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

JUNE 8, 2022

PLANNING COMMISSION



BACKGROUND

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- March 4, 2021- Applicant applies for Precise Development Plan and associated entitlements.
- January 6, 2022- Project application is deemed complete.
- March 29, 2022- Community Development Director issues approval decision.
- April 2022- Four independent appeals submitted.
- June 8, 2022- Planning Commission review.



BACKGROUND

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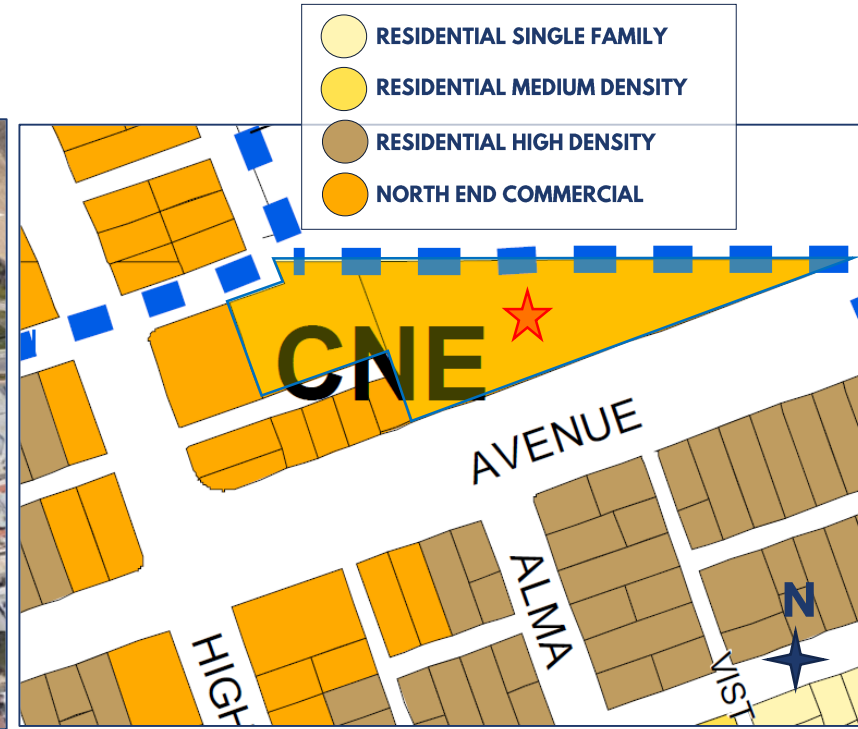
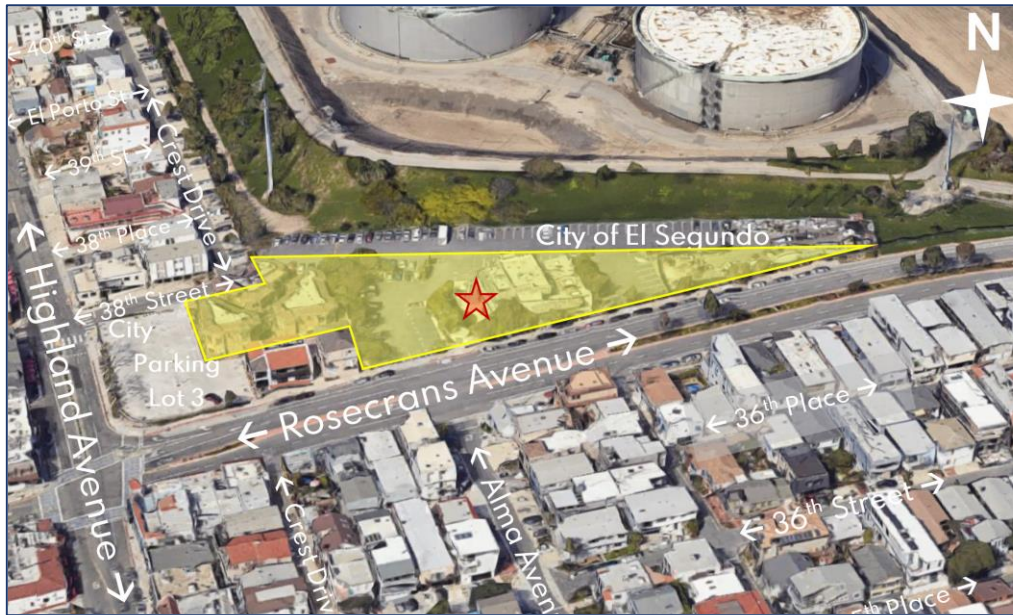


