

# **BELVEDERE LAGOON PROPERTY OWNERS ASSOCIATION**

**P.O. BOX 465**

**BELVEDERE, CA 94920**

June 20, 2022

Dear Members of the Belvedere City Council and Planning Commission  
Mr. Robert Zadnik, City Manager  
Ms. Irene Borba, Director of Planning and Building

Re: Mallard Pointe Housing Application Response to Comments Letter dated 5.24.2022

This letter is in response to Mallard Pointe's (the "Applicant") submittal of a Response to Comments letter dated 5.24.2022 ("MP May Response") in response to the City's February 24<sup>th</sup> Completeness Review of the Mallard Pointe Housing Application (the "Project").

As you are aware, in response to the initial Mallard Pointe development application for the Project, the Belvedere Lagoon Property Owners Association ("BLPOA") submitted a letter noting the ways in which the BLPOA Board of Directors believed the application was deficient as it related to BLPOA property and responsibilities. (see attached dated February 16, 2022).

The size of the Lagoon boundary impacted by the Project, the scale of the changes to the land and the structures to be constructed on it, the Project's impact on the soil stability and water quality of the Lagoon as a waterway and the adjacent Lagoon-front properties is quite significant, far beyond when a single home is remodeled or constructed.

The BLPOA's written comments addressed our concerns about the Project's impact on the Lagoon, particularly with regard to protecting water quality of the Lagoon as governed by federal and state water quality laws. Our continued concern is the potential impact of the demolition, grading and new construction on the boundaries and geologic stability of the Lagoon, **specifically**, the need for a new, engineered bulkhead for the entire site to support the new and significantly larger and denser development.

The BLPOA believes the MP May Response continues to be deficient with regard to the issues raised by BLPOA. In fact, the MP May Response specifically states that they have not responded to the important issues raised in our previous comments because they do not believe we have jurisdiction to comment. We strongly disagree.

## **A. BLPOA Jurisdiction.**

Rather than addressing the concerns and deficiencies raised by BLPOA in our prior comments, Section E of the MP May Response (page 10) states that BLPOA is a “private entity” and as such is not part of the City’s completeness review. The BLPOA fundamentally disagrees with that assertion and believes it demonstrates the Applicant’s lack of understanding of the jurisdiction, responsibilities and role of the BLPOA, as well as the responsibilities of the City in soliciting input to inform its decisions on this and future decisions regarding the Project.

Per federal, state and county water regulations, the BLPOA is responsible for the water quality of the Belvedere Lagoon and for the maintenance and proper operation of the waterway, which connect to Richardson Bay. As such, BLPOA has both the knowledge and obligation to inform the City of the risks of the Project on the Lagoon water quality. We request the City to require the Applicant to meet its obligations to address and prevent adverse impacts from the Project onto the Lagoon environment.

The Project contains multiple elements that involve and impact BLPOA property, including:

- demolition and grading that will impact bulkheads and the Lagoon boundary stability,
- underground utility and storm drain abandonment and relocations that can impact the community and Lagoon waters,
- new lot lines and roads for Lagoon-touching properties,
- new docks and Lagoon access points, and use of the Lagoon by the residents of Lagoon-touching lots.

As such, BLPOA acted within its jurisdiction by submitting comments requesting the City require Applicant to address those elements.

And finally, the Applicant’s “jurisdiction” comment dismissing its obligation to respond to BLPOA’s comments confirms the purpose of this letter today – that the Applicant still has not addressed the very real and significant concerns and impacts raised by BLPOA in its previous written comments. It is trying to shoot the messenger, or distract the City, rather than respond to the actual issues. The City has an interest in and obligation for being fully informed of all the potential issues, impacts, responsibilities and regulations that would result from the Project and deem the Application incomplete. It is charged with reviewing the Application for completeness to ensure that Applicant has submitted the information necessary to move forward for review on the merits. It is not for Applicant to decide whose comments are considered or to reject a commentator rather than respond to an issue.

