

Martha Alvarez, MMC

From: Richard G <dr.rgmac@gmail.com>
Sent: Thursday, January 19, 2023 3:44 PM
To: List - City Council
Cc: info@chillthebuild.com
Subject: [EXTERNAL] Fwd: Living near natural gas flaring poses high risks for pregnant women, babies

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

cf with present controversy re gas stoves.

Sent from my iPhone

Begin forwarded message:

From: Chill The Build <info@chillthebuild.com>
Date: January 19, 2023 at 2:04:57 PM PST
To: Richard G <dr.rgmac@gmail.com>
Subject: Re: Living near natural gas flaring poses high risks for pregnant women, babies

Thank you for this.

On Wed, Oct 26, 2022 at 5:58 AM Richard G <dr.rgmac@gmail.com> wrote:

Another reason why HighRose would be a community disaster

<https://news.usc.edu/173335/natural-gas-flaring-pregnant-women-babies-health-risks-usc-research/>

Sent from my iPhone

Martha Alvarez, MMC

From: Mark Nelson (Home Gmail) <menelson@gmail.com>
Sent: Thursday, January 19, 2023 4:50 PM
To: List - City Council
Subject: [EXTERNAL] Oppose HighRose/Veranda Project Approval

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear Councilmembers:

As Mark Burton and others have highlighted, the City is not obligated to approve this project. It is too big, too tall, and built next to an industrial site. Please reject it.

Sincerely,

Mark Nelson

Martha Alvarez, MMC

From: Mark Nelson (Home Gmail) <menelson@gmail.com>
Sent: Thursday, January 19, 2023 4:47 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Honorable City Councilmembers:

I strongly urge you to vote NO to the HighRose/Veranda's project...again.

The City has a duty and responsibility to assess the health and safety implications of building any housing unit next to the Chevron refinery (on record as one of the biggest polluters in the state). As of January 9th, we understand the City has not hired outside land use legal experts and that should give the City pause. It is the City Council's job to make sure no stone has been unturned before a decision is made, that will not only have negative health and safety issues placed upon Manhattan Beach citizens, but will forever change our low-profile character, with the real possibility of this becoming predominantly a short-term rental facility.

It is once again time to show residents an example of strong leadership and not succumb to fear mongering without hearing experts that have a sound legal basis to support the City's prior decision to deny this project. Please do the right thing, demonstrate political courage, raise every good faith legal argument available, and act as our leaders to safeguard the City's general welfare on behalf of the residents of our special community.

Sincerely,

Mark Nelson
Expert Witness
Retired Edison Executive

Martha Alvarez, MMC

From: Richard Ralph <rralph6696@aol.com>
Sent: Thursday, January 19, 2023 4:38 PM
To: List - City Council
Subject: [EXTERNAL] Highrose: Points for Consideration

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear Honorable Mayor Napolitano, Mayor Pro Tem Montgomery, and Council Members Franklin, Howorth and Lesser:

There are a few points I'd like to make regarding the Highrose mess, because at this point that's what we have here. To clarify, I am against the Highrose/Verandas project as proposed. I am against the fact that this decision is being re-heard. And I question whether the appellants due process rights have been violated since the City Council is getting a second bite of the apple based on some unknown data point development, yet the appellants are unable to have the appropriate time to officially respond or present at the hearing on January 19, 2023. Hopefully the City Attorney can address this legal concern.