- Two lots- 401 Rosecrans Avenue and 3770 Highland Avenue
- CNE zone, Area District III (Non-appealable coastal zone)
- 43,648 square-foot site size
- Former banquet facility (Verandas- 401 Rosecrans Ave) and commercial building (Tradewinds Vil.- 3770 Highland Ave)



VICINITY & ZONING MAPS

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



GOVERNING REGULATIONS

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



GENERAL PLAN & HOUSING ELEMENT

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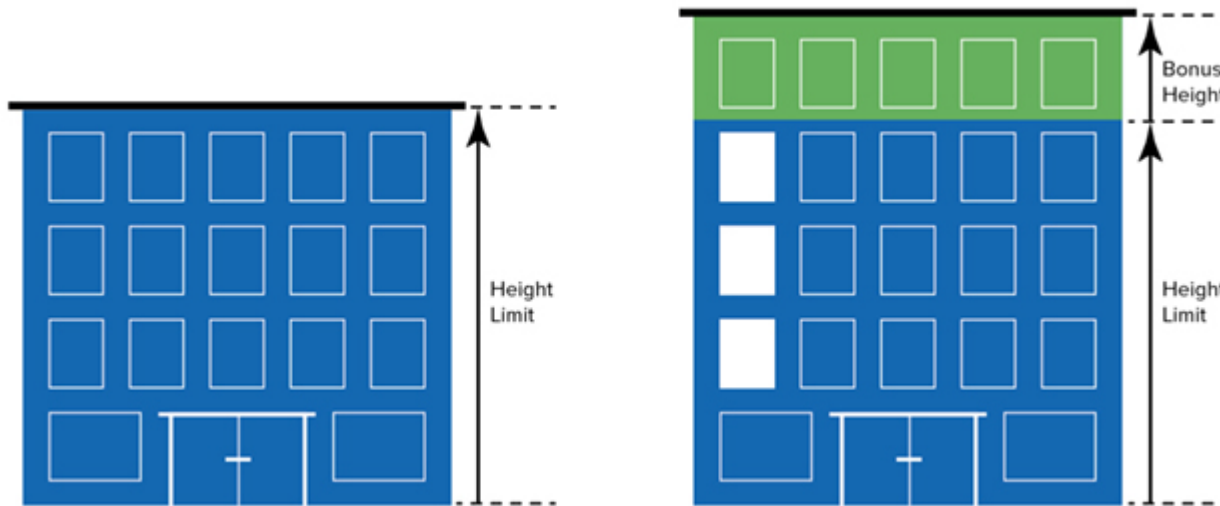
- General Plan- North End Commercial
 - High density residential allowed
- 5th Cycle Housing Element
 - Goals, policies, programs