We respectfully request that the City review and consider our previous comments in our February 16, 2022 letter in determining whether Applicant has met its obligation for completeness of the Application.

Furthermore, the following issues should be resolved before the application is deemed complete.

## **B. The Project should be reviewed as a Single, Complete Project.**

We respectfully request that the City review the Application and the Project generally as a single project for the purposes of health and safety, including water quality and geologic impacts on soil stability and structural support. We disagree with Applicant's attempt to use its Subdivision Map Submittal and creation of "private lots" adjacent to the Lagoon to avoid or minimize Applicant's responsibility for making critical improvements to the Project Site, the Lagoon bulkheads and the public infrastructure that are needed as a result of its Project.

The demolition of the entirety of the existing improvements of the Project site, relocation and replacement of utilities serving the entire site, and the redevelopment of the Project site at an increased density of both single and multi-family homes will be the single largest construction/housing project in Belvedere.

The Applicant has submitted it for approval under a single application and thus the City must review, regulate and manage the Project and its impacts as a single large project. In numerous ways throughout its application, submittals and the MP May Response, the Applicant seeks to get all the permissions and benefits of approvals to build out the entire Project site, but then seeks to avoid responsibility and expense for necessary improvements and protections resulting from the Project by thrusting them on the new owners of the lots adjacent to the Lagoon or ignoring that they exist.

## **C. R-1 vs. R-2 Setbacks and land fill.**

Applicant proposes to demolish and re-grade the entire multi-acre site up to the edge of the Lagoon and its 70+ year old bulkheads and seeks approval of new lots and arguably incorrect setbacks (R-1 vs. R-2 issue) for much larger homes closer to the edge of the Lagoon. Combined with a large apartment building, this construction will impact the integrity of the existing Lagoon boundaries and the structural load on the bay mud and landfill of the Lagoon and its neighbors. Yet, it has conducted no geologic survey of the impact of that work nor done any engineering to protect the Project, its neighbors or the Lagoon from its work. The City is well aware of the need to improve and manage all the bulkheads of the Lagoon, and that after many years many are underperforming even without the pressure of extensive and invasive land-moving work and increased structural density from new construction.

The BLPOA has raised this issue directly with the Applicant numerous times as well as in our written comments to the City. Yet the Applicant still has not invested in any new geologic study to analyze this risk or provided any engineering information as to how to mitigate the certain impacts of this work. The MP May Response on page 6 in 3(n) states, "The existing bulkheads are presently intended to remain in place and be repaired as necessary." Who decides "as necessary" and when? The Application should not be deemed complete without addressing this fundamental structural safety issue. The Applicant has not answered a key question, what is the cut and fill for this major grading project?

**D. The May 2022 Storm Water Control Plan is NOT signed; hence, applicant has not agreed to implement it.**

The MP May Response submittals regarding drainage and storm water continues to be noncommittal and unclear about how they will manage the wastewater and storm runoff from the new apartment building, its below grade garage, and its operations. The plans state it will be filtered through “natural rock” – there is no natural rock in bay mud. The Application is not complete because the Applicant has not signed that it agrees with the report and that it agrees to implement it.

### **E. Additional Comments.**

Our comments below use the page numbers, comment numbers and descriptions used in the Mallard Pointe’s 5/24/2022 letter.

## **B. PLANNING COMMENTS**

### **3. Design Review Application**

- Page 5 - (e) Plan Sheet A1 – Encroachments on BLPOA property – there will be no filling or new improvements proposed on the existing and permitted encroachments on BLPOA property. Applicant “will maintain these areas.” That is not consistent with the Application drawings as shown. What is meant by “maintain these areas”? And how does that fit with the proposed demolition of the entire site? Also, what happens once the property is subdivided into the single family home lots? What “permitted encroachments”?
- Page 6 - (n) Bulkheads – Applicant states that “existing bulkheads presently intended to remain in place and be repaired as necessary.” Per our comments in B above, this is not an appropriate response to the critical structural risks presented by the Project that will impact both the new construction as well as the structural integrity of the Lagoon and existing lots adjacent to the Project on the Lagoon.
  - The Applicant needs to undertake an analysis of combined structural soundness of all bulkheads on the Property to determine how as a whole they will support the soil structure for the demolition, grading, new utilities and new construction of all the buildings.
  - The analysis should identify the potential impacts of the Project and provide engineering solutions to mitigate those impacts on both the lots and proposed structures on the Project site, as well as adjacent private and public improvements and the waters of the Lagoon itself. Risk to all new construction, neighboring properties, lagoon health and operations

### **6. Page 6 - Project Plans – Parking**

(e) While Applicant claims that some of the parking requirements are superseded by state law, DRAINAGE regulations for off street parking spaces are NOT superseded by the State Density Bonus Law. Application does not provide an adequate, legal or safe drainage plan for apartment garage and other off street parking. Current plan for pumping it “natural rock” is unclear, and

appears to create an illegal discharge to a regulated water in violation of Federal, State and County water quality regulations.

7. Page 7 - Project Plans – Setbacks

- Page 7 - (c) Rear Setbacks: Rear yard setbacks to the lagoon not conforming to 15 ft. setback.

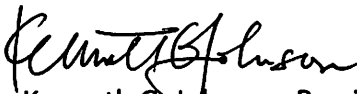
8. Page 8 - Project Plans – Open Space – Applicant is providing 40% less Open Space than is required. They offer to make it up using decks, but then ask the City for a concession because it is too expensive. The lack of Open Space is further evidence of the huge mass of the new construction and how it will impact the stability of the lagoon and the bay mud geology of the site, as well as adversely impact the neighborhood, create more runoff into the lagoon and adversely impact the light, space, air, etc. The Application should not be deemed complete if the Applicant is unable or unwilling to fulfill the mitigation for what it proposes. Applicant should submit plans, including alternatives designs of the building, that show that it is willing and able to meet this obligation.

13. Page 8 - Project Plans – Docks. With regard to the new Docks shown on the sheet L.1.0, the BLPOA has **not** given approval of any new construction on BLPOA property. This is also further confirmation of the jurisdiction and importance of the BLPOA in review and approval process for the Project.

17. Page 8- Requested Waivers

- (a) - Lot frontage for Lot 5 – The Applicant is proposing using a “flag lot” to serve some of the new Lagoon-front lots. The Belvedere code does not provide for the use of “flag lots”, and we believe that it is not appropriate to make an exception in this case because it adds to buildings being closer to the lagoon. We understand jurisdictions in California who have approved the use of flag lots, also have regulations and a flag lot is only allowed when there is no other option, such as when the lots are up a narrow canyon into which access is limited or a property is land locked.

Thank you for your consideration of our comments. If you have any questions, please do not hesitate to contact us.



Kenneth G. Johnson, President

On behalf of the BLPOA Board of Directors

# **BELVEDERE LAGOON PROPERTY OWNERS ASSOCIATION**

**P.O. BOX 465**

**BELVEDERE, CA 94920**

February 16, 2022

Dear Mayor Wilkenson, Belvedere City Council members Campbell, Lynch, Block and Kemnitzer,

In response to Belvedere City's deadlines to notify the developers of Mallard Pointe, the BLPOA Board held a special meeting to evaluate the recent application that appears on the City's website and wishes to comment as follows:

The Board considers the application incomplete because of the following:

1. The bulkhead issues and risks of subsidence impacting the Lagoon and adjacent structures identified by the BLPOA in its previous correspondence to the City and the developers remain unaddressed. The City's Building Department has a policy in place regarding the requirement for engineered bulkheads to be installed as a condition for new FEMA compliant structures adjacent to the Lagoon. The BLPOA also has been working with the City and Lagoon residents to improve bulkheads for all existing home and/or dock remodels. The requirement for engineered bulkheads should be made clear to the developer, and the developer's plan to address the geotechnical issues with the entirety of its proposed project, including installing engineered bulkheads to protect its new construction as well as the Lagoon, should be in the application and reviewed as part of the Design Review.
2. Given that this project is being applied for as a single project for the purposes of demolition and site preparation, the City should require that the engineered bulkhead be designed and installed by the developer as a single, comprehensive bulkhead supporting the entire property and installed as part of site preparation for the full project. The analysis on bulkheads memo attached to the end of the Geotechnical report is dated October 2020. It does not address the developer's current submitted plans to replace all existing single story small duplexes with all new construction of 2+ story tall, larger scale, and higher density buildings across the entire property. Developer's October 2020 memo appears to be focused on short term repair to support the existing single-story duplexes. It does not consider the total demolition of those structures, the impact of heavy equipment

and construction activity impacting soil stability over multiple years, and replacement of the existing structures with FEMA compliant two+ story buildings with their additional weight.

3. The geotechnical report submitted by the developers appears to be shallow, incomplete and inadequate. As an example, it assumes the new construction would be slab on grade. However, the FEMA compliant structures being proposed in the project area are not and could not be slab on grade. Also, the evaluation of seismic densification risk (rated as low), completely misses the negative impact of demolition and construction activities on neighboring properties and surrounding fill, which historically has caused damage due to the high carrying capacity of vibrations in fill material like the bay mud. Another example is Section 4.9 "Slope stability/land sliding", which assumes that since the project lot is flat, there is no stability or slide risk. This completely ignores the fact that all lots on the Lagoon sharply drop off at the edge of the Lagoon and out into the BLPOA property. Thus, stability and land sliding is a high risk to BLPOA property as a result of the demolition and construction activities proposed, especially when there is no plan for an engineered bulkhead to be installed as part of site preparation prior to commencing building construction. Finally, although the multi-unit apartment building does not border the Lagoon itself, the weight and also impact of construction of this large-scale construction (such pile-driving to sink multiple support pilings) should be addressed as it will cause outward vibration and soil impacts to neighboring properties and BLPOA property. All of these issues and others should be included in a comprehensive and complete geotechnical report performed to address the impacts of the project as currently proposed.
4. Additionally, we recommend that the city hire a geotechnical expert to review the developer's geotechnical report submission. Given the complexity of the project and potential impacts and the technical expertise involved in evaluating and mitigating any and all impacts, the City needs expert assistance to understand and evaluate the developer's report and any proposed resolution. This is similar to when the City uses outside plan checkers and special inspection services to review and respond to proposed plans requiring special expertise.
5. The Developer should confirm that the project will not cause or require any addition of landfill into Lagoon water. Adding fill to the Lagoon would be a violation of longstanding BLPOA policy, and it would raise additional issues that go beyond City jurisdiction issues involving state water quality laws that prohibit discharges and landfill into protected waters. New bulkheads should be constructed prior to demolition to prevent soil movement into BLPOA property as a result of large heavy equipment used for the leveling of the existing housing or any fill of or impact to Lagoon waters as part of the new construction.
6. The Acoustic Report appears incomplete because it underestimates the impact of demolition and construction equipment impacts due to vibration waves based on the assumption "typical soil conditions". Clearly the project site is not

composed of typical soil as the Geotechnical report makes clear. There is no consideration of vibrations during demolition nor the potential impact on bulkheads. The last bullet point on page 12 before the summary should be adopted as a condition of approval.

