City of Manhattan Beach

1400 Highland Avenue
Manhattan Beach, CA 90266

Legislation Details (With Text)

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Title:	Consideration of Five Appeals of the Planning Commission's Decision to Affirm the Community Development Director's Approval of a Precise Development Plan, Coastal Development Permit, and Tentative Parcel Map for the Development of a 96,217 Square-Foot Multi-Family Residential Building Ranging 37 to 50 Feet in Height and Including 79 Rental Dwelling Units with the Developer Utilizing a Density Bonus Pursuant to State Law, Inclusive of Waivers and Concessions, at 401 Rosecrans Avenue and 3770 Highland Avenue (Community Development Director Tai). (Estimated Time: 3 Hrs.) AFFIRM THE DECISION OF THE PLANNING COMMISSION		
Sponsors:			
Indexes:			
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Attachments:	, , , , , , , , , , , , , , , , , , ,		

Date	Ver.	Action By	Action	Result
8/16/2022	1	City Council Regular Meeting	accept	Pass
8/16/2022	1	City Council Regular Meeting	accept	Pass

TO:
Honorable Mayor and Members of the City Council

THROUGH:
Bruce Moe, City Manager

FROM:
Carrie Tai, AICP, Community Development Director
Talyn Mirzakhanian, Planning Manager
Ted Faturos, Associate Planner

SUBJECT:
Consideration of Five Appeals of the Planning Commission's Decision to Affirm the Community Development Director's Approval of a Precise Development Plan, Coastal Development Permit, and Tentative Parcel Map for the Development of a 96,217 Square-Foot Multi-Family Residential Building Ranging 37 to 50 Feet in Height and Including 79 Rental Dwelling Units with the Developer Utilizing a Density Bonus Pursuant to State Law, Inclusive of Waivers and Concessions, at 401 Rosecrans Avenue and 3770 Highland Avenue (Community Development Director Tai).
(Estimated Time: 3 Hrs.)
AFFIRM THE DECISION OF THE PLANNING COMMISSION

RECOMMENDATION:
Staff recommends that the City Council affirm the decision of the Planning Commission.

EXECUTIVE SUMMARY:
Applicant Highrose El Porto, LLC has submitted an application for a Precise Development Plan and associated entitlements - Coastal Development Permit and Tentative Parcel Map - for development of a 96,217 square-foot, four-story multi-family residential structure (the "Project") located at 401 Rosecrans Avenue and 3770 Highland Avenue within the North End Commercial (CNE) District. The proposed Project contains 79 rental dwelling units, six of which will be set aside for "very low income" households. The Project was approved by the Community Development Director on March 29, 2022. After reviewing the four appeals of the project, the Planning Commission upheld the Director's decision on June 8, 2022. The Planning Commission's decision has been appealed by five appellants.

Pursuant to Program 3(b) in the 5th Cycle Housing Element in the City's own General Plan, adopted in 2014, projects that qualify for a density bonus are permitted in the CNE district subject only to an administrative non-discretionary precise development plan.

The California State Legislature has found and declared that "the intent behind the Density Bonus Law is to allow public entities to reduce or even eliminate subsidies for a particular project by allowing a developer to include more total units in a project than would otherwise be allowed by the local zoning ordinance in exchange for affordable units. It further reaffirms that the intent is to cover at least some of the financing gap of affordable housing with regulatory incentives, rather than additional public subsidy."

Pursuant to state Density Bonus Law, the Project includes:

- Waivers or reductions to the following development standards in accordance with California Government Code Section 65915(b)(1) and 65915(e)(1):
  - (1) buildable floor area;
  - (2) height requirements;
  - (3) number of stories;
  - (4) side-yard setback requirement for a proposed electrical transformer only; (5) rear and side setback requirements for building walls over 24-feet in height.
- One concession to exceed the maximum wall/fence height in the setbacks in accordance with California Government Code Section 65915(b)(1) and 65915(d)(1).
- Parking based on the parking ratios prescribed by Government Code Section 65915(p)(1), which supersede the City's parking requirements.
- Tandem parking pursuant to Government Code Section 65915(p)(3)(5), which provides that "a development may provide onsite parking through tandem parking or uncovered parking, but not through onstreet parking."

The state Housing Accountability Act, initially adopted over 40 years ago, but substantially amended over the last five years, currently provides:

"When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions

exist:

“(A) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. 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.

“(B) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.”

FISCAL IMPLICATIONS:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

Application Timeline

On March 4, 2021, the Community Development Department received an application requesting a Precise Development Plan and associated entitlements (Coastal Development Permit and Tentative Parcel Map) for the demolition of existing structures and the construction of a new, 96,217 square-foot, four-story multi-family residential structure containing 79 rental dwelling units, six of which will be set aside for “very low income” households.

The City conducted a thorough evaluation of the proposed Project’s compliance with applicable and objective local and State regulations over the 12 months the Project was under review. This evaluation consisted of a multi-department review with over seven rounds of submittals that allowed the applicant to refine the plans. Additionally, and while not required, a trip generation study and Phase I and Phase II Environmental Site Assessments (see attachments) of the subject property were provided. The trip generation study was peer reviewed by the City’s Traffic Engineer (also attached). On March 29, 2022, the Community Development Director approved the Precise Development Plan and associated entitlements for the Project (see attachment).

Staff received four independent appeals of the Director’s decision within the 15-day appeal period. The four independent appeals were filed by Donald McPherson, Susan Bales and Richard MacKenzie, George Bordokas, and Andrew Ryan. Appeals of a decision by the Director of Community Development may be considered by the Planning Commission and are governed by the Manhattan Beach Municipal Code (MBMC) and Manhattan Beach Local Coastal Program (MBLCP).

On June 8, 2022, by a 5-0 vote, the Planning Commission affirmed the Community Development Director’s approval of the Project.

Staff received five independent appeals of the Planning Commission’s decision within the 15-day appeal period. The five independent appeals were filed by Donald McPherson, Ronald Schendel, George Bordokas, Mark Burton, and Andrew Ryan. Appeals of a decision by the Planning Commission may be considered by the City Council and are governed by the MBMC and MBLCP.

Site Overview

The subject site is located within the non-appealable portion of the coastal zone in the North End Commercial (CNE) District, Area District III. The General Plan land use designation and the Local Coastal Program zoning designation for the property is North End Commercial, which accommodates high-density residential uses in addition to small-scale, low-intensity neighborhood-serving service businesses, retail stores, and offices.