STATE DENSITY BONUS LAW

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



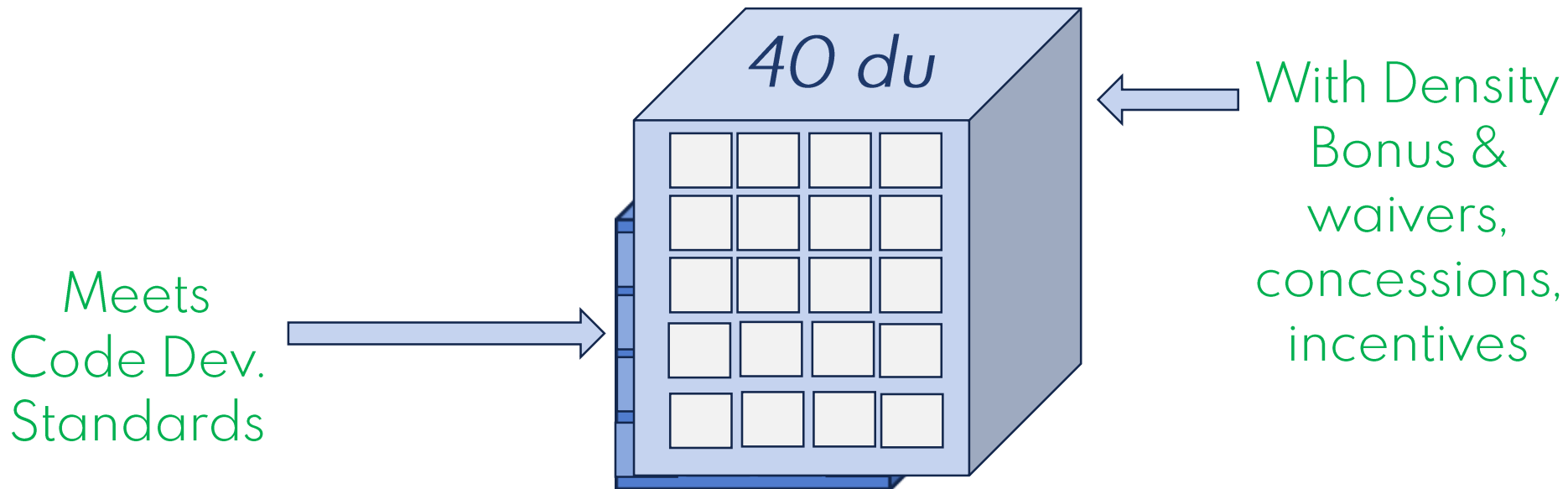
State > Local



STATE DENSITY BONUS LAW

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WAIVERS, CONCESSIONS & INCENTIVES



Meets
Code Dev.
Standards

With Density
Bonus &
waivers,
concessions,
incentives

 = Standard Sized Unit



LOCAL COASTAL PROGRAM

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- MBLCP Chapter A.16- C Commercial Districts > A.12
 - Lot Consolidation Bonus (A.12.030 (T))
- MBLCP Section A.84.010 Purposes
 - “Precise development plans are intended to encourage the development of affordable housing through a streamlined permitting process. Projects that qualify for a density bonus pursuant to Chapter A.94 shall be eligible for an administrative non-discretionary precise development plan.”
- MBLCP Chapter A.94 Affordable Housing Density Bonus and Incentive Program



DISCRETIONARY VS NONDISCRETIONARY

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

Discretionary project means 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.



NON-DISCRETIONARY/ MINISTERIAL

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

“Ministerial” describes a governmental decision involving little or no personal judgment by the public official 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...”



