



May 24, 2022

Ms. Irene Borba  
Director of Planning and Building  
City of Belvedere  
450 San Rafael Avenue  
Belvedere, CA 94920

Re: Mallard Pointe Housing Application

Dear Ms. Borba:

This letter is in response to the City's February 24<sup>th</sup> Completeness Review of the Mallard Pointe Housing Application ("Project"). A "completeness" review under the Permit Streamlining Act ("PSA") is limited to confirming whether the application contains the "items actually required on the lead agency's submittal requirement checklist." Gov. Code § 65943(a). While we have made a good-faith effort to respond to all of the City's information requests and comments, as well as those of outside agencies, it must be noted that multiple pieces of information requested were either not on the City's list of items required for completeness, or were much more appropriate for the building permit stage, when the planning-level design of the project has been finalized. When excessive information is required at the outset, any Project changes then have a costly and time-consuming waterfall effect as every detailed sheet must then be changed by the various disciplines to conform to the new layout or concept. We would ask that the focus be on the information necessary to analyze the requested entitlements, as opposed to trying to develop a plan set from which you could build the Project tomorrow.

The responses below correlate to the numbering in the City's letter.

**A. Application Types Required:**

1. Demolition Permit Application - Attached.
2. Subdivision Map Application – Attached.
3. Accessory Dwelling Unit Permit Applications – Attached for Lots 3, 5 and 7.
4. Conditional Use Permit and Design Review Application for Deviations to the ADU Standards – As confirmed by the City, the ADUs are exempt from review per 19.79.060 1.a of the of the November, 2020, ADU ordinance, which governs this application pursuant to SB 330.
5. Revocable License Application – Attached.
6. Extension of the Construction Time Limit Application – Attached.
7. Cost Recovery Agreement – Attached.

## **B. Planning Comments:**

### 1. Density Bonus Application.

- a. This appears to be a merits comment as opposed to a completeness item, but we will clarify. The base density for this Project is 39 units, not 42 units. The reason is that ADUs do not count toward density. This is made very clear both in Belvedere's Code, and State law. Belvedere's Code, for example, states: "**An Accessory Dwelling Unit shall not be considered when calculating the allowable density for the lot upon which it is located.**" Further, ADUs are automatically a residential use deemed consistent with the general plan and zoning. (**Gov. Code, § 65852.2, subd. (a)(1)(C).**) So, in order to meet the requirements of State Density Bonus Law, the Project is providing four (4) units for Low-Income Households, which is 10% of the total Project's 39 units.
- b. Based on feedback and State law, we have provided a greater amount of low-income housing in the project. Instead of providing 2 very-low and 2 moderate units, the four (4) affordable units are as follows: Very Low-Income Unit #108 (2-bedroom) and the Low-Income Units #103 (1-bedroom), #204 (2-bedroom) and #208 (2-bedroom) as shown on sheets MF-2 and MF-3 of the attached drawings.
- c. Questions #5 and #6 have been answered on the Density Bonus Application.

### 2. Replacement Housing Relocation Plan.

The City's February 24, 2022, letter requests additional information about replacement housing and relocation assistance that is not on the City's submittal requirement checklist. Providing this information is therefore not required for the "completeness" of the application for the purposes of the PSA. With that understanding, we are happy to respond to these and other requests for information, especially in light of our shared interest in ensuring that the Project provides a strong plan for replacing existing housing and assisting tenants with relocation.

The Applicant team is committed to meeting all replacement housing and relocation requirements imposed by state law, and even expects to exceed the law's requirements. We understand that the City must ensure compliance with these state laws as a condition of approving the Project. As other cities have done when approving similar projects, the City can meet this requirement by imposing a condition of approval on the Project requiring that replacement housing and relocation assistance be provided in accordance with the law. However, we understand that the City would like as much information as practicable before project approval, especially to ensure that the proposed Project contains sufficient below-

market-rate units to meet the requirement to “replace” units pursuant to Gov. Code § 66300(d)(2)(A) and Gov. Code § 65915(c)(3)(B).