The existing subject site consists of two separate lots, 401 Rosecrans Avenue and 3770 Highland Avenue. The lot identified as 401 Rosecrans Avenue is a 32,201 square foot triangular lot, currently occupied by an approximately 7,178 square-foot commercial structure utilized as a banquet facility (Verandas). The grade of this lot rises approximately 19 feet when measured from west to east. This lot has existing vehicular access from a single driveway off Rosecrans Avenue, with additional vehicular access provided from Crest Drive/38th Street through an adjacent property located in the City of El Segundo to the north of the site. The lot identified as 3770 Highland Avenue is an 11,447 square-foot rectangular lot, currently occupied by an approximately 11,634 square-foot commercial structure containing a mix of office, personal service, and eating and drinking establishment uses (Tradewinds Village). The grade of this lot rises approximately 10 feet when measured from west to east. This lot has no on-site parking and thus does not have vehicular access.

The majority of the subject site's northern and eastern boundary abuts a parking lot approximately 570-feet long by 66-feet wide owned by Chevron Corporation, with Chevron's El Segundo Refinery located north of the aforementioned parking lot. Both the parking lot and the Chevron El Segundo Refinery are located within the jurisdiction of the City of El Segundo. A small segment of the subject site's northern boundary abuts 38th Street within the City of Manhattan Beach, with properties north of 38th Street developed with multi-story, single- and multi-family residential uses. The property west of the subject site is developed with a two-level, City-owned public parking structure. Properties southwest of the subject site include two-story commercial and multi-family residential uses. Properties south (across Rosecrans Avenue) of the subject site are developed with multi-story, single - and multi-family residential uses.

<u>Governing Regulations</u>
The proposed Project is reviewed for compliance with applicable, objective regulations, including the City's General Plan and its 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.

General Plan and 5th Cycle Housing Element
The General Plan is a long-range policy document that identifies the community's vision for its collective future and establishes the fundamental framework to guide decision-making about development, resource management, public safety, public services, and general community well-being. This vision is expressed in goals and policies that allow this vision to be accomplished. All projects are reviewed to ensure the project aligns with the General Plan's goals and policies. The City's General Plan was adopted in December 2003.

General Plans contain required "elements", or chapters, including a Housing Element, which must be updated every eight years. The Project is under the jurisdiction of the 5th Cycle Housing Element, not the recently adopted 6th Cycle Housing Element, as the Project application was received and deemed complete before the adoption of the 6th Cycle Housing Element. The 5th Cycle Housing Element identifies goals, policies, and programs which are aimed at addressing the identified housing needs outlined in the Housing Element's Housing Needs Assessment.

The City Council's adoption of the 2013 Housing Element (5th Cycle) included Program 3b, which is titled "Facilitate multi-family residential development in the CL, CD, and CNE commercial districts." The term "facilitate" here refers to the City's efforts to make the development process easier by, among other things, changing the processes for developing residential uses in a commercial zone from a Use Permit (subject to discretionary review) to a Precise Development Plan (which only requires non-discretionary review based on objective standards).

The City's zoning regulations have allowed residential development in commercial areas since 1941 (Ordinance No. 502). As early as 1993, the City's Land Use Element of its General Plan recognized that the provision of housing in commercial areas has been a long-time city housing policy. Furthermore, and as stated in Policy 3b in the General Plan's 5th Cycle Housing Element, the development of residential uses and commercial uses in a mixed-use commercial district can facilitate the delivery of housing, and also reduce traffic congestion, energy consumption, and air emissions as residents are able to walk to nearby commercial services. Residential uses can also enhance the viability of commercial areas.

State Density Bonus Law (Government Code Section 65915 - 65918)
State density bonus law includes a range of options incentivizing developers to integrate affordable housing into their residential developments. Among other things, State density bonus law allows developers to exceed the maximum density requirements, as specified in a municipality's zoning code or General Plan, in exchange for setting aside a certain percentage of the total units in the Project for low income residents. In addition, State density bonus law allows developers to request waivers from development standards, such as setback and height requirements, as well as other concessions and incentives. An unlimited number of waivers may be requested by the developer and granted by the jurisdiction when a development standard will have the effect of physically precluding the construction of a density bonus project. Here, as noted in the executive summary, the applicant has requested five waivers. In addition, State density bonus law specifies the number of concessions a project is entitled to, based on the percentage of affordable units included. Concessions, unlike waivers, are directly associated with cost reductions to provide for affordable housing costs. State density bonus law requires jurisdictions to grant concessions unless the jurisdiction can make written findings supported by substantial evidence to support a denial, with the burden of proof borne by the jurisdiction. Written findings include, but are not limited to, a finding that the concession does not result in identifiable and actual cost reduction. Here, the Applicant has requested one concession: to exceed the maximum wall/fence height in the setbacks.

Manhattan Beach Local Coastal Program
A portion of the City is under the jurisdiction of the California Coastal Act. The California Coastal Act authorizes coastal jurisdictions to create Local Coastal Programs (LCPs) that, as described by the California Coastal Commission's website, "specify appropriate location, type, and scale of new or changed uses of land and water. Each LCP includes a land use plan and measures to implement the plan (such as zoning ordinances)… While each LCP reflects unique characteristics of individual local coastal communities, regional and Statewide interests and concerns must also be addressed in conformity with Coastal Act goals and policies." The California Coastal Commission certified the City's LCP in 1996, and in doing so authorized the City to issue Coastal Development Permits. MBLCP Section A.96.040 requires a Coastal Development Permit for any "development" within the Coastal Zone. The proposed Project is located in the non-appealable portion of the Coastal Zone; therefore, the Project requires a Coastal Development Permit, which was reviewed for compliance with the following sections of the City's LCP:

- MBLCP Chapter A.16 - governs commercial districts, including the North End Commercial district where the Project is located. MBLCP Section A.16.030 regulates development standards in commercial zones, and states that “Dwelling units shall be subject to the standards for minimum setbacks, height limits, maximum density, maximum FAR [floor area ratio], balconies and bay windows, usable open space and parking for the RH [Residential High Density] District and the Area District in which the site is located.” Accordingly, the Project is subject to the development standards for the RH District, which are provided in MBLCP Section A.12.030. MBLCP Section A.12.030(T) allows for density bonus projects to be granted a “lot consolidation bonus incentive when two or more parcels are consolidated in a single building site…”, with a 10% base density bonus increase allowed for combined parcels greater than or equal to one acre. MBLCP Section A.04.030 defines a lot as “a site or parcel of real property delineated with a number or other separate designation on a plat duly recorded in the office of the County Recorder.”

- MBLCP Section A.84.010 - provides that “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.”

- MBLCP Chapter A.94 Affordable Housing Density Bonus and Incentive Program - mirrors the policy objectives of State density bonus law by also allowing developers to exceed the maximum density requirements in exchange for setting aside a certain percentage of the total units in the Project for low income residents (see attachment). MBLCP Chapter A.94 is currently out of date and is not congruent with State law. Per MBLCP Section A.94.01 (A), “Where conflict occurs between the provisions of this chapter and State law, the State law provisions shall govern, unless otherwise specified.” MBLCP Section A.94.050(D) requires an Affordable Housing Agreement be recorded against the property with a density bonus project, which, among many other stipulations, requires a certification process to certify the affordable units’ rents, and the process that will be used to certify renters of such units.

  Both State density bonus law and MBLCP Chapter A.94 use terms like “low income” and “very low income” to describe households that are eligible to rent the affordable units. State density bonus law requires that a density bonus project’s low income units be subject to a recorded affordability restriction of 55 years. Affordability terms are subject to limits established by the US Department of Housing and Urban Development (HUD), which calculates the median family income for the Los Angeles-Long Beach-Glendale, CA area, and then defines “Very Low Income” in relation to the median family income. For fiscal year 2021, HUD has calculated that the median family income for the Los Angeles-Long Beach-Glendale, CA area to be $80,000, with the “very low income” threshold determined to be $59,100 for a family of four, or $41,400 for an individual.

Subdivision Map Act and MBMC Chapter 11 Subdivisions
The Subdivision Map Act is a state law that regulates land divisions. MBMC Chapter 11 Subdivisions is a section of the Municipal Code that supplements the Subdivision Map Act and imposes requirements in addition to those set forth in the Subdivision Map Act. The Project involves the consolidation of two lots through a tentative parcel map and is thus subject to these regulations.

Project Overview

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The Project proposal includes the demolition of existing structures and the construction of a new, 96,217 square-foot, four-story multi-family residential structure containing 79 rental dwelling units, six of which will be set aside for "very low income" households. The property owner seeks a Precise Development Plan for the development of affordable housing utilizing State density bonus provisions pursuant to California Government Code Section 65915. In addition, the property owner has applied for a Coastal Development Permit for development within the City's Coastal Zone and a Tentative Parcel Map (No. 083628) for the consolidation of two lots into one.

The applicant proposes to consolidate the two existing lots into a single lot with a tentative parcel map (Tentative Parcel Map No. 083628). The consolidated lot would be 43,648 square feet and have a 29-foot change in grade, measured from west to east. The consolidated lot would have an irregular shape, as the western portion of the lot would have a rectangular shape and the eastern portion of the lot would have a pointed shape with the rear and front property lines intersecting at a point at the property's eastern-most edge. The applicant proposes two street improvement easements to the City totaling 99 square feet on the property's northern side at the intersection of 38th Street and Crest Drive, with the street improvement easements used to create a wider turning area for cars, including City emergency personnel and their respective vehicles. The Project also includes new sidewalk paving along 38th Street, connecting two pieces of unconnected sidewalk where only landscaping exists currently.

The site's only vehicular access to the subterranean garage is from a driveway on Rosecrans Avenue. Pedestrians and cyclists would have access to the site from both Rosecrans Avenue and from 38th Street/Crest Drive intersection. The Project includes a two-story subterranean parking garage containing 114 standard-sized parking spaces, 13 compact-sized parking spaces, 27 bicycle parking spaces, and seven motorcycle parking spaces. Of the 114 standard-sized parking spaces, 48 have a tandem configuration. Tandem parking spaces are permitted by local regulations and supported by State density bonus law.

The proposed structure would be up to four stories tall, with the building ranging from 37 to 50 feet in height. The building's massing is mainly placed on the site's western and northern edge, with a 4,984 square-foot courtyard open to above located towards the middle of the property's southern edge. The applicant proposes a courtyard area having common open space, which includes a pool, outdoor furniture, and other outdoor amenities for the property's residents.

The proposed structure includes 21 studio units, 11 one-bedroom units, 40 two-bedroom units, and seven three-bedroom units. The six units set aside for "very low income" residents include two studio units, one one-bedroom unit, and three two-bedroom units. The applicant has identified which specific units will be set aside for very low income residents in the plans (see attachment). Many units have dedicated usable open space with private balconies, and there is also common open space areas located throughout the structure open to all residents. The Project provides a total of 20,444 square feet of open space.

In addition to the building's square footage dedicated to housing, the development also contains a trash room, various mechanical rooms, and a fourth-floor "lounge room" with a 1,996 square-foot outdoor deck. The proposed building's main trash area is located close to the intersection of 38th Street and Crest Drive, where trash pickup will occur.

The building incorporates exterior materials that include stucco, siding with a wood-like appearance, glass, and white-washed brick or stone. The first floor of the building would be wrapped in white-

washed brick or stone that will help break up the building's massing, as the upper floors will be clad in stucco and siding. The building's massing is further lightened by the incorporation of glass guardrails for balconies and decks.

The applicant requests a 10% local lot consolidation bonus pursuant to MBLCP A.12.030 (T), and a 35% density bonus under State density bonus law for setting aside 11% of the base density's units for very low income affordable housing units.

The applicant also requests a Precise Development Plan for the development of affordable housing utilizing State density bonus provisions pursuant to California Government Code Section 65915 and has requested waivers and a concession from development standards in accordance with California Government Code Section 65915(b)(1) and 65915(e)(1). Specifically, the applicant has requested waivers or reductions of the following development standards: (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. Additionally, the applicant requests one concession for the maximum wall/fence height in the setbacks in accordance with California Government Code Section 65915(b)(1) and 65915(d)(1).