1. There is absolutely no valid reason that the original City Council vote that took place denying Highrose should be undone because of scare tactics as there are no new data points that exist that should reverse the original decision. If fact, one former Council Member mentioned her wish was to have this settled in the courts once and for all. This re-vote makes the process repetitive, not necessary and has questionable motivations and creates horrible precedent.
2. You all received the letter by now that was sent from Chill The Build's attorney, Rick McNeil, to the Housing Community Development (HCD). Why did the city fail to hire promptly an expert land use attorney to fully advocate the city's already determined position to deny the HighRose/Verandas Project? Residents even tossed some names in the ring to our City Attorney who was waiting for your guidance which appears to have fallen flat.
3. What Mayor Napolitano stated as his rationale to deny the project legally, makes perfectly good sense. The refinery pollutes. The pollution issue cannot be mitigated. We have evidence of continual fires and burn offs at the refinery facility and those cannot be mitigated and harm human health. The worst was an actual explosion that took place years ago and if you look at historical photos, you'll see that the area consumed in the black cloud of toxic smoke was right over the Highrose land. And then there is the land concern. The city is relying on Environ reports that are not complete, have errors and are old (over five years). The city is relying on stale environmental information to make a current decision and that is unacceptable.
4. You cannot ignore the fact that this project takes away city parking from beach visitors. There is no designated employee parking or guest parking for the project and the number of parking spots in the plan are not enough, so we will see an influx of residents that need parking in the area and that blocks people from visiting the beach and that is a Coastal Commission violation. The discussions of building a 9 million dollar plus garage improvement hasn't been secured as a project in the works and cannot be relied upon for the decision of this project. Nor should we be spending \$9 million dollars to gift a developer to a problem he is creating.
5. I wrote YIMBY and this is my correspondence below. You will have to read from the bottom to the top for chronological order. I believe they had equal concern about building affordable housing next to refineries, but are ignoring the fact that the Highrose/Verandas project is next to a refinery as I understand they have threatened a lawsuit. Don't you find this a little hypocritical given the nature of Highrose and its proximity to the refinery?

_____ BEGINS CORRESPONDENCE WITH RAFA SONNENFELD FROM YIMBY

9/20/22 from RICHARD RALPH TO:

Hi Rafa,

That's a huge concern considering just the one example of the explosion that occurred at the Chevron Richmond refinery in 2012. I wish I had all the answers. And I am thankful for organizations like Communities for a Better Environment (CME) that champion these issues.

My concerns are very specific to the language in AB2011 and the 3200' setback for NEW affordable housing structures.

Does your organization support all of AB2011?

I would prefer not to see new housing being placed in harms way, near refineries and/or oil wells knowing what we know in this day and age and the dangers that exist with regard to human life and safety.

Regards,
Richard

Sent from my iPhone

On Sep 20, 2022, at 3:31 PM, Rafa Sonnenfeld <rafa@yimbylaw.org> wrote:

I appreciate your concern Richard. What do you think we should do about housing that is already within 3200 feet of a refinery? For example, almost the entire city of Martinez is within 3200 feet of the Shell refinery in Contra Costa Co.

On Fri, Sep 16, 2022 at 3:03 PM RICHARD RALPH <rralph6696@aol.com (<mailto:rralph6696@aol.com>)> wrote:
Hi Rafa,

Thanks for getting back to me. Just to clarify, the language includes both oil wells and facilities that actively refine oil (refineries). My specific concern is refineries and I want to educate others regarding the concerns the state, organizations like yours and myself have regarding new housing being placed in harms way near active oil wells and/or refineries.

Regards,
Richard

Sent from my iPhone

On Sep 16, 2022, at 2:24 PM, Rafa Sonnenfeld <rafa@yimbylaw.org (<mailto:rafa@yimbylaw.org>)> wrote:

Hi Richard,

Yes, we support all of AB 2011. The language in AB 2011 aligns with the goals of SB 1137, which sets a new 3,200 setback so that new oil wells can't be proposed near "a residence, education resource, community resource, health care facility, dormitory, or any building open to the public"

Best,

Rafa Sonnenfeld he/him
Director of Legal Advocacy

(<https://www.yimbylaw.org/>)

On Tue, Sep 13, 2022 at 7:58 PM Sonja Trauss <sonja@yimbylaw.org (<mailto:sonja@yimbylaw.org>)> wrote:
Hi Rick,

Thank you for your email. I'm adding Rafa who will be able to answer your question.

Sonja

On Tue, Sep 13, 2022 at 5:23 PM RICHARD RALPH <rralph6696@aol.com (<mailto:rralph6696@aol.com>)> wrote:

Hi YIMBY organization,

It's my understanding the YIMBY supports the new legislation, AB2011, that now awaits Gov'n Newsom.

I am interested in the section of AB2011 below and getting a better understanding of YIMBY's position, specifically item (e) below. ("(e) None of the housing on the site is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.")

What is YIMBY's stance on building housing near oil wells or oil refineries within a 3200 foot setback?

Does YIMBY support all of AB2011?

Sincerely,

Rick Ralph

Below is a section of AB2011
65912.113.

A development project shall not be subject to the streamlined, ministerial review process provided by Section 65912.114 unless the development proposal meets all of the following objective development standards:

(a) The development shall be a multifamily housing development project.

(b) The residential density for the development will meet or exceed the applicable density deemed appropriate to accommodate housing for lower income households in that jurisdiction as specified in paragraph (3) of subdivision (c) of Section 65583.2.

(c) (1) The development proponent shall complete a phase I environmental assessment, as defined in Section 25319.1 of the Health and Safety Code.

(2) If a recognized environmental condition is found, the development proponent shall undertake a preliminary endangerment assessment, as defined in Section 25319.5 of the Health and Safety Code, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(A) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with current state and federal requirements.

(B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with current state and federal requirements.

(d) None of the housing on the site is located within 500 feet of a freeway, as defined in Section 332 of the Vehicle Code.

(e) None of the housing on the site is located within 3,200 feet of a facility that actively extracts or refines oil or natural gas.

Sent from my iPhone

_____Ends correspondence from Rata Sonnenfeld from YIMBY

Conclusion:

In conclusion, at a minimum, delay this project decision so the city can get the proper environmental assessment done, hire a proper qualified land use attorney to guide the city down the best path, or deny the project on the same grounds Mayor Napolitano denied it last go around. Let's be done being scared by the HCD, YIMBY and other organizations and show them why. If I can find this information as a mere resident, certainly the city has the resources to at least approach this with more professional land use expertise the city now needs in order to do what's best for its residents. I would gladly forego any logos on the El Porto city sidewalks costing hundreds of thousands of dollars that might instead go to a greater community concern.

Sincerely,

Rick Ralph
25+ year Manhattan Beach resident

Martha Alvarez, MMC

From: VALERIE DIAZ <d.diazfamily@verizon.net>
Sent: Thursday, January 19, 2023 4:35 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Honorable City Councilmembers:

I strongly urge you to vote NO to the HighRose/Veranda's project...again.

The City has a duty and responsibility to assess the health and safety implications of building any housing unit next to the Chevron refinery (on record as one of the biggest polluters in the state). As of January 9th, we understand the City has not hired outside land use legal experts and that should give the City pause. It is the City Council's job to make sure no stone has been unturned before a decision is made, that will not only have negative health and safety issues placed upon Manhattan Beach citizens, but will forever change our low-profile character, with the real possibility of this becoming predominantly a short-term rental facility.

It is once again time to show residents an example of strong leadership and not succumb to fear mongering without hearing experts that have a sound legal basis to support the City's prior decision to deny this project. Please do the right thing, demonstrate political courage, raise every good faith legal argument available, act as our leaders to safeguard the City's general welfare on behalf of the residents of our special community.

Valerie diaz
Sent from my iPhone

Martha Alvarez, MMC

From: Bernard Wong <bernardwong2@gmail.com>
Sent: Thursday, January 19, 2023 4:21 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers and Lesser, too:

I strongly urge you to vote NO to the HighRose/Veranda's project...again.

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Sincerely, wtf?

A very concerned Bernard Wong

sent from my iPhone, please excuse any typos and other mistakes.

Martha Alvarez, MMC

From: Robert Nall <nalledge@me.com>
Sent: Thursday, January 19, 2023 3:35 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers:

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I will add another critical point and one of great concern to me - in my opinion this is an example of the developers in and around our state that have no interest in any thing other than seizing upon opportunities to make bank on the back of communities that mean nothing to them. The fact that they argue for affordable housing is a JOKE! They will clean up at the expense of our neighborhood community - can't let that happen!