The Applicant has commissioned a relocation consultant, OPC, LLC, with significant experience administering similar relocation programs, to survey tenants and to design and develop a relocation plan.

With respect to items (a) and (b), rental units on the property are market-rate units, which command very high rents even by Belvedere’s standards, and so it would be very surprising if the proportion of lower-income renters at the Project site were comparable to the proportion of lower-income renters in the City as a whole. Tenants are also under no obligation to disclose their household incomes to us. Despite this, the Applicant team has engaged in a diligent effort to determine the income levels of households living on the site by surveying all tenants in occupancy at the date of the application. The survey provided the current HCD/HUD income limits for Marin County to all households and asked the respondents to identify whether their household income level is within any of the identified income bands, and if so, to identify which income level applies. All respondents were entitled to a rent reduction for a timely response to the survey, irrespective of which income level they identified.

All households in occupancy on the date of the application participated in our survey, and their responses confirm that most of the tenants’ household incomes are above Marin County’s “moderate-income” level, the highest income category. Of the nineteen households in occupancy at the date of application, twelve households signed an acknowledgement self-certifying that their household income exceeds the “moderate income” category for Marin County. The remaining seven households were requested to provide income documentation to determine their income level, and the relocation consultant reviewed the information provided. The relocation consultant determined that two of these households have incomes that are “above moderate,” that two households qualify as “low-income,” and that one household qualifies as “very low-income.” The remaining two households did not provide sufficient documentation to verify that their incomes are at or below the “moderate income” level.

Item (a) requests an “indication of which units are ‘protected units’ including units that were occupied by lower income households within the past five years . . . .” Nine units have been occupied by the same household for the past five years. For the remaining units that have not been occupied by the current tenant for the past five years, we do not have information about the income of the past tenants who are no longer living in the units. The law does not provide any guidance about what presumptions should apply when the income level of the current occupant is known but the income level of a past occupant is not known. However, as our counsel discussed with counsel for the City, this should not be relevant to ensuring that the units are “replaced” under the Housing Crisis Act and Density Bonus Law. Although the statutory language governing whether a unit is *protected* includes units occupied

by lower income households “within the past five years,” Gov. Code § 66300(d)(2)(F)(vi)(III), the requirement to “*replace*” a “protected unit” is satisfied as long as a unit “of equivalent size” is provided at a level affordable to, “and occupied by, persons and families in the same or lower income category as those households *in occupancy*.” Gov. Code § 65915(c)(3)(B)(i) (emphasis added). “‘Equivalent size’ means that the replacement units contain at least the same total number of bedrooms as the units being replaced.” Gov. Code § 66300(d)(2)(F)(iii). As such, a project satisfies the requirement to “replace” any units that are “protected” by providing units affordable to persons and families in the same or lower income category as the households in occupancy, as long as the units have the same total number of bedrooms as the units that are being replaced.

Finally, three of the units were unoccupied on the date the application was submitted. For unoccupied units, “the proposed housing development shall provide units of equivalent size to be made available at affordable rent or affordable housing cost to, and occupied by, persons and families in the same or lower income category as the last household in occupancy.” Gov. Code § 65915(c)(3)(B)(i) (emphasis added). The households who previously occupied those three units provided us with income information at the time they applied to rent those units, and that information shows that those households’ incomes were also above the Marin County moderate-income level. The current occupants of these previously unoccupied units also are above-moderate-income.

Item (c) discusses the rebuttable presumption for replacement housing that applies in situations in which “none of their incomes are known.” As discussed above, this is not a situation in which none of the tenants’ incomes are known, because all tenants in occupancy at the date of application participated in our survey. 14 households self-certified, or were determined by the consultant, to have “above moderate” incomes. Only three households were determined to be lower-income (two low-income and one very low-income). The remaining two households did not provide sufficient information to demonstrate that their incomes are at or below the moderate-income level. We cannot compel any tenant to share income information with us, but tenants presumably have a rational incentive to disclose income information that demonstrates their entitlement to relocation benefits. In any event, the survey responses rebut the presumption that lower-income households occupy units at the site at the same proportion as in the City as a whole.