DISCUSSION:

Precise Development Plans are required for residential developments that qualify for a density bonus pursuant to MBLCP Chapter A.94. Pursuant to State and local 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. Staff reviewed the Project for compliance with all applicable and objective regulations as described herein this report and detailed in the attachment titled Compliance with Local Coastal Program- Implementation Plan and Government Code Section 65915.

The Project conforms to all applicable objective General Plan, Zoning Code (as embodied in the LCP), subdivision, and design standards/criteria that applied at the time the application was deemed complete as follows:

1. *The proposed project is consistent with applicable provisions of the General Plan.*

   The Project proposes development of a 79-unit multi-family residential structure, in accordance with State density bonus provisions, on property located within Area District III (Beach Area) and zoned North End Commercial (CNE). The General Plan land use designation and the Local Coastal Program zoning designation for the property is North End Commercial, which accommodates high density residential uses in addition to small-scale, low -intensity neighborhood-serving service businesses, retail stores, and offices. The majority of the subject site's northern and eastern boundary abut a parking lot owned by Chevron Refinery, located within the jurisdiction of the City of El Segundo. A small segment of the subject site's northern boundary abuts 38th Street within the City, with properties north of 38th Street developed with multi-story, single- and multi-family residential uses. The property west of the subject site is developed with a two-story, City-owned public parking structure. Properties southwest of the subject site include two-story commercial and multi-family

residential uses. Properties south (across Rosecrans Avenue) of the subject site are developed with multi-story, single- and multi-family residential uses. Many of these multi-family residential uses meet the minimum unit per acre standard required for properties in the RH zoning district for Area District III, and other surrounding properties are zoned RH and could thus be redeveloped with high-density residential uses in the future. Therefore, the proposed high-density residential use is compatible with surrounding uses and complies with the City's General Plan land use designation of North End Commercial.

Furthermore, and as described below, the Project as proposed is consistent with the following goals, policies and programs of the Housing Element of the General Plan:

Housing Element Goal II. Provide a variety of housing opportunities for all segments of the community commensurate with the City's needs, including various economic segments and special needs groups.

Housing Element Policy 3. Provide adequate sites for new housing consistent with the Regional Housing Needs Assessment and the capacity of roadways, sewer lines, and other infrastructure to handle increased growth.

Housing Element Program 3a. Continue to facilitate infill development in residential areas.

Housing Element Program 3b. Facilitate multi-family residential development in the CL, CD, and CNE commercial districts.

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.

2. *The physical design and configuration of the proposed project are in compliance with all applicable zoning and building ordinances, including physical development standards.*

   The physical design and configuration of the proposed Project are in compliance with all applicable zoning and building ordinances, including physical development standards, contingent upon the granting of waivers and the concession in accordance with State density bonus law (California Government Code Section 65915). The Project's compliance with applicable standards is demonstrated in the attachment titled Compliance with Local Coastal Program- Implementation Plan and Government Code Section 65915.

3. *The proposed project is consistent with applicable state and local subdivision requirements.*

   The Subdivision Map Act governs applications for parcel maps, which are mechanisms utilized to either consolidate multiple parcels into a single parcel or subdivide a single parcel into up to

four parcels. This Project proposes consolidation of two lots into one lot via a tentative parcel map. The proposed tentative parcel map is consistent with applicable General Plan policies, including Goal II, Policy 3, Program 3a, Program 3b, Program 3d, Policy 5, Program 5a, and Program 5b of the Housing Element (as described above).

The design or improvement of the proposed subdivision is consistent with the General Plan, including the aforementioned policies.

The site is physically suitable for the type of development, as the proposed Project meets all applicable development standards, contingent upon the granting of waivers and the concession in accordance with State density bonus law (California Government Code 65915). Pursuant to MBLCP Section A.12.030, there are no maximum lot size requirements applicable to the Project site for a proposed residential development subdivision.

The site is physically suitable for the proposed density of development, as the applicant has demonstrated with plans and supporting documents that the Project can comply with required development standards contingent upon the granting of waivers and the concession in accordance with State density bonus law.

The design of the subdivision or the proposed improvements are unlikely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, as there are no known wildlife habitats on the site, which was previously developed with commercial uses.

The design of the subdivision or type of improvements is unlikely to cause serious public health problems as it proposes an infill residential development on a previously-developed site surrounded by residential and commercial uses.

The design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large, for access through or use of, property within the proposed subdivision, as no such easements exist on the site and all existing public access to the coast will be preserved.

4. *The proposed project conforms with the certified Manhattan Beach Local Coastal Program.*

The MBLCP consists of a Land Use Plan (LUP) composed of “Polices and Implementation Measures” and an Implementation Plan (Phase III LIP) including zoning ordinances, district maps, and other implementing actions. As described above, the proposed high-density residential use is compatible with surrounding uses and complies with the City’s General Plan land use designation and Local Coastal Program zoning designation of North End Commercial, which accommodates high density residential uses in addition to small-scale, low -intensity neighborhood-serving service businesses, retail stores, and offices.

Furthermore, the Project as proposed is consistent with the Coastal Access policies in the Local Coastal Program, the goal of which is to preserve coastal access for the public. Specifically, the Project is consistent with the following coastal access policies:

Policy I.A.1: The City shall maintain the existing vertical and horizontal accessways in the Manhattan Beach Coastal Zone.

The Project does not block or impede any accessways to the coast. Access to the coast remains unaffected by the Project. East-west coastal access along the south side of 38th Street will be enhanced as the Project includes new sidewalk paving, connecting two pieces of unconnected sidewalk where only landscaping exists currently.

Policy I.A.3: The City shall preserve pedestrian access systems including the Spider Web park concept (Spider Web park concept: a linear park system linking the Santa Fe railroad right-of-way jogging trail to the beach with a network of walkstreets and public open spaces).
The Project does not alter any pedestrian access systems, including existing sidewalks or streets, in a way that blocks or impedes access systems to the coast. Access to the coast remains unaffected by the Project, albeit improved along the south side of 38th Street as the Project includes new sidewalk paving connecting two pieces of unconnected sidewalk where only landscaping exists currently. The walkstreets and public open spaces linking the Santa Fe railroad right-of-way jogging trail are unaltered by the Project.

The proposed Project is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (Commencing with Section 30200 of the Public Resources Code), in that the proposed structure does not impact public access to the shoreline. Adequate public access is provided and shall be maintained along Rosecrans Avenue, Highland Avenue, and 38th Street. The Project also proposes to improve the sidewalk along the south side of 38th Street as the project includes new sidewalk paving connecting two pieces of unconnected sidewalk where only landscaping exists currently. Furthermore, the Project does not create any barriers along Rosecrans Avenue, Highland Avenue, and 38th Street that prevent public access to the coast. The Project exceeds the minimum parking requirement, offers parking for different modes of transportation (automobile, motorcycle, and bicycle), and also replaces an existing commercial site that contains no on-site parking.

Planning Commission

At the June 8, 2022 Planning Commission meeting, City staff, the applicant, and all four appellants made presentations regarding the Community Development Director’s approval of the Project. After the presentations, the Planning Commission heard public comment from 18 individuals, eight individuals speaking in favor of the Project and ten individuals speaking in opposition to the Project. Based on substantial evidence in the record, and pursuant to the Manhattan Beach Local Coastal Program and other applicable law, the Planning Commission unanimously affirmed the Community Development Director’s approval of the Project. See attached Planning Commission draft minutes for additional detail.

Appeals

Five independent appeals of the Planning Commission’s decision to affirm the Community Development Director’s approval of the Project were filed within the 15-day appeal period following the Planning Commission’s decision (as specified by MBLCP Section A.96.160).

Local regulations require the City Council to consider appeals of a decision made by the Planning Commission. 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)

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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.

Furthermore, Section 15369 of the State CEQA Guidelines define the term "ministerial" as "*a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment 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…"* Section 15357 of the State CEQA Guidelines define a discretionary project as "… a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project."

Uniformly, none of the appeals raises any argument that would form the basis of denying the Project. The Project is consistent with the City's General Plan, including the 5th Cycle Housing Element Program 3B, the LCP, and all applicable objective general plan, zoning code, subdivision, and design standards/criteria. No evidence has been presented 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…." Moreover, many of the arguments raised by the appellants are based upon unsupported allegations that, during construction, asbestos, contaminated water, contaminated soils, and other harms would be unleashed by construction activity. These alleged harms are regulated by federal, state, and local environmental and public health regulations, as well as the requirements for building, demolition, and grading permits.

In addition, the following contains representative points of the appeals, and staff's response. (The "*italicized text"* in quotes is taken directly from the appeals, with staff's response in regular font. For the sake of brevity, duplicate arguments are not addressed separately. Each of the appeals is attached in whole and incorporated by this reference.)

Appeal #1: Donald McPherson

1. *"On March 29, 2022, Community Development ministerially approved the Highrose project with a Precise Development Plan, which did not require environmental review, in compliance with the California Environmental Quality Act ["CEQA"], Public Resources Code*

[“PRC”] § 21080(b)(1).1

On June 8, 2022, however, the appeal to the planning commission raised the project to a discretionary process that requires environmental review, per the Manhattan Beach Municipal Code…

With the appeals to the planning commission and now to the city council, however, the project no longer ‘ministerial’, but rather discretionary process that requires CEQA review:

> *“Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.” [CEQA Guidelines § 15268(d)]”*

Program 3b of the 2013 Housing Element (5th Cycle) and MBLCP Section A.84.010 provide that density bonus projects requiring precise development plans are subject to “administrative non-discretionary review” in accordance with MBLCP Section A.84.010. Accordingly, the approval of the Project, and any subsequent appeals, are ministerial and, pursuant to CEQA Section 21080, no environmental review is required.

2. *“…the Density Bonus Law [“DBL”] specifically 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)]”*

“At their June 8 appeal hearing, the planning commission failed to consider the mandate by city and state law that Highrose requires environmental review.”

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:

> (d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county 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, consistent with subdivision (k), to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).
> >
> > (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 or on any real property that is listed in the California Register of Historical Resources and 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.

3. “*The Highview project constitutes the first major development in the city 6th Housing Element Upgrade [“HEU”] program… As result, per CEQA, the city must prepare a Single-Program EIR…*

   Consequently, the Highrose Single-Program EIR must evaluate cumulative effects from all projects necessary to fulfill the 406-unit quota for affordable housing by 2029.”

   The Project is subject to the standards and incentives of the 5th Cycle Housing Element, not the recently adopted 6th Cycle Housing Element, as the Project application was received and deemed complete before the adoption of the 6th Cycle Housing Element.

Appeal #2: Ronald Schendel

1. “*Applicant states in its plan that limiting the building height to the allowable 36 ft would result in relegating the entirety of the project to studios. In other words, <u>applicant admits that the project is in fact feasible by relegating the entirety of the project to studios</u>…*

   “Applicant’s own statement demonstrates that 79 units can be provided in structure(s) limited to 36 ft height.

   “If the applicant desires a mix of larger units, it has the option of building fewer units. The 79 units is a maximum allowed and not a mandate…”

   The City’s Municipal Code and Local Coastal Program do not contain any regulations or development standards that dictate the mix of units in a new multi-family residential project. The City reviews a density bonus project solely based on whether the project meets objective and applicable development standards. Thus, the City has no authority to require an applicant to change the mix of units in a density bonus project.

   The City does ensure that sizes of the unit types are comparable (and not grossly larger) than the standard unit of that type in the surrounding area (i.e. a one-bedroom unit is not 1,800 square feet). Furthermore, the City does require that the affordable units are comparable to and integrated with the market-rate units to ensure equity among all of the units.

2. *“Granting the height waiver means there would be more two-bedroom and one-bedroom units, and fewer studios. The increase in occupancy would result in health, safety and environmental problems, thereby allowing the city to not allow the height waiver.”*

   California Government Code Section 65915 (e)(1) authorizes a local government to reject a waiver request “if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. This subdivision shall not be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that

would be contrary to state or federal law."

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 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."

As the Project proposes a multi-family residential use on an infill site that is zoned for high-density residential use and surrounded by residential and commercial uses, the proposed Project does not violate any objectives, identified written public health or safety standards, policies, or conditions. Furthermore, the Project would not have an adverse impact on a property that is listed in the California Register of Historical Resources.

Additionally, the appellant has not met the statutory requirements for demonstrating an "adverse impact", as the appellant also does not quantify the impact, nor evaluate remediation measures to demonstrate why the impacts would be unavoidable using objective, identified written public health or safety standards, policies, or conditions.

