

**CITY OF CAPITOLA  
Notice of Exemption**

**To:**  Clerk of the Board  
County of Santa Cruz  
Governmental Center  
701 Ocean Street  
Santa Cruz, CA 95060

Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

**From:** City of Capitola, Community Development Department, 420 Capitola Avenue, Capitola, CA 95010

**Project Title:** 38<sup>th</sup> Avenue Apartment Project

**Project Address:** 1098 38<sup>th</sup> Avenue

**Assessor's**

**Parcel No.:** 034-172-01

**Project Location:** City of Capitola (see Figure 1)

**County of:** Santa Cruz

**Project Description:** The project consists of a Coastal Development Permit, Design Permit, and Density Bonus request for construction of a 52-unit, 100% affordable housing project on a 1.9-acre site at the east side of 38<sup>th</sup> Avenue just south of the railroad crossing. The project includes a mix of 1-bedroom, 2-bedroom, and 3-bedroom apartment units configured in four buildings. Three of the proposed buildings have three floors while one building has two floors. The buildings would also include laundry rooms, community rooms with kitchens, offices and property management/resident services, and equipment and utility spaces. Other on-site amenities would include outdoor dining and gathering areas, including two protected courtyards, pedestrian pathways, a central plaza, lawn, community dining area, café tables and chairs, raised vegetable beds, and outdoor areas.

The project would utilize the State Density Bonus law, which allows 100% affordable housing projects to utilize the 80% density bonus increase and up to four concessions/incentives from the City's development standards. The project includes four requested concessions for (1) private open space requirements, (2) maximum building height requirements, (3) tree replacement ratio less than 2:1, and (4) parking lot landscape less than 20%. The project would not provide private open space. In lieu of private open space, the project would provide approximately 22,830 square feet of common open space area (26% of the site). The project also is requesting a concession to allow for increased maximum building height from 30 to 40.5 feet, a replacement of trees at less than 2:1 ratio due to potential for crowding and overplanting, and to reduce the required parking lot landscape percentage to less than 20%.

**Name of Person or Agency Carrying Out Project:** MidPen Housing

**Name of Public Agency Approving Project:** City of Capitola

**Exempt Status: (check one)**

- Ministerial Project (Section 21080(b)(1); 15268).
- Categorically Exempt (Section 15332).
- Declared Emergency (Section 21080(b)(3); 15269(a)).
- Emergency Project (Section 21080(b)(4); 15269(b)(c)).
- Statutory Exemption (Code/Section \_\_\_\_\_).
- The project clearly will not have a significant effect on the environment (15061(b)(3)).

**Reasons why project is exempt:** CEQA provides “categorical exemptions” which are applicable to categories of projects and activities that the Natural Resources Agency has determined generally do not pose a risk of significant impacts on the environment. The Class 32 categorical exemption is for “infill development” projects that meet the following criteria:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- (c) The project site has no value as habitat for endangered, rare or threatened species;
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- (e) The site can be adequately served by all required utilities and public services.

The proposed project meets all of the foregoing criteria to claim the application of the infill exemption as summarized below, which is based on a detailed review of how the project meets the above criteria and does not meet any of the exceptions to an exemption.

- (a) The project is consistent with General Plan and zoning land use designations and all applicable General Plan policies and zoning regulations. The property is designated Multi-Family Residential (R-M) in the City’s General Plan. The R-M General Plan designation applies to areas primarily intended for multifamily residential development. All residential uses are permitted in the R-M designation, including multi-family structures; therefore, the project is consistent with the permitted uses in this land use designation. City review also finds that the project is consistent with the policies of the General Plan.