In sum, to “replace” protected units as required by the Housing Crisis Act and Density Bonus Law, the Project must provide two units at the low-income level or lower, and one unit at the very low-income level or lower, and ensure that those units have the same number of bedrooms as those units currently occupied by the two low-income households and one very low-income household. The Project will meet or exceed this requirement. Additionally, the square footage of the replacement units will be greater than the existing units.



Finally, in response to item (d), we note that a complete relocation plan is not required as part of the City's submittal requirements checklist, and it would not be feasible to have finalized such a plan at this stage of the application process. However, our relocation consulting firm is currently preparing the Project's replacement and relocation plan in compliance with Government Code section 66300(d)(2)(D). This will involve further surveys of the lower income tenants to determine their needs, and analysis of available replacement housing, among other tasks. A draft of this plan is being submitted as part of this resubmittal. Relocation assistance will be provided to current occupants who are lower income households as required by Government Code section 66300(d)(2)(D).

3. Design Review Application.

- a. Photosimulations. The City directed that 6 additional vantage points be photo simulated. These images are attached as exhibit MISC-1 through MISC-3.
- b. Story Pole Plan. Based on direction from the City, the Applicant is proposing story pole locations that model the massing of each structure on the exterior edges of property as shown on sheets A25 and A26 for the Lagoon fronting Lots 1 -11 and sheets MF13 and MF14 for the Community Road facing Lot 12. To respond to the existing operations of the property, the story poles would be installed at least 20 days before our first hearing, certified, photographed for reference and then removed after the 20 days. The renderings would then be updated, to the extent possible, from vantage points previously analyzed
- c. Project Data Sheet. A comprehensive project data sheet is provided that summarizes the requirements for, and compliance with, each development standard for the project.
- d. Plan sheet A1 & A4. All sheets now refer to lots.
- e. Plan Sheet A1. The encroachments noted on BLPOA property are existing and permitted as noted in Section 4 of the January 11, 2005, Amended Resolution of the BLPOA Board of Directors Regarding BLPOA Lagoon Property Line Encroachments. There is no filling or new improvements being proposed on encroachments on BLPOA property. Further, as required by the Amended Resolution, Applicant will maintain these areas.
- f. Plan sheet A3. The areas with the solar panels and mechanical equipment on the apartment roof are not usable outdoor space. Sheet MF-4 Roof Plan has been modified to more clearly denote the usable area of the roof.
- g. Adjacent Structures. The City clarified that it is seeking distances from residential units adjacent to Lots 1 and 11. This is provided on Sheet TM-4A.
- h. Plan Sheet A6. The blurred notes have been corrected.

- i. Existing Grade and Base Flood Elevations (BFE). All single-family, duplex, and apartment structures have BFE and existing grades shown on the plans.
  - j. Transformer/Vaults. Locations for PG&E transformers and vaults are shown on plans TM3A, TM3B, TM4A, MF1, MF1A, L1.0, L2.1, L2.2, and L2.4 (shown with Triangle and Box).
  - k. Rooftop Mechanical. The height of the mechanical equipment on the apartment roof is shown on Building Sections on sheet MF8. The roof top equipment and solar panels are in equipment bays and hidden by the parapet.
  - l. Workspace. The workspace resident amenity area that was on the roof level has been removed to enhance the lobby elevation.
  - m. Fencing. A Fencing Plan is attached as sheet L3.0.
  - n. Bulkheads. The existing bulkheads are presently intended to remain in place and be repaired as necessary.
4. Vicinity Map. The vicinity map and site plan on page AO have been replaced and enlarged to show the location of the site and surrounding roads and uses.
  5. Project Plans. The City agreed with the Applicant that Section 19.28.040 for the R-2 zone does not apply to FAR. Lot coverage information is provided in the Project Data Sheet. While FAR doesn't apply, no crawl space is over 6 feet in height.
  6. Project Plans – Parking.
    - a. A parking diagram with all spaces shown is provided as sheet TM3A, TM3B and MF1. All parking spaces are dimensioned and conform to the requirements outlined in Section 19.68.020, as modified by State Density Bonus Law.
    - b. Compact spaces are labeled.
    - c. A turning template is provided for the southernmost parking spaces in the Apartment garage which are the only spaces having adjacent obstructions that could impact access.
    - d. As noted on Sheet MF-1, all parking spaces in the garage are assigned.
    - e. Section 19.68.050 requiring that “Off-street parking spaces for a duplex or for a multiple dwelling shall be located in a garage or covered carport, the design, construction, drainage, and surfacing of which has first been approved by the Planning Commission prior to the construction thereof” is superseded by State Density Bonus Law which allows for reduced parking ratios, tandem parking and uncovered spaces. Further, State Density Bonus Law requires 1.5 spaces for 2- and 3-bedroom units. All “C” 2-bedroom units are paired with an “A” 3-bedroom unit