3. "*The Applicant's justification calculation has the following errors.*
   • The assumed unit utilization rate of 72% is unreasonably low. The submitted project has a utilization rate of 76%.
   • Applicant's calculation subtracts the open space requirement AFTER applying the assumed utilization rate rather than subtracting from net building envelope (BEFORE applying the assumed utilization rate)."

   MBLCP Section A.12.030 (M)(1) states "For single-family dwellings in Area District III and IV and multifamily dwelling units in all districts, the minimum [open space] requirement is fifteen percent (15%) of the buildable floor area per unit, but not less than two hundred twenty (220) square feet."

   The appellant uses the term "utilization rate" to describe the percentage of the building's buildable floor area that is dedicated to the units' actual living area, and excludes square footage dedicated to areas like corridors, exterior stairs, lobbies, trash, storage, and enclosed amenity spaces. The approved plans use the term "efficiency rate" instead of "utilization rate".

   MBLCP A.12.030 (M)(1) states that the minimum open space requirement is based off of "the buildable floor area *per unit* [emphasis added]", meaning that square footage dedicated to non-residential areas like the lobby, mail room, interior common areas, etc. cannot be factored into the number that open space is based on since those areas are not part of the residential units. The open space was deducted from the net buildable envelope after applying the 72% utilization rate because the 72% utilization rate exclusively represents the buildable floor area of the 79 units, and excludes buildable floor area for non-residential areas like the lobby, mail room, interior common areas, etc.

   Staff requested that the project architect demonstrate the potential size of each unit in a hypothetical development at the site, in a situation where no concessions or waivers from development standards were issued. As shown on page 05-02 of the project plans, the

analysis concluded that the resulting unit size would be 490.9 square feet using a hypothetical 72% utilization rate, or the percentage of the buildable floor area used for actual living area.

The appellant correctly states that the utilization rate of the actual Project is higher than the hypothetical 72%. The Project's actual utilization rate is 75.8%, (72,932 square feet of living area divided by 96,217 square feet of total buildable floor area equals 75.8%). Using the 75.8% instead of the 72% in a hypothetical development at the site where no concessions or waivers from development standards were issued, the average unit size would be 528 square feet. Although there are 21 studio units proposed in the Project that are 512 square feet, all other proposed units are larger than the 528 square-foot average unit size. For example, proposed one-bedroom units range between 684 square feet to 834 square feet; two-bedroom units range between 1,050 square feet to 1,269 square feet; and three-bedroom units range in size between 1,262 square feet to 1,727 square feet.

To further support this exercise, the applicant provided, and staff verified, market data demonstrating the average unit size for apartments in the Manhattan Beach rental market. This data demonstrated that the resulting 528 square-foot average unit was significantly smaller than the typical apartment in coastal southern California rental market. Consequently, the applicant has provided substantial evidence to demonstrate that the requested concession and waivers are necessary, as not allowing and waivers would have the effect of physically precluding the construction of the development with the associated density bonus.

Appeal #3: George Bordokas

1. "*Planning director and staff, concluded that "reasonable documentation" was given to established the project's eligibility, the documentation came from the developer, did staff think of getting a second opinion, did they question it?*

   "Pages from the plan and k is a survey of rental sizes in the area without any supporting documentation…

   "The director the city is not obligated to give the waivers? There is a burden of proof, by providing reasonable information that it can't be done within the building code 30 ft 3 stories therefore that would prove the project can't move forward resulting in the waiver being given. But it can be done. The developer has no incentive to say it can. Why would they? Nah can do it... so the director issues the Waivers."

   Per California Government Code Section 65915 (a)(2), State law "does not prohibit a local government from requiring an applicant to provide reasonable documentation to establish eligibility for a requested density bonus, incentives or concessions, as described in subdivision (d), waivers or reductions of development standards, as described in subdivision (e), and parking ratios, as described in subdivision (p)."

   The applicant has provided documentation that establishes the Project's eligibility for requesting a density bonus, concession, and waivers from development standards. This documentation includes written explanations on why waivers and the concession are necessary (page 05-01 of the plans), a study of the buildable envelope and resulting average unit size for a project that did not request any concessions and waivers from development standards (page 05-02 of the plans), an analysis of the height limitations and how it affects the

resulting structure (page 05-03), a revised analysis of average residential rental unit size in coastal Southern California rental market (see attachment), and a letter from the project architect describing the typical ceiling heights for new residential projects, including affordable housing projects (see attachment).

As shown on page 05-02 of the project plans, the analysis concluded that the resulting unit size would be 490.9 square feet. To further support this exercise, the applicant provided, and staff verified, a revised rental analysis demonstrating the average unit size for apartments in the Southern California coastal rental market. The applicant's revised rental analysis further documents local rentals by providing a hyperlink to every rental listing in the analysis. This data demonstrated that the resulting 490.9 square-foot average unit was significantly smaller than the typical apartment in the Manhattan Beach rental market. Consequently, the applicant has provided substantial evidence to demonstrate that the requested waivers are necessary, as not allowing the concession and waivers would have the effect of physically precluding the construction of the development with the associated density bonus.

All of the aforementioned documentation constitutes substantial evidence on the Project's eligibility for a density bonus, concession, and waivers from development standards. The appellant has not submitted evidence such as architectural plans or massing studies to support his determination of what the average unit size would be if no concessions or waivers were utilized in a project design.

Appeal #4: Mark Burton

1. "*This Project is in direct conflict with our City's General Plan, its vision, several of its overarching principles and the several specific goals as set forth therein…*

   "The Project does not maintain a small-town community feel that preserves the unique characteristics of the surrounding neighborhood. See Principle #1. In fact, the Project's height and use will forever destroy any small-town community feel and the special characteristics of the surrounding neighborhood and our community…

   The General Plan's Introduction states that the aims of the General Plan's goals and policies are interrelated. Specifically, the General Plan states:

   > "The Manhattan Beach General Plan describes how residents will work to retain the small-town atmosphere that makes our City unique, but at the same time, responds to the dynamics of regional traffic issues and meets changing community needs. The General Plan serves as a policy guide, balancing these interrelated factors to Manhattan Beach's community vision."
   >
   > The Land Use Element focuses on the built environment aspect of Manhattan Beach and pulls together issues and goals from the other elements, laying out the framework for balancing development with broader community aims.
   >
   > …General Plan users should realize that the policies throughout all elements are

> interrelated and should be examined comprehensively. All of these policy components must be considered together when making planning decisions."