PROJECT OVERVIEW

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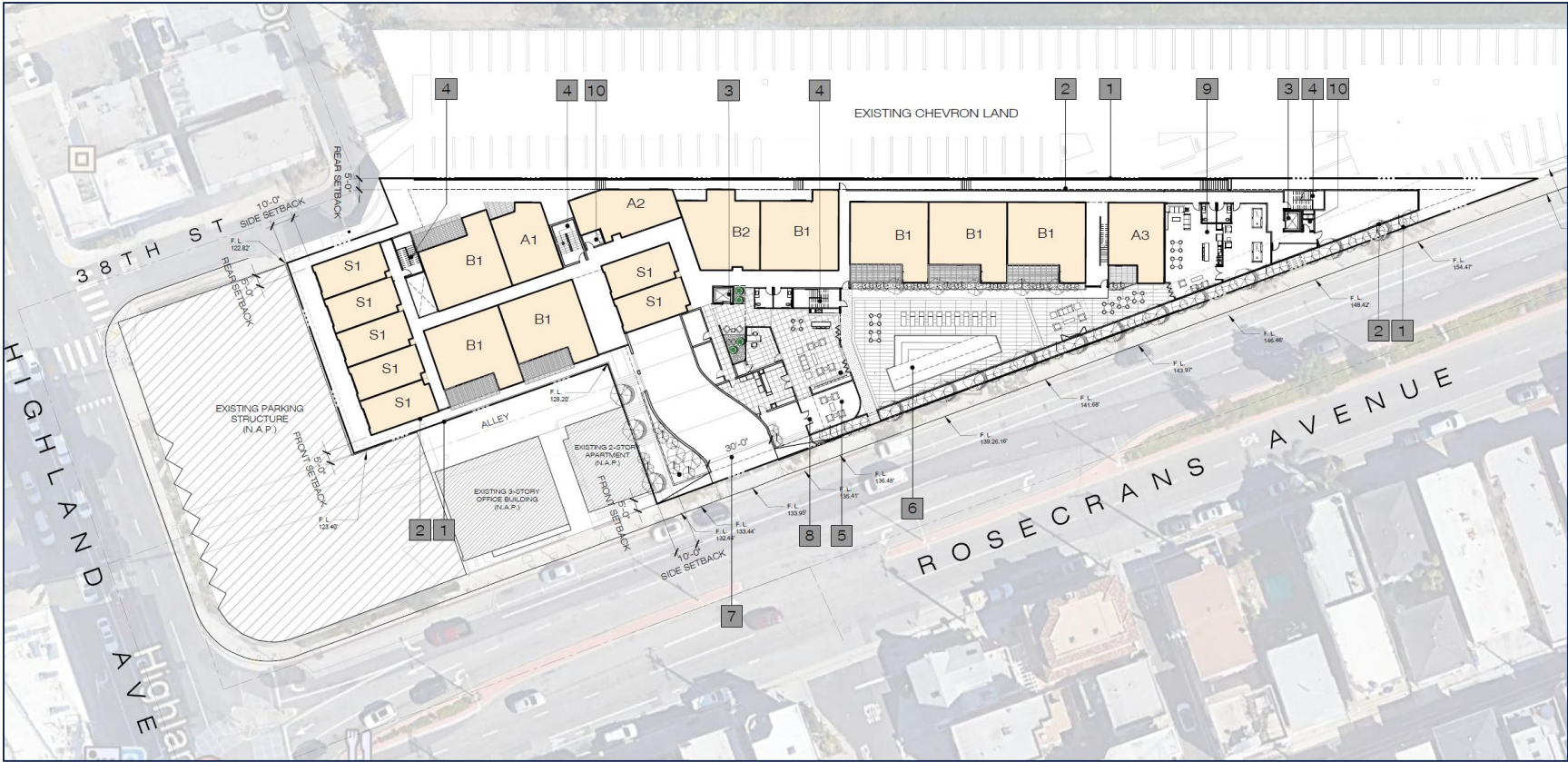
- Precise Development Plan (PDP-21-00001)
- Coastal Development Permit (CDP-21-00015)
- Tentative Parcel Map (SUBDIV-21-00002)
- Demolition of existing structures
- Merger of two lots (Tentative Parcel Map No. 083628)
- Construction of new 96,217 square-foot multi-family structure



PROJECT OVERVIEW

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- Vehicular access from Rosecrans Avenue
- Subterranean parking structure



PROJECT OVERVIEW

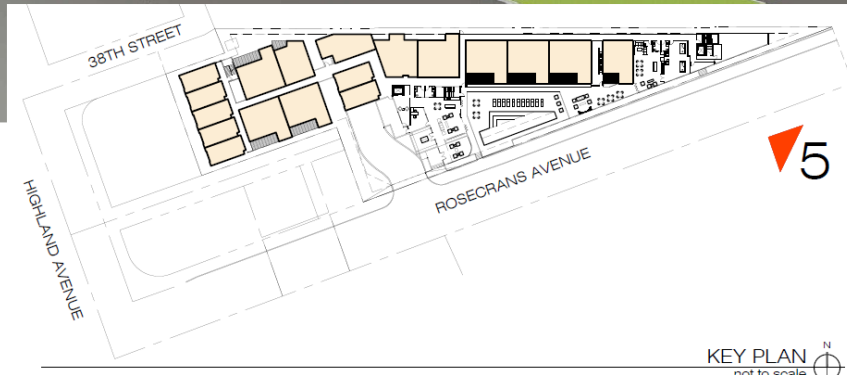
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- 79 units, with six units set aside for “very low income”
- Four stories at tallest point
- 37-50 feet in height
- Mix of studio, one, two, and three-bedroom units
- Courtyard facing Rosecrans Avenue
- Parking
 - 114 standard-sized parking
 - 13 compact-sized parking
 - 7 motorcycle parking
 - 27 bicycle parking
- Affordable Housing Agreement with City
 - 55 years deed restricted
 - Verification process