and provide 3-parking garage spaces in total (1.5 spaces on average) thereby meeting this requirement. It should be further noted that most C-units also have apron parking and 2 parking spaces.

- f. EV charging stations are noted on the single-family, duplex and apartment garage plans.
7. Project Plans – Setbacks.
- a. Front Setbacks:
    - i. Apartments: The City agrees that the apartment building conforms with the setback requirements per the notations on sheet MF1, which describes the front yard on the north side garage entry, side yards on the east and west side, and back yard on the south side. This information is also stated on the associated elevations on sheets MF6 and MF7. It should be further noted the City agrees that setback from the “street line” only applies to the front yard.
    - ii. Single-Family and Duplex Setbacks: Units on Lots 4, 8, and 9 have been adjusted to comply with front setback requirements.
  - b. Side Setbacks: Cross-sections have been provided for single-family, duplex, and apartment buildings demonstrating each building’s conformance with the sideyard setback requirements. Since the lots are generally not rectilinear, worst-case scenarios are illustrated.
  - c. Rear Setbacks: All buildings conform to the rear setback requirements.
8. Project Plans – Heights. The apartment plans have included dimensions to the top of the elevator penthouse. Applicant is seeking a waiver for height encroachments.
9. Project Plans – Open Space. The Project Data Sheet lists the open space for each of the lots. All single-family and duplexes comply with the R-2 open space requirement of 450 square feet/unit/private. The apartment building provides 2,868 square feet of private open space but is required to provide 10,350 square feet (23 units x 450 sq.ft./unit), a deficit of 7,482 square feet. Midstate Construction has provided the attached budget for building decks at cost of \$283 per square foot. This additional project cost is \$2.1 million for which the Applicant is seeking budgetary relief through a concession.
10. Project Plans – Elevations. Elevations show gutters, downspouts, and vents as designed.
11. Project Plans – Landscaping: The Landscaping Plans show the transplanted tree locations on sheets L-2.0 to L-2.4.

12. Signage Plans. The condition that each lot have a maximum of 4 square feet of signage does not make any sense for a project like this. This section of Code, like others in Belvedere, did not appear to anticipate a multifamily project. Project identification signage is impractical on the interior of the site, and there will be no other project signage on the property.
13. Project Plans - Docks. Docks that are located on BLPOA property are shown as existing and will be rebuilt in their current footprint and location per the BLPOA's Amended Resolution regarding Property Line Encroachments; new docks are shown on Applicant's property. In both situations, the docks are labeled either new or existing on sheets L 1.0.
14. Preliminary Utility Design Memo. The memo has been corrected and is attached.
15. Technical Studies (Advisory). Traffic, historic resources, biological, greenhouse gas and Phase I environmental reports have been provided to the City.
16. Traffic Study. Based on the revised Density Bonus Application, the traffic study is correct.
17. Requested Waivers. The Projects seeks waivers for the following:
  - a. Lot frontage for Lot 5
  - b. Lot area/unit, sideyard setback above 25', lot coverage, and height for Lot 12, the apartment building lot.
  - c. The prohibition on apartment courts and/or apartment houses in the R-2 zone.
  - d. The construction time limit, if the City believes the time limit commences upon demolition or construction of site improvements and is not handled on a lot-by-lot basis. The CTL was clearly designed for individual single family home projects and if strictly applied here, would render project construction impossible.

