



Legislation Text

File #: 23-0038, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Talyn Mirzakhanian, Acting Community Development Director
Ted Faturos, Associate Planner

SUBJECT:

Consideration of An Application for 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 (Acting Community Development Director Mirzakhanian).

(Estimated Time: 3 Hrs.)

AFFIRM THE DECISION OF THE PLANNING COMMISSION AFFIRMING THE COMMUNITY DEVELOPMENT DIRECTOR'S DECISION APPROVING THE PROJECT

RECOMMENDATION:

Staff recommends that the City Council repeal Resolution No. 22-0124 and affirm the decision of the Planning Commission.

SUMMARY:

On October 18, 2022, the City Council adopted Resolution No. 22-0124 overturning the Planning Commission's decision to affirm the Community Development Director's approval of the Highrose Project, thereby disapproving the Project.

The Applicant filed a lawsuit alleging that the denial resulted in a taking without just compensation and violated the Housing Accountability Act (HAA) and the State Density Bonus Law. The Complaint seeks "in excess of \$52 million" and recovery of attorney's fees incurred in connection with the litigation. Three housing advocacy organizations also notified the City of their intent to bring lawsuits challenging the City's denial of the Project if the City Council does not conduct a rehearing.

On November 28, 2022, the California Department of Housing and Community Development (HCD) served a "Notice of Violation" on the City, asserting that the denial violated the HAA and the State Density Bonus Law. The Notice of Violation is attached.

If a court finds that the City has denied a project in violation of the HAA, the court must order that the City comply with state law within 60 days, which may involve the court compelling the City to approve

the Project. In addition, Government Code Section 65589.5(k)(1) provides that the court shall award the petitioner attorney's fees and costs of suit.

Under the HAA, if a proposed housing project complies with applicable, objective General Plan, zoning, and subdivision standards and criteria (as the Highrose Project does), a city may disapprove the proposed housing development project only 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.”

According to HCD, there is no evidence in the record of any specific adverse impact upon the public health, safety or welfare, caused by the proposed Project, that justifies denial of the Project under the HAA. The Notice states:

“The contents of City Council Resolution No. 22-0124, inclusive of the administrative record and documents cited by the Mayor during Council's deliberation, do not satisfy the statutory requirements for written findings of denial applicable under the HAA (Gov. Code, §65589.5) and SDBL (Gov. Code, § 65915).

HCD listened to the City Council's deliberations at both meetings, and while councilmembers expressed a variety of concerns, none identified a specific adverse impact that would support Project denial. At the meeting on October 18, 2022, the Council discussed Assembly Bill 2011 (Chapter 647, Statutes of 2022) insofar as this law contains a provision removing certain projects located near oil refineries, such as the Project, from eligibility for CEQA streamlining. Even if it had been in effect at the time of the Project application, AB 2011 is irrelevant to the Project for many reasons, including: (1) the Project does not seek CEQA streamlining under AB 2011; (2) the City's existing planning documents (e.g., General Plan, Local Coastal Program) permit residential uses on the site; and (3) CEQA and other environmental impact assessments have been performed to permit residential land uses on the site.”

In addition, after the Council's denial of the Project, HCD notified the City that it would not certify the City's Housing Element. HCD's notification stated that further revisions to the City's Housing Element will be necessary to comply with the State Housing Element Law, in large part due to the City Council's denial of the Project. The notification stated that:

“The element may utilize pending, approved, permitted or under construction projects toward the regional housing need allocation (RHNA) and lists the 79-unit Verandas

project. However, HCD understands the City has denied the project The element must either demonstrate the availability of these units in the planning period or remove the sites or units as appropriate. If continuing to utilize the project toward the RHNA, the element should include a program that will identify additional sites by a specified date if the project is not approved in a timely manner.”

Further state action in response to the denial may be imminent. In 2021, California Attorney General Rob Bonta created the Housing Strike Force, which, according to the Attorney General’s website, is “made up of a dozen state Justice Department lawyers who will use new powers to initiate enforcement on cities and counties failing to build their fair share of new homes.” In one recent example of his increased emphasis on housing development, Attorney General Bonta announced in March 2022 that “he is prepared to hold the City of Encinitas accountable for its denial of a housing project if the city fails to take corrective action to approve a modified version of the project.” Attorney General Bonta alleged that Encinitas’ decision to deny the housing project violated the Density Bonus Law, the Housing Accountability Act, and its state law obligation to affirmatively further fair housing.

In response to the Notice of Violation, pending litigation with the Applicant, and threatened lawsuits by housing advocacy groups, the Council is considering the project again.

BACKGROUND AND ANALYSIS:

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. A thorough project description and analysis are provided in the prior staff reports attached (see linked attachments).