The maximum permitted residential density in the R-M designation is between 10 and 20 dwelling units per acre (du/ac) depending upon the zoning classification (RM-L at 10 du/ac, RM-M at 15 du/ac, and RM-H at 20 du/ac maximums). The project has requested a density bonus that allows the project to exceed the General Plan density of 15 du/ac in the R-M designation and RM-M zoning district. The project also includes four requested concessions for private open space requirements, maximum building height requirements, reduction in tree replacement planting ratio, and reduction in parking lot landscape percentage as part of the density bonus request pursuant to provisions in state law. Therefore, the project is consistent with zoning regulations pursuant to provisions under the State Density Bonus law, which allow for waivers and concessions to the City’s zoning regulations, the approval of which would not render the project inconsistent with City zoning requirements. The court decision in *Wollmer v. City of Berkeley* expressly held that the waivers and concessions a city was required to grant for a density-bonus-eligible project did not result in planning and zoning inconsistencies that disqualified the project from the categorical exemption for infill development, because the mandatory nature of the waivers meant that those standards were inapplicable to the project.

In summary, the project is consistent with the applicable General Plan land use designation and all applicable General Plan policies as well as with the applicable zoning designation and regulations.

- (b) The approximately 1.9-acre site is located within City limits, is less than 5 acres in size, and is surrounded by existing developed urban residential uses adjacent to the site on the north, west, and south, and commercial uses to the east that front 41<sup>st</sup> Avenue.
- (c) The project site was previously developed, but the former building has been demolished. Remnants of the building foundation and parking area remain. The site is not within mapped areas of potential sensitive habitat as depicted in the City's General Plan, and there are no known endangered or threatened species on or adjacent to the site due to the site's location within a developed urban area. Thus, the project has no value as habitat for endangered, rare, or threatened species.
- (d) The project would not result in any significant effects relating to traffic, noise, air quality, or water quality. The project is a 100% affordable housing project, which is screened out from traffic and vehicle miles traveled (VMT) reviews. The City's adopted VMT threshold and accompanying guidelines follow CEQA Guidelines Section 15063(c)(3)(C) and the Office of Planning and Research (OPR) Technical Advisory on Evaluating Transportation Impacts in CEQA, which allows for development of "screening criteria" that can be used to identify projects that are not expected to cause a significant impact on transportation without conducting a detailed VMT analysis. Affordable residential development is screened out; the OPR Technical Advisory provides data to support the conclusion that adding affordable housing to infill locations generally improves jobs-housing match, in turn shortening commutes and reducing VMT. Accordingly, the Capitola's screening criteria provides that projects that are a 100% affordable residential development or the residential component of a mixed-use development, in infill locations shall be assumed to have a less-than-significant impact on transportation. The project is both a 100% affordable residential project and located in an infill location.

The project would not result in a substantial increase in permanent or temporary noise levels as a residential use within a developed residential neighborhood. Existing City regulations include performance standards that prohibit generation of loud, boisterous, irritating, penetrating, or unusual noise that is defined and regulated in the Capitola Municipal Code.

Air pollutant emissions generated during project construction and operation would not exceed significance thresholds established for different criteria pollutants by the Monterey Bay Air Resources District (MBARD) as the number of proposed residential units is well below MBARD screening levels for potentially significant impacts as a result of residential apartment development. Emissions from construction activities represent temporary impacts that are typically short in duration, depending on the size, phasing, and type of project, and MBARD CEQA Guidelines indicate that projects with grading of less than 2.1 acres per day would not result in significant emissions. The project site is less than 2.1 acres in size.

The proposed project does not involve any discharges that would violate any water quality standards or waste discharge requirements, and would not result in significant impacts to water quality. The project would be designed to comply with regulations contained in the

City's Municipal Code regarding stormwater runoff water quality impacts. A stormwater plan review has since completed, and concluded that the project complies with City requirements.

- (e) The site can be adequately served by all required utilities and public services, as existing utility infrastructure and public services already serve the project area. The project would connect to existing utility infrastructure adjacent to the project site. The project would result in an incremental increase in demand for utilities and public services but would not exceed available capacities.