7. The naming of the garage as “subterranean” appears to have been removed from prior versions of the developers’ presentations and is now called “semi-subterranean.” Does the proposed garage or any of the rest of the proposed project, whatever it is called, require FEMA compliance or review?
8. There appears to be a downslope from 6.3 ft on the street to about 5 ft at the entrance of the garage, which would potentially result in drainage of water into the garage. Elsewhere there is mention of “ejectors” (pumps?) for water from the garage to drain into the Belvedere lagoon for water “treatment”. The BLPOA strongly objects to this item because any discharge of water from the project would violate California state law and regulations implementing the Federal Clean Water Act, which prohibit discharges into protected waters or storm drains. The Lagoon is a protected water and operates under a Regional Water Quality Control Board permit that limits any discharges into the Lagoon to those specifically approved in the permit. Any “eject” or pumping or release of anything from the developer’s project into the Lagoon would violate applicable state laws and the terms of the permit, and be a reportable offense to the state board. This would include any pumping or discharge of any type of material into the Lagoon during demolition, construction or after occupancy. The Lagoon cannot be used for treatment or management of water or drainage from developer’s project.
9. Are there any new storm drains that empty into the lagoon planned? Are the existing storm drains to remain in their present placement? All storm drains, both new or existing, must be shown on the drawing. New storm drains into the Lagoon are subject to California state as well as Marin County water quality review and regulations.
10. The proposed plans state that the developer will build and manage its own sewage system. What does this mean and how would this be managed, monitored and controlled? What is the connection to SAN 5, which is the governing agency responsible for all sewage and storm drain systems in the City? The proposed project will create substantial and concerning potential adverse impacts on the sewer system and new risks for unsafe storm water runoff into the Lagoon that developer must identify and establish plans to manage as required by law and in collaboration with SAN 5 as the governing agency.
11. Since all existing housing units are being removed it appears this project falls under the City codes applicable for residences that will be demolished. If so, we believe that any existing non-conformities must be corrected and any new residences must meet all applicable current City codes. In particular, there are structures (Docks) and landfill located on BLPOA property that are non-



conformities. The BLPOA respectfully requests the City require correcting these non-conformities as a condition for the approval of the project.

12. It is not possible for the BLPOA to determine the placement of the proposed new docks shown on the plans relative to the existing docks. From the BLPOA perspective this renders the project application incomplete. Developer also must mark on the plans which docks are "existing", which docks are "removed" and which docks are "new" in order to be clear that no scope of work will involve adding new fill or construction into the Lagoon. Per #5 above, no landfill in the Lagoon may be permitted as part of the project.
13. From the BLPOA perspective the plans are not complete because the issue of whether the developers intend to create a Homeowners Association has not been stated. This important item was previously addressed in the BLPOA correspondence as the developer must ensure that the residents of its property that have access to the Lagoon follow all rules and requirements of the BLPOA.
14. Is this application considered a "sub-division?" Will each private residence and duplex and ADU be individually reviewed for compliance with City codes? What is the scope of approval and review being granted to developer's project? Will the proposed private homes have approved plans that the developer plans to sell with the land?
15. The amount and size of windows on the properties adjacent to the lagoon appear to be excessive and creating a glaring affect on other lagoon properties. More information is necessary to determine if this element meets State requirements. The height of the new residences must meet FEMA requirements and as such will be higher than the majority of properties that directly face the new residences. The lighting elements are extremely important to avoid direct lightings and reflections into neighboring properties. Photos will be delivered to City and developers to demonstrate what should not occur as a result of a recent remodel completion.

Per our comments above, the BLPOA also strongly suggests that the City hire outside consultants, at applicant's expense, to assist City staff in reviewing this application. Specifically, a geotechnical engineer to review the proposed project, the bulkhead designs, and also consider assisting our building inspectors during the time of construction for the following reasons.

- Review and construction oversight of this project requires significant technical expertise. Members have expressed to the BLPOA that when they were remodeling or building their new homes the city required that they pay for such outside consultations, for projects with nowhere near the scale or complexity of this project.

- Potential adverse impacts on other projects requiring review and oversight. Given the size of our City staff, it appears the workload required for this project will result in other citizens of Belvedere being delayed in their construction plans.
- Lack of proper oversight creates significant liability risks for city, BLPOA and citizens. Many members remember the fiasco created in Tiburon when Point Tiburon was approved and constructed, and the subsequent major engineering problems that went unnoticed during review and during construction resulted in all property owners having to vacate their homes for major structural and drainage corrections.

Respectfully submitted,



Kenneth Johnson, President

On behalf of the Board of Directors