Sincerely,
Robert Nall
2100 Grandview Ave

A very long time and concerned resident

Martha Alvarez, MMC

From: Amy Hawkes <amhawkes26@gmail.com>
Sent: Thursday, January 19, 2023 3:18 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers:

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Sincerely,

A very concerned resident

Sent from my iPhone

Martha Alvarez, MMC

From: Mike C <artifiscal444@gmail.com>
Sent: Thursday, January 19, 2023 3:15 PM
To: List - City Council
Subject: [EXTERNAL] high rose project

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

To City Council,

It was unfortunate the developer did not engage with the community prior to drawing up plans. I think they would have found community support for a 3 story development, either commercial or mixed commercial/residential regardless of number of low income units.

In addition, theyve mentioned families will move in. But it is highly doubtful that any families with kids will ever move in. Responsible families will Not place their kids directly in front of breathable carcinogens.

-Mike (MB resident)

Martha Alvarez, MMC

From: bklobner42 <bklobner42@gmail.com>
Sent: Thursday, January 19, 2023 3:05 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

Importance: High

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Honorable City Councilmembers:

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Sincerely, Bret Lobner

A very concerned resident

Sent from my Verizon, Samsung Galaxy smartphone

Martha Alvarez, MMC

From: Nancy Pappas <mbnancypappas@gmail.com>
Sent: Thursday, January 19, 2023 2:54 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers:

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It is once again time to show residents an example of strong leadership and not succumb to fear mongering without hearing experts that have a sound legal basis to support the City's prior decision to deny this project. Thank you.

Sincerely,

Nancy Pappas

Martha Alvarez, MMC

From: Corina Sullivan <corinasullivan1964@icloud.com>
Sent: Thursday, January 19, 2023 2:06 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers:

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Sincerely,
Corina Sullivan
A very concerned resident

Sent from my iPhone

Martha Alvarez, MMC

From: Brett Thomas <Brett.Thomas@icpcal.com>
Sent: Thursday, January 19, 2023 1:40 PM
To: List - City Council
Subject: [EXTERNAL] HighRose Project

EXTERNAL EMAIL: Do not click links or open attachments unless you trust the sender and know the content is safe.

Dear City Council Members,

I am a lifelong resident of 38th Street, and am writing to reiterate my strong opposition to the HighRose project in its current proposed state.

We all knew that the lawsuits would come, so I hope that I am not alone in stating that nothing has changed since the previous City Council decision (thank you again for that!).

While the state's efforts to increase affordable housing are understandable, admirable, and should be taken seriously, it is imperative that we as a city and community get a say in where such additional units best fit physically and logistically, especially when a proposed project such as HighRose is simply using such state programs as a guise to circumvent local ordinances and build more *non*-affordable housing units than would otherwise be allowed.

I believe that we have the ability to provide a roadmap to additional housing in the city to appease the state and address the housing issue, and to also exemplify this greedy and deceitful plan to intentionally misuse well-intended state programs for a developer's personal gain.

Thank you for your continued support,

Brett Thomas
Industrial Commercial Properties
Office: (310) 715-1300
Email: brett.thomas@icpcal.com
CA DRE Broker License No: 01713881

Martha Alvarez, MMC

From: stephanie mclagan <mcmadr@gmail.com>
Sent: Thursday, January 19, 2023 1:37 PM
To: List - City Council
Subject: [EXTERNAL] Reject HighRose...again. Stand with the Residents.

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Honorable City Councilmembers:

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Sincerely,

A very concerned resident

The developer is seeking to utilize the Density Bonus Law codified in Government Code § 65915 by reserving 6 rental units for very low-income renters to qualify the project for a streamlined, administrative, non-discretionary Precise Development Plan review, pursuant to the City's local zoning laws, including its General Plan and Local Coastal Program. In order to facilitate making the development process easier, City staff mistakenly believes they can streamline this review by 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), and forego conducting a mandatory Environmental Impact Report as required by the California Environmental Quality Act.

City staff claims the City's 5th cycle Housing Element and LCP Section A.84.010 require an administrative, non-discretionary Precise Development Plan process for a project that qualifies for a density bonus pursuant to LCP Chapter A.94. City staff made findings unsupported by the evidence and made material misrepresentations of fact when the preliminary approval for the Project was initially made.