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. On March 29, 2022, the Community Development Director approved the Precise Development Plan and associated entitlements for the Project, determining, among other determinations, the Project is consistent with applicable provisions of the General Plan and the City’s Local Coastal Program. The Director’s decision is hereby incorporated by this reference.

Donald McPherson, Susan Bales and Richard MacKenzie, George Bordokas, and Andrew Ryan appealed the Director’s decision. On June 8, 2022, by a 5-0 vote, the Planning Commission affirmed the Community Development Director’s approval of the Project. Donald McPherson, Ronald Schendel, George Bordokas, Mark Burton, and Andrew Ryan appealed the Planning Commission’s decision.

Appellants and other persons opposed to the Project expressed concerns related to parking, traffic and building height, among other issues. Many members of the public have urged the City to conduct further environmental review pursuant to the California Environmental Quality Act (CEQA), primarily due to the site’s proximity to the Chevron Refinery and concerns about demolition, excavation, and

construction. Appellants have claimed that the CEQA exemption for ministerial projects does not apply in this case for a number of reasons, including recently adopted State legislation concerning the development of certain housing projects near a facility that actively extracts or refines oil or natural gas. As previously noted in earlier staff reports, and as stated in HCD's Notice of Violation, the recently adopted legislation does not apply. Opponents also claimed that state housing laws are unconstitutional, deprive neighbors of due process, and unlawfully take away local control from the City. Similar arguments were raised in a case involving the City of San Mateo. In that case, the Court of Appeal held that San Mateo's denial of a housing project violated the HAA because the denial was not based upon objective standards. The court further rejected each of San Mateo's constitutional claims, including that the HAA violates the due process rights of neighboring landowners.

The Court of Appeal noted: "[T]he HAA does not wrest control from local governments so much as require them to proceed by way of clear rules adopted in advance, rather than by ad hoc decisions to accept or reject proposed housing." Here, the City Council adopted clear rules in 2013 in its General Plan that established the objective standards and ministerial review process that facilitated the Project.

As demonstrated in more detail in prior staff reports, neither the City nor the public have identified any basis for denying the Project, or requiring more environmental review. Simply put, no one has identified a specific adverse impact upon the public health, safety or welfare created by developing housing on the site.

After considering the Project at a number of City Council meetings, the Council adopted Resolution No. 22-0124 (see attachment) to overturn the Planning Commission's decision to affirm the Community Development Director's approval of the Project, thereby disapproving the Project.

In November 2022, the Applicant filed a lawsuit against the City alleging that the City Council's action resulted in a taking without just compensation and violated the Housing Accountability Act and the State Density Bonus Law. The lawsuit seeks, among other things, damages and a writ ordering the City Council to approve the Project. The Complaint seeks "in excess of \$52 million" and recovery of attorney's fees incurred in connection with the litigation.

On November 28, 2022, the California Department of Housing and Community Development (HCD) served a "Notice of Violation" on the City, asserting that the denial violated state housing laws (see attachment). HCD demanded that the City respond to the notice by December 28, 2022. According to the letter, Manhattan Beach's "response should include, at a minimum, a specific plan and timeline for corrective action, including (1) the repeal of the City's resolution denying the Project and (2) the reconsideration and approval of the Project as proposed." The letter indicates that "After [December 28, 2022], HCD may move forward with any of the actions authorized by Government Code section 65585, subdivision (j), including, but not limited to, referral to the California Office of the Attorney General." In addition, HCD notified the City in November that further revisions to the City's 6th Cycle (2021- 2029) Adopted Housing Element will be necessary to comply with the State Housing Element Law, in large part due to the City Council's denial of the Project.

In addition, Californians for Homeownership ("CFH") notified the City that CFH and two other housing advocacy groups (YIMBY Law and California Renters Legal Advocacy and Education Fund) also intend to bring lawsuits challenging the City's denial of the Project if the City Council does not conduct a rehearing.

In response to HCD's Notice of Violation and pending litigation, the Council is considering the Project again.

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 repeal Resolution No. 22-0124 and affirm the Planning Commission's decision.

PUBLIC OUTREACH:

The City notified the Applicant, Appellants and interested parties on January 9, 2023 that the Council would be considering this item on January 19, 2023. The Beach Reporter published notice of this item on January 12, 2023. In addition, public notice was mailed to all property owners and residents within a 100-foot radius of the project site on January 10, 2023, on which day staff also posted the notice at City Hall and on the City's website.

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>](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 730 interested parties, with staff periodically providing updates of important milestones, the City's review process, and the appeal process (including the Planning Commission meetings).

ATTACHMENTS:

1. Resolution No. 23-0014
2. HCD Letter- November 28, 2022
3. Community Development Director's Decision- March 29, 2022
4. Web-Links Provided for Additional Attachments
5. PowerPoint Presentation