The General Plan includes several goals and policies that promote the production of housing, including affordable housing, and staff has identified these housing-focused goals and policies from the General Plan earlier in this report. All of these General Plan goals and policies work in tandem, with the aforementioned Housing Element programs working in conjunction with other policies, the overall goal of which is "balancing development with broader community aims".

Equally significant, the specific program 3b which facilitates the streamlined approval process overrides general policy statements.

2. *"The Project does not maintain the vibrant commercial areas throughout the City with businesses meeting the desired needs of the community. See Principle #3. In fact, the Project forever destroys the premier commercial property location in the North End Commercial Zone, eliminates commercial properties that serve the adjacent neighborhood, and creates "dead space" in an area that should join El Porto with North Manhattan Beach. All commercial vibrancy will be lost forever at that location…"*

The General Plan specifically identifies the North End Commercial Zone (CNE) as a location for housing through the following Housing Element programs:

> Housing Element Program 3b. Facilitate multi-family residential development in the CL, CD, and CNE commercial districts.
>
> Housing Element Program 3d. Ensure that development standards for residential uses in the CD and CNE Districts do not pose unreasonable constraints to housing.

Furthermore, zoning regulations are developed with the purpose of implementing the goals and policies of the General Plan. Accordingly, the zoning regulations specifically allow multi-family residential uses on all properties in the CNE zoning district, which is characterized in the General Plan as a mixed-use neighborhood.

As mentioned herein, the General Plan states "…General Plan users should realize that the policies throughout all elements are interrelated and should be examined comprehensively. All of these policy components must be considered together when making planning decisions." The aforementioned Housing Element programs work in tandem with Goal LU-6 to simultaneously build new housing while also ensuring the viability of commercial zones. In the context of the Project, the new residential units will bring a net gain of residences to the North End/El Porto neighborhood. The Project does contribute to the viability of the surrounding commercial area by adding residents who would live in walking distance to, and would potentially patronize, local and neighborhood businesses.

3. "*The Project does not safeguard picturesque vistas of the ocean. See Principle #5. In fact, the Project has the grotesque size and mass that will forever blot out the picturesque vistas of the ocean."*

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The General Plan Housing Element, and local and State density bonus regulations, including waivers and concessions, supersede any inconsistent local regulations, including height limits.

4. "*The Project does not create a sense of community that bonds residents together, thus making a stronger, better Manhattan Beach. See Principle #6… The Project doesn't bond residents together, it divides residential neighborhoods."*

   Staff is unable to identify a General Plan goal or policies that corresponds to the appellant's statement. By contrast, General Plan Policy LU-6.4 recommends recognizing the unique qualities of mixed-use areas and balancing the needs of both the commercial and residential uses, because mixed-use areas, such as North End/El Porto, promote lively neighborhoods. As previously mentioned, the Project will contribute to the viability of the surrounding commercial area by adding residents who would live in walking distance to, and would patronize, local and neighboring businesses.

5. *"The Project does not maintain the low-profile development and small-town atmosphere as set forth in Goal LU-1. In fact, the Project is the ultimate antithesis of that goal. The Project is repugnant to our low-profile development and small-town atmosphere…*

   "The Project does not limit the height to two stories and does not preserve the low-profile image as set forth in Policy LU-1.1. In fact, the Project is the ultimate antithesis of that goal. The Project is just so grossly out of scale and proportion, with heights soaring to 4 stories…

   "The Project does not preserve the scale of existing residential neighborhoods."

   The applicant has requested a waiver from the 30-foot height requirement in order to accommodate the proposed 79 units. The applicant submitted a study of the site's buildable envelope, given no incentives or waivers were used to build 79 units (page 05-02 of the plans), and demonstrated that the resulting average unit size would be significantly below the average unit size of other residential rental units in Manhattan Beach and other Southern California coastal rental markets. The applicant has provided substantial evidence to demonstrate that the requested waiver of the 30-foot height limit is reasonable, and not granting the waiver would have the effect of physically precluding the construction of the development with the associated density bonus.

Appellant #5 Andrew Ryan

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)…*

   "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 …"

   State law has strict requirements on how asbestos is removed prior to the demolition of a

structure as part of the construction process. The City requires asbestos testing and proper asbestos removal in accordance with State law occur as part of a demolition permit, which is obtained during plan check. Staff has attached the South Coast Air Quality Management District (AQMD) "Rule 1403 Frequently Asked Questions (FAQ)" handout (also available on the City's Building & Safety Division's website) that describes the asbestos removal process that all projects are required to abide by. As is the case in all residential and commercial demolition throughout the City, the proper disposal of lead-based paints and PCBs is regulated by County and state agencies.

2. "*Clearly, the fact that Chevron [initial study] 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 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 subterrain 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 [initial study] Report regarding the floating petroleum is dated September 5, 2019. (Exhibit B.)"

   Once again, 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 as they existed on the date the application was deemed complete," of a proposed project. The Chevron refinery property's Initial Study, which the appellant references, 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. Applying the California Government Code Section 65589.5 definition of "adverse impact," the appellant does not demonstrate how the groundwater conditions on the Chevron site are a significant or unavoidable impact of the Project. The appellant also does not point to any written material that quantifies any adverse impact of the proposed Project to demonstrate why the suspected impacts would be unavoidable using objective, identified written public health or safety standards, policies, or conditions.

   Furthermore, the applicant has conducted a Phase I and Phase II Environmental Site Assessment (ESA) (see attachment) for the project site. An ESA outlines the current and historical uses of a property 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 ESA concluded that there were no conditions detected on the site that pose a threat to the environment and/or human health.

Once again, there are strict rules employed during construction regarding the removal of asbestos and similarly harmful materials.

3. *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."… 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 appellant mischaracterizes the requested waiver from the local maximum height requirement as an "incentive". State density bonus law distinguishes waivers from incentives or concessions, with waivers from development standards used when the development standard physically precludes the construction of a development.

   California Government Code Section 65915 (e)(1) states that "in no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section." Furthermore, pursuant to California Government Code Section 65915, the applicant is entitled to unlimited waivers and a certain number of concessions; not either or.