The City has further considered whether the project is subject to any of the exceptions to the use of a categorical exemption found at CEQA Guidelines Section 15300.2. This section prohibits the use of categorical exemptions under the following circumstances:

- (a) for certain classes of projects (3, 4, 5, 6, and 11) due to location;
- (b) when the cumulative impact of successive projects of the same type in the same place, over time, is significant;
- (c) where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
- (d) where the project may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway;
- (e) where the project is located on a state designated hazardous waste site; and
- (f) where the project may cause a substantial adverse change in the significance of a historical resource.

Section 15300.2(a) does not apply to this project because the Class 32 category of projects is not excluded on the basis of location.

There is no evidence of a potential significant cumulative impact (b) because successive projects of the same type in the same place have not been approved and are not proposed. Additionally, there is no evidence to conclude that significant impacts would occur based on past project approvals in the surrounding area or that the proposed project's impacts are cumulatively considerable when evaluating any cumulative impacts associated with air quality, noise, transportation, or water quality as a result of other approved projects in the surrounding area. Other development projects in the vicinity of the project have been limited and/or small-sized projects and would not result in project-level or cumulatively significant impacts. Therefore, this exception does not apply.

The project would not result in any significant effects on the environment due to unusual circumstances (c). The project site's immediate area has similar General Plan and zoning designations as the project property and is comprised of an assortment of detached single-family homes, multi-family housing, mobile home parks, and commercial uses. There are no "unusual circumstances" that differentiate the project or project site from the general class of similarly situated projects. For example, other properties in the project vicinity and within other areas of the City could develop a similar affordable housing project, utilizing waivers and concessions permitted under the provisions of the State Density Bonus law. The project is located in a developed urban neighborhood and is directly surrounded by urban uses, including existing multi-family housing, and sensitive resources are not present. There are

no features that distinguish the project or project site from other properties in the area that have the same General Plan land use designation and zoning as the project. For these reasons, the project would not result in any significant effects on the environment due to unusual circumstances, and exception (c) does not apply to the project.

The project would not result in damage to scenic resources or a scenic highway (d). There are no designated state scenic highways within the City, and the project site is not located near a highway officially designated as a state scenic highway. Therefore, the project would not result in damage to scenic resources within a state scenic highway. Thus, this exception does not apply to the project.

The site is not a hazardous waste site (e). The project site is not located on any of the Cortese List online databases, including the California Department of Toxic Substance Control lists of hazardous waste and substances sites or hazardous waste facilities subject to corrective action; and State Water Resources Control Board lists of leaking underground storage tank sites, solid waste disposal sites, or active Cease and Desist Orders and Cleanup and Abatement Orders. There are no known former or current hazardous materials release sites on or adjacent to the project site. Therefore, the project site is not included on any list compiled pursuant to Government Code §65962.5 and this exception does not apply to the project.

A Phase I Environmental Site Assessment (ESA) followed by two subsurface investigation programs were completed for the project and potential contamination was not found to be significant, but recommendations were made for potential use of vapor intrusion measures and implementation of a soil management plan during construction that are being reviewed with the County of Santa Cruz Health Services Agency, and would be implemented by the project based on County review..

The former building on the project site has been demolished, there are no existing structures on the site that would be considered historical resources, and the project site is not located within a designated historic district. An archaeological-historical records search and cultural resources review was conducted for the project and it was concluded that the project would not result in any significant impacts to archaeological or historic resources. Therefore, the project would not result in a substantial adverse change to the significance of a historical resource (f), and this exception does not apply to the project.

Therefore, the City is able to document that the project qualifies for the Categorical Exemption found at CEQA Guidelines section 15332, the infill exemption, and that none of the potential exceptions to the use of a categorical exemption apply to this project or the project site.