5th Cycle Housing Element. Policy 3 in the City's 5th cycle Housing Element is to, "Provide adequate sites for new housing consistent with the Regional Housing Needs Assessment." This Policy establishes incentives for low income housing in the North End Commercial District. One incentive is to allow rental multi-family housing developments that qualify for a density bonus under Government Code § 65915 are subject only to a non-discretionary Precise Development Plan to control the project design. But developing a low-income housing project adjacent to an oil refinery is not an adequate site for residential housing, and this Project doesn't qualify for a density bonus under Government Code § 65915 because the Project is a discretionary project subject to CEQA review and mandatory findings of significance require an Environmental Impact Report that has never been prepared.

LCP Section A.84.010. Section A.84.010 allows projects that qualify for a density bonus pursuant to Chapter A.94 shall be *eligible* for an administrative non-discretionary precise development plan. Being *eligible* for an administrative non-discretionary precise development plan review, is not the same thing as the LCP *requiring* an administrative non-discretionary precise development plan review. '*Eligible*' is defined as being 'qualified or entitled to be chosen.' Because eligibility requires a choice, this choice necessarily means the City must engage in discretionary decisionmaking prior to the Project becoming a ministerial project. In other words, the Project is a discretionary project before it becomes a ministerial project.

The California Environmental Quality Act (CEQA) is codified in Division 13 of the Public Resources Code, and Title 14, Division 6, Chapter 3, of the California Code of Regulations. The Housing Accountability Act (HAA) and the State Density Bonus Law (SDBL) are codified in Government Codes §§ 65589.5 and 65915, respectively. Both require that a local agency make specific written findings in order to lawfully

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deny a qualifying project. But a project can't be a qualifying project if it violates mandatory CEQA provisions. The lead agency improperly invoked a statutory CEQA exemption under the misguided conclusion that the Project is required to be treated as a ministerial project. In reality, the Project is required to be treated as a discretionary project because discretionary decisions are required prior to ministerial actions described in the City's local zoning laws are authorized to be conducted.

Actual ministerial projects are statutorily exempt from CEQA review, unless the project contains both a ministerial action and a discretionary action, in which case the project will be deemed to be discretionary and will be subject to the requirements of CEQA (see Statutory Exemptions, § 152689(d)). Moreover, mandatory findings require an EIR be prepared for any project where there is substantial evidence, in light of the whole record, that the project has possible environmental effects that are individually limited but cumulatively considerable, or the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly (see Mandatory Findings of Significance, § 15065). Airborne emissions from oil refining activities and groundwater contamination from these industrial operations are well established public health and safety concerns, and the record in this proceeding has provided substantial evidence that these concerns merit further environmental review.

Moreover, City staff claimed the City's local zoning laws, including its General Plan and Local Coastal Program, require *ministerial* review for the Project. What the City's local zoning laws actually require, is compliance with State law. When conflicts exist between state and local laws, state law governs. Since CEQA is a State law, the City's General Plan and LCP provisions cannot be improperly interpreted for the purpose of exempting the Project from an otherwise mandatory CEQA review.

LCP Chapter A.94 lists the types of incentives available as concessions for affordable housing. Subpart 4 is Other Incentives, and states, "Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable cost reductions or avoidance." Again, cost reductions and avoidance for Density Bonus considerations cannot be improperly allocated to undermine and circumvent the public health and safety concerns enshrined in the environmental protection statutes.

The language in the City's Housing Element clearly states the incentive for qualifying housing developments is to allow these projects be allowed a non-discretionary Precise Development Plan review to control the project's design, not improperly use these incentives to eviscerate environmental protections that could endanger public health and safety. The Legislature never intended to endanger public health and safety in order to achieve cost reductions in low-income housing developments; those misguided interpretations defy logic and unfairly exploit bureaucratic defects and opportunistic financial interests.

CITY CLERK'S OFFICE
MANHATTAN BEACH, CA

2023 JAN 19 PM 3:43

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