby ministerial in nature, exempting the project from CEQA. The process was adopted in 2013-5, long before the 2017 State regulations.

- A public comment states that *"pursuant to the Manhattan Beach Municipal Code, the development is discretionary with a conditional use permit required."*
  The City's 5th cycle Housing Element and Section A.84.010 of the LCP require an administrative non-discretionary Precise Development Plan process for a density bonus project pursuant to Chapter A.94 of the LCP. This streamlined permitting process is specifically outlined in the General Plan and LCP as an incentive to encourage the development of affordable housing.

- A public comment states that *"pursuant to 14 CA ADC Section 15268 and Day v. City of Glendale, 51 Cal. App. 3rd 817, the development is not a "ministerial project", but discretionary. Specifically, determinations of what is ministerial are made on a case-by-case basis. Examples of actions that are "ministerial" are the issuance of building permits; the issuance of business licences; the approval of individual utility service connections or disconnections; or the issuance of a Certificate of Compliance. Clearly, the approval of a massive 4-story, 79 unit, behemoth of a luxury apartment building is of a completely different character for CEQA purposes.*
  As noted in the City's response to the prior public comment, the City's 5th cycle Housing Element and Section A.84.010 of the LCP require an administrative non-discretionary Precise Development Plan process for a density bonus project pursuant to Chapter A.94 of the LCP. The General Plan and LCP incorporated this streamlined permitting process as an incentive to encourage the development of affordable housing. The case cited by the commenter, *Day v. City of Glendale*, is readily distinguishable. The *Day* court addressed local standards for a grading permit that imposed both ministerial and discretionary requirements, and determined that – because the entitlement at issue has "a mixed ministerial-discretionary character" – environmental review under CEQA is required. Here, in contrast, there is no discretionary component to the City's review; the Housing Element and LCP require an administrative, non-discretionary approval process for this project.

  Although the project is exempt from CEQA, it remains subject to a wide variety of local, state, and federal regulations adopted to protect the natural environment and human health.

  All construction activities in Manhattan Beach are required to adhere to a set of construction rules, which, as required by the City, will be posted on-site throughout the course of the project. These rules include construction hours, regulation of debris dumping, maintenance of CAL/OSHA safety measures, parking and traffic regulations,

etc. As a part of construction plan review, contractors must submit necessary traffic control and parking plans to ensure that construction worker parking, equipment drop-offs, loading areas, and staging areas are arranged in a manner that does not compromise public safety or usability of the sidewalk or roadways. Further, if, contrary to the findings in the Phase I and Phase II ESAs, contaminated soil or other hazardous conditions are found during construction, measures will be immediately taken to protect the public health of nearby residents and construction workers.

Once construction is complete, the project must be operated in accordance with regulations governing, among other things, air and water pollution, soil contamination, lead-based paint, asbestos, and traffic safety.