4. *The City initially agreed with this [36-foot max height] 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.*

   Staff delivered the referenced corrections to the applicant regarding the building's height on April 5, 2021, after reviewing the applicant's first submittal, at which time the specific waivers and concessions had not been identified. Over the course of the review (seven total rounds), the applicant specified that a waiver is requested from the maximum height requirements. Thus, staff's height corrections from the first round of review became void once the applicant requested, and staff evaluated, the waiver from the height requirements.

   The Community Development Director approved the Precise Development Plan and associated entitlements on March 29, 2022, and the approved plans included the request for the height waiver. The Planning Commission affirmed the Community Development Director's approval of the Project and the associated waiver from the height requirements. The Planning Commission did not "reverse the findings and interpretation of the initial plan reviewer" as the appellant claims, but rather affirmed the Community Development Director's approval of the Project, inclusive of the height waiver which nullified Staff's height comments from the first round of review.

5. *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… 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.

The provision the appellant cites in MBMC Section 10.12.030 requiring a "city-wide election" would only be required if the City would propose an amendment of the specified development standard(s) for an entire zoning district. The provision the appellant cites does not prevent the City from granting a higher maximum building height or other increases in development standards for specific projects where such increases are explicitly allowed by both State law and local regulations, like projects that are granted variances or density bonuses with an associated waiver from the City's maximum height requirement.

A City-wide election is not required for the Project because the City is not proposing to change the maximum height requirement for the North End Commercial zoning district where the Project is located, but is rather granting the applicant a waiver from the City's maximum height requirement as allowed by California Government Code Section 65915 and MBLCP Chapter A.94.

6. *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.*

   California Government Code Section 65915 (f)(2) states that density bonus projects that set aside 11% of the units as "very low income" are entitled to a 35% density bonus. The percentage of affordable units is based on the base density of the project, or the number of units that are allowed on the site if the project did not include a density bonus. Per MBLCP Section A.12.030, the site has a base density of 51 units, with one unit allowed for every 850 square feet of land. Eleven percent of 51 units is 5.61, resulting in the Project proposing six very low income units.

   See the attached analysis that summarizes the calculations for the total units allowed on the site per State density bonus law, and includes the 10% lot consolidation bonus allowed under MBLCP Section A.12.030(T) and the 35% density bonus allowed under California Government Code Section 65915 (f)(2). Per California Government Code Section 65915 (q), "each component of any density calculation, including base density and bonus density, resulting in fractional units shall be separately rounded up to the next whole number."

7. *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.

As mentioned previously, the Phase I ESA states "the [Chevron] Refinery is not considered to represent a significant environmental concern to the Site at this time."

In the event that the Project is approved, and prior to issuance of building permits, the City's Building and Safety Division, Public Works Department, and Fire Department will thoroughly review the Project's construction documents via the "plan check" process, during which the Project will be vetted to ensure compliance with the State Building Code and the City's Municipal Code. The Project is required to abide by all construction regulations applicable to all projects. Thus, there will be no adverse impact on public health, public safety, or the physical environment as a result of the Project, and the required findings cannot be made in support of denial.

In sum, the appellant has not met the statutory requirements for demonstrating an "adverse impact", as the appellant also does not point to written material that quantifies the impact of the Project or its waivers and concession, to demonstrate why the impacts of the Project would be unavoidable using objective, identified written public health or safety standards, policies, or conditions.

CONCLUSION:

The purview of the City Council in its evaluation of this Project is limited to confirming compliance with all objective, applicable State and local regulations. Accordingly, and based on the evidence introduced in the record, staff recommends that the City Council affirm the Planning Commission's decision.

PUBLIC OUTREACH:

A courtesy notice for this City Council meeting was published in The Beach Reporter on August 4, 2022. The required public notice was mailed to all property owners and residents within a 100-foot radius of the project site on August 4, 2022, on which day staff also posted the notice at City Hall and on the City's website.

Staff received over 180 public comments between the day after the Planning Commission's decision (June 9, 2022) and the day before the public notice was mailed to nearby property owners and residents (August 3, 2022) (see attachment). The majority of these comments expressed opposition to the project.

Staff received 16 public comments between August 4 and August 9, 2022 (see attachment), with all comments expressing opposition to the project.

Staff has supplemented the notifications above by creating and maintaining a webpage dedicated to the Project on the City's website (www.manhattanbeach.gov/highrose <http://www.manhattanbeach.gov/highrose>). The webpage includes a project timeline to describe Project milestones, public comments received on the Project, and a thorough "frequently asked questions" section to provide context about the Project and the decision process. The Project webpage also has links to the project plans, the Community Development Director's March 29, 2022, decision, appellants' materials, other relevant documents, and contact information for both City staff

and the applicant.

Staff has also maintained an “interested parties” email list of over 470 interested parties, with staff periodically providing updates of important milestones, the City’s review process, and the appeal process (including the Planning Commission meetings).

ENVIRONMENTAL REVIEW:
Pursuant to the California Environmental Quality Act (CEQA), City has reviewed the proposed Project and has determined that pursuant to Section 21080 of the California Public Resources Code, no environmental review is required.

LEGAL REVIEW:
The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENTS:
1. Resolution No. 22-0124
2. Proposed Plans (Web-Link Provided)
3. Approval Decision - Director of Community Development (March 29, 2022)
4. Planning Commission Resolution No. PC 22-07
5. Planning Commission Draft Minutes (June 8, 2022)
6. Planning Commission Report, Attachments, and Related Material (June 8, 2022) (Web-Link Provided)
7. MBLCP Chapter A.94 Affordable Housing Density Bonus and Incentive Program (Web-Link Provided)
8. Compliance with Local Coastal Program- Implementation Plan and CA Gov Code 65915
9. Appellant Materials - Donald McPherson
10. Appellant Materials - Robert Schendel
11. Appellant Materials - George Bordokas
12. Appellant Materials - Mark Burton
13. Appellant Materials - Andrew Ryan
14. Applicant’s Architect’s Letter Regarding Ceiling Height (September 8, 2021)
15. Applicant’s Revised Study of Residential Rental Unit Size
16. Traffic Analysis Provided by Applicant
17. City Trip Generation Review (February 17, 2022)
18. Phase I and II Environmental Site Assessment (Web-Link Provided)
19. Public Comments (Received Between June 9, 2022 - August 10, 2022) (Web-Link Provided)
20. PowerPoint Presentation

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