PROJECT OVERVIEW

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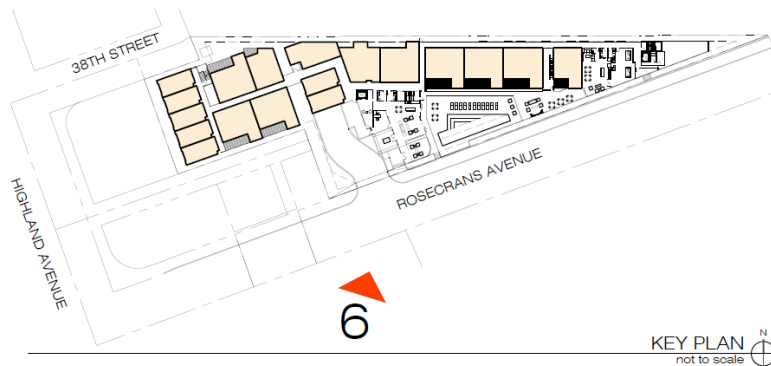


KEY PLAN
not to scale



PROJECT OVERVIEW

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KEY PLAN
not to scale



PROJECT OVERVIEW- FACING NORTH

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

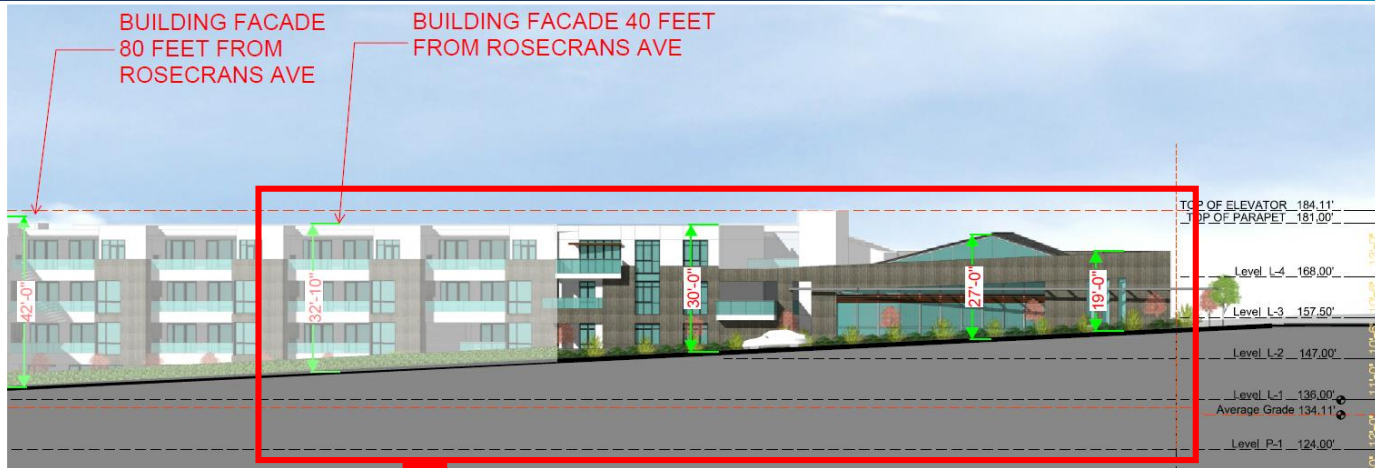
BUILDING FACADE 80 FEET FROM ROSECRANS AVE

BUILDING FACADE 40 FEET FROM ROSECRANS AVE



PROJECT OVERVIEW- FACING NORTH

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PROJECT OVERVIEW

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



GENERAL PLAN CONSISTENCY

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



GENERAL PLAN CONSISTENCY

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



GENERAL PLAN CONSISTENCY

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



DEVELOPMENT STANDARDS

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



SUBDIVISION REQUIREMENTS

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



LOCAL COASTAL PROGRAM

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



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



APPEALS

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- Four independent appeals filed
 - Donald McPherson
 - Susan Bales and Richard MacKenzie
 - George Bordokas
 - Andrew Ryan
- MBLCP Section A.96.160 requires the Planning Commission to consider appeals of Community Development Director's decision