Each of the development standard waivers is shown on the detailed site data table included with this resubmittal.

In regards to the lot frontage for Lot 5, that lot is a flag lot. Belvedere does not appear to have an accommodation for flag lots like most other cities. (see, i.e. [https://qcode.us/codes/napa/view.php?topic=city\\_of\\_napa\\_municipal\\_code-17-17\\_52-17\\_52\\_190&frames=on](https://qcode.us/codes/napa/view.php?topic=city_of_napa_municipal_code-17-17_52-17_52_190&frames=on)). In order to achieve a lot layout that even begins to approach the maximum allowable density of the site, at least one flag lot is required, as demonstrated by the site plan.

In regards to the waivers for Lot 12, the apartment building, the General Plan allows for 56 units at the property. To even come close to reaching this unit count, some form of multifamily (i.e., apartment) housing would be required in order to fit the units on the site. This can be realized by



reviewing the site plan, which, but for Lot 12, generally conforms to the R-2 regulations. Assuming Lot 12 were just three more duplexes, a continuation of the pattern, and that all currently proposed single-family residences were changed to duplexes, would yield only 28 units, far below that which is allowed. Accordingly, a waiver is necessary to allow apartments, and to allow a building that fits the additional requested units. This necessitates deviations from the height, coverage and setback standards in order to accommodate the units. As noted, the application seeks much less than the density bonus maximum that would be allowed for the site, thereby making the waivers much less than were a full density project sought. Because the Project includes 10% Low-income units, the Project is entitled to a density bonus of 20%. (Government Code 65915(f)(2).) Accordingly, 68 units are permitted on the Property (56 + 20%). Only 39 are sought at this time.

### **C. Public Works Comments.**

1. Preliminary Title Report. An updated preliminary title report is attached.
2. Stormwater Control Plan. Attached.
3. Preliminary Storm Drain Design. Attached.
4. Subdivision Map Submittal.
  - a. Engineer and surveyor of record with license numbers have been provided on the map.
  - b. Boundary information has been clarified to allow retracing.
  - c. Mallard Road is the loop street; the spur street is a driveway and unnamed.
  - d. Cross-sections of the streets are provided.
  - e. A demolition plan is attached. The project geotechnical engineer, Miller Pacific, recommends that any underground utilities that are abandoned in place should be filled with lightweight cellular concrete with 28-day compressive strength between 50 and 200 psi.
  - f. A photometric study of the site is attached. There is minimal spillage from the site.
  - g. The pedestrian improvements recommended in the traffic study have been incorporated on sheets TM3A, TM3B, L1, L1.1 and L2.1.
  - h. Sheet TM1 – Road name revised
  - i. Sheet TM2 – Boundary information corrected to reflect CSW-ST2 survey of record.

- j. Sheet TM3B added to show vehicle turn movements from Lots 4, 5, and 6. As these lots are on a private drive, the Applicant believes that this access is acceptable and, further, the City has no guidelines regarding the requested vehicular access.
- k. Sheet TM4 – Grading, Drainage & Utilities
  - i. The storm drain between Lots 6 and 7 will be abandoned – no easement is required.
  - ii. An easement is shown between Lots 7 and 8.
  - iii. An easement is shown on Lot 11; however, outfall and improvements are on neighbor’s property.
  - iv. Joint trench routing and sections added.
  - v. Notes are added to Sheet TM2 indicating which utilities are to remain or to be installed.
  - vi. Cross-sections are provided on TM3 that show utilities and proposed building foundations. Notes reference architectural plans for additional details.

5. Utility Design Memo 01-17-2022

- a. Preliminary Storm Water Drain Design – a Stormwater Control Plan sheet has been provided (TM6) and Stetson Engineering study has been referenced in hydraulic report.
- b. The District has confirmed plant capacity sufficient to serve the Project.
- c. MMWD has confirmed the availability of service to the site for the Project.

6. Landscape Plan 01-17-2022

- a. Trees are not planted in easements.
- b. Landscape plans have been updated to reflect stormwater LID features.