**Lead Agency**

**Contact Person:** Brian Froelich, Senior Planner

**Phone:** (831) 475-7300 x 259

**Department:** Community Development

**Address:** 420 Capitola Avenue  
Capitola, CA 95010

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** Senior Planner

- Signed by Lead Agency
- Signed by Applicant

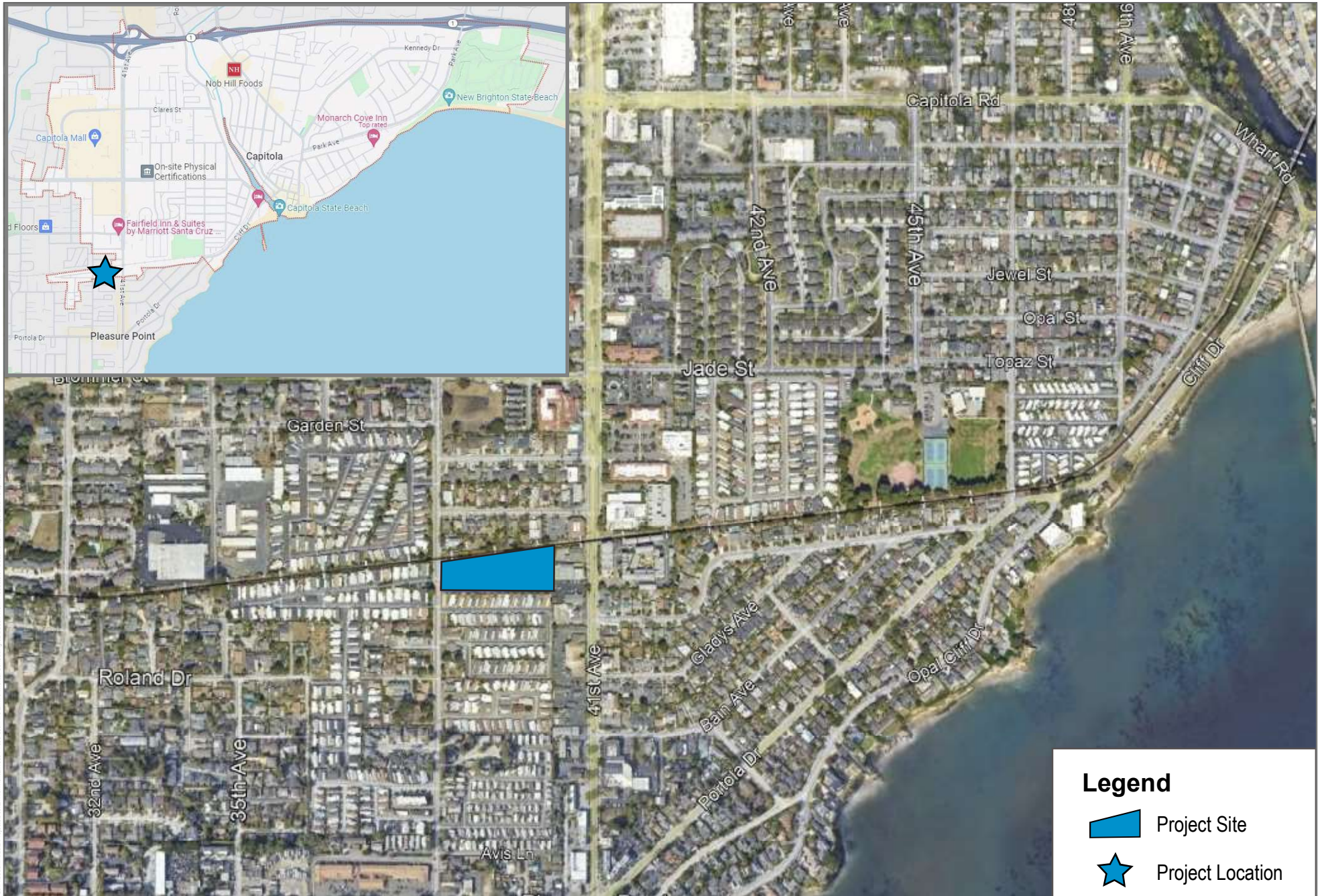
**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?  Yes  No

Date Received for filing at County Clerk: \_\_\_\_\_

Date Received for filing at OPR: \_\_\_\_\_





SOURCE: Google Maps, 2024

**DUDEK**



**FIGURE 1**  
**Project Location**  
 38th Avenue Apartments Project