CRITERIA FOR REVIEW

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



CRITERIA FOR REVIEW

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



APPEAL #1: MCPHERSON

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- *Requires an EIR to account for housing units required in 6th Cycle Housing Element*
 - Ministerial projects are not subject to CEQA
- *Proposes two alternative projects*
 - Staff only reviews submitted applications
- *Average unit size without waivers/concessions = 871 sq ft*
 - Appellant has not provided plans/studies
 - Applicant provided substantial evidence for design without waivers/concessions = 490.9 sq ft



APPEAL #2: BALES/MACKENZIE

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- *Requests “environmental impact be studied”*
 - Ministerial projects are not subject to CEQA
- *Not enough parking*
 - Exceeds minimum parking requirements outlined in Government Code Section 65915(p)(1)
 - Also provides motorcycle and bicycle parking
- *More residents, more traffic, more congestion*
 - Applicant’s traffic analysis = fewer trips generated
 - Independently confirmed by City’s Traffic Engineer
 - Enhanced pedestrian safety on 38th Street with improved sidewalk



APPEAL #2: BALES/MACKENZIE

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- *Ministerial, non-discretionary process undermines local decision making*
 - State density bonus law requires expeditious review
 - City requires administrative, non-discretionary review of density bonus projects with a Precise Development Plan
 - Ministerial review adopted by City in 2013
- *State density bonus law is a loophole for developers to overbuild*
 - City must follow all local and State laws
 - State density bonus law has clear criteria designed to encourage housing production



APPEAL #3: BORDOKAS

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- *Granting waivers means ignoring the code.*
 - Applicant provided reasonable documentation to support waivers and concessions
 - CA Govt Code 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.”



APPEAL #3: BORDOKAS

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- *Height waiver is fundamental to the project and exceeds height allowable and should be reduced to meet the 30ft limit.*
 - Applicant provided evidence to show that 30-foot height limit physically precludes the building of housing



APPEAL #3: BORDOKAS

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- *Director does not have authority to review/approve PDPs*
 - MBLCP Section A.84.020 states: “The Community Development Director shall approve, conditionally approve, or disapprove applications for minor exceptions and precise development plans.”
- *Director’s findings in granting approval does not justify the variances granted.*
 - Applicant has not applied for a variance
 - State density bonus law allows waivers and concessions
 - Waivers and concessions are not variances



APPEAL #4: RYAN

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- *Project's proximity to Chevron site creates an "adverse impact" on public health*
 - "Adverse impact" defined by CA Govt Code 65589.5 as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."



APPEAL #4: RYAN

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Cont'd

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



APPEAL #4: RYAN

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- *Two-story deep excavation presents a hazard and therefore poses an “adverse impact” on public safety*
 - If approved, project goes through “plan check”
 - Appellant has not met statutory requirements for demonstrating “adverse impact”
- *The City cannot grant an “incentive” to allow a building’s height to exceed 20% of the 30-foot maximum height limit*
 - Applicant has requested a waiver from the building height, not an incentive/concession
 - Waivers differ from incentives



APPEAL #4: RYAN

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



APPEAL #4: RYAN

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

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



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- *MBMC Section 10.94.040 only allows for a single “incentive”, not multiple incentives*
 - Applicant only requesting one incentive/concession
 - State law allows for two incentives/concessions
 - Waivers differ from incentives/concessions
- *The project’s lot merger will result in a lot that exceeds the 7,000 square-foot maximum lot size*
 - MBLCP Section A.12.030 (U) states “Multi-family residential developments meeting the minimum requirements for a density bonus pursuant to Chapter A.94 shall be exempt from these maximum lot size limitations.”



PUBLIC NOTIFICATION/OUTREACH

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- Notice mailed Jan 6, 2022 for Director's consideration of project
 - Decision made on March 29, 2022- exceeded minimum 7-day noticing requirement
- Notice mailed on May 26, 2022 for Planning Commission meeting
- Courtesy ad in The Beach Reporter- March 26, 2022
- Webpage- www.manhattanbeach.gov/highrose
- Interested parties email list
 - Over 300 email addresses



PUBLIC COMMENT

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- Jan 6, 2022 – May 25, 2022
 - Dozens of public comments
 - Mostly against, some in favor
- May 26, 2022 – June 2, 2022
 - Three public comments, all in favor
- June 3, 2022- 1:00 p.m. Today
 - 13 public comments, 1 in favor, 12 oppose



RECOMMENDATION

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



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JUNE 8, 2022

PLANNING COMMISSION