**D. Building Department Comments** – Applicant has reviewed and acknowledges the conditions outlined by the Building Department except for the Construction Time Limit of 18 months for which the Applicant is requesting an extension of as noted above.

**E. Belvedere Lagoon Property Owner’s Association (BLPOA) Comments** – Applicant has reviewed the BLPOA letter and met with, and responded to, the President of the

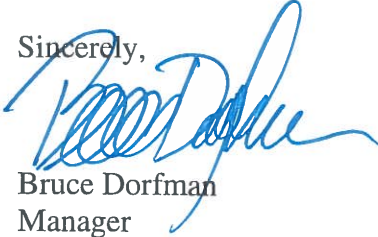
BLPOA. That being said, the BLPOA is a private entity and not a part of the City's completeness review.

- F. Marin Municipal Water District Comments** - Applicant has reviewed and acknowledges the conditions outlined by MMWD.
- G. Sanitary District 5 of Marin County Comments** – Sanitary District 5 has confirmed that its treatment plant has the capacity to serve the Project. Applicant is prepared to accept as a condition of approval that any pipe or pump station upgrades necessitated solely as a result of the Project will be Applicant's responsibility.
- H. Tiburon Fire Protection District Comments** – Applicant met with the Fire Marshall on April 19<sup>th</sup> to review TFD comments.
1. Fire Hydrant – a fire hydrant is shown on Mallard Road and incorporated in the TM plans. This change is clouded.
  2. Roadway and Driveway Minimum Clearance – The 20-foot width from the inside to insides of standard curbs is acceptable and the 18-foot width on the driveway accessing Lots 4, 5 and 6 is acceptable. Both are shown and clouded on the revised TM plans.
  3. Fire Lanes Required – Language has been added to the TM plans that no parking fire lane curbs and signs shall be installed in accordance with TFPD and CA Vehicle Code standards. TFP Fire Lane signage template has been attached as an exhibit.
  4. Vegetation Management Plan ("VMP") – A VMP shall be required as a condition of approval.
  5. Roof Access – The building has two stairwells and an elevator that provide access to all levels and the roof. There is no exclusive fire department access to the roof other than the elevator which can be placed into Fire Service Mode. The elevator is sized to carry a full-size gurney.
- I. Design Review Comments** – Applicant has reviewed the M. Sandoval Architects, Inc. analysis. The project design has been modified to respond to the major comments to the extent feasible while maintaining the allowable density.

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This resubmittal presents an unprecedented level of detail for a project in Belvedere. We request that the City deem this Project complete and move to the merits review phase. Please contact Eric Hohmann, our counsel Riley Hurd, or me with any questions related to the responses outlined above or the attached exhibits.

Sincerely,



Bruce Dorfman  
Manager  
Mallard Pointe 1951, LLC

cc: Craig Middleton  
Robert Zadnik  
Tricia Stevens, MIG  
Riley Hurd  
P. Eric Hohmann  
William W. Thompson

Attachments:

1. Project Narrative
2. Demolition Permit Application
3. Subdivision Map Application
4. Accessory Dwelling Unit Permit Applications (Lot 3, 5, 7)
5. Revocable License Application
6. Extension of Construction Time Limit Application
7. Cost Recovery Agreement
8. OPC Income Review Memo
9. Draft Relocation Plan
10. Preliminary Utility Design Memo
11. Preliminary Title Report
12. Stormwater Control Plan
13. Preliminary Drainage Strategy
14. Amended Resolution of BLPOA, Re: Property Line Encroachments
15. Midstate Construction Budget to Add Balconies
16. Sutton Suzuki Architect Drawings A0 – A26
17. Francis Gough Architect Drawings MF1 - MF14
18. The Guzzardo Partnership Drawings L1 - L3.2
19. Fenzi Media Group Drawings S1 - S4

**Mallard Pointe 1951, LLC**

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- 20. Additional Photosimulations MISC 1 – MISC 3
- 21. Project Data Sheet MISC 4
- 22. Photometric Study MISC 5
- 23. Fire Lane Sign Template