

# Holland & Knight

50 California Street, Suite 2800 | San Francisco, CA 94111 | T 415.743.6900 | F 415.743.6910  
Holland & Knight LLP | www.hklaw.com

Daniel R. Golub  
415-743-6900  
Daniel.Golub@hklaw.com

**To: Robert Zadnik, Irene Borba, Ann Danforth, Barbara Kautz**  
**From: Daniel R. Golub, Deborah Brundy**  
**Date: September 19, 2022**  
**Re: Mallard Pointe Replacement Housing and Relocation Requirements**

The purpose of this memorandum and supporting material is to further document that the Mallard Pointe Project (“Project”) will satisfy all “replacement housing” and “relocation assistance” requirements of the State Density Bonus Law (“SDBL”) (Gov. Code § 65915, *et seq.*) and the Housing Crisis Act of 2019 (“HCA”), as amended by SB 8 of 2021 (Gov. Code § 66300, *et seq.*). More specifically, this memorandum responds to the City of Belvedere’s (“City”) August 16, 2022 Compliance Review letter and September 6, 2022 request for documentation regarding the income levels of residents of 1 – 22 Mallard Road (“Current Development”).

As pertinent here, the HCA and SDBL impose two sets of requirements:<sup>1</sup>

- *First*, Gov. Code § 66300(d)(2)(A) and Gov. Code § 65915(c)(3) require residential projects to “replace” any “protected units” with units occupied by the same or lower income level as those tenants in occupancy. We refer to these requirements as “replacement housing” requirements.
- *Second*, Gov. Code § 66300(d)(2)(D) requires developers to agree to provide existing occupants who are lower income households certain relocation benefits and a right of first refusal for a comparable unit in the new project. We refer to these as “relocation” requirements.

Although we recognize there is some connection between the two categories, we believe it is helpful to consider each category separately. Most importantly, the “replacement housing” requirements affect how many Below Market Rate (“BMR”) units must be included in the Project, irrespective of whether those units are ultimately occupied by the tenants of the Current

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<sup>1</sup> The other provisions of Gov. Code § 66300(d) are not at issue and so we do not address them further in this memorandum. The Project will provide a sufficient number of homes to satisfy Gov. Code § 66300(d)(1) and (d)(2)(B), and will also agree as a condition of approval to comply with the tenant notice and occupancy requirements in Gov. Code § 66300(d)(2)(C).

Development. The “relocation” requirements, by contrast, establish which benefits are offered to *specific* tenant households who occupy the Current Development.

We understand the City has a significant interest in ensuring compliance with these laws, the primary purpose of which is to ensure that appropriate relocation and new housing opportunities are provided when a development displaces lower-income households. In that context, it must be noted that homes in the Current Development are market-rate rentals in a very desirable location and receive very high rents even by Marin County standards. The average rent at the Current Development is \$6,000, or \$72,000 annually. Under the Marin County income limits in effect at the time of the Project application, any “lower income” household paying such rent would be paying over 60% of its household “pre-tax” income in rent. This fact alone strongly suggests that that is unlikely any significant number of lower-income households occupy the Current Development, and it is certainly sufficient evidence to rebut any presumption that lower-income households occupy the Current Development at a similar proportion as the City as a whole.

Despite this, the applicant team has made a diligent proactive effort to seek as much information as the tenants of the Current Project are willing to share in order to ensure that applicable replacement and relocation requirements are satisfied. As detailed in the Project’s application, OPC, an independent relocation consultant with substantial experience with California relocation law, has performed a thorough inquiry of all tenant households. OPC’s review confirms that, at most, three households in the Current Development have incomes at or below moderate-income levels: one appears to be a “very low income” household and two appear to be “low income.” As such, providing two low-income BMR units and one very low-income BMR unit is sufficient to satisfy all replacement housing requirements. The Project will exceed this requirement. The Project will create more than 22 2-bedroom units and will also satisfy all relocation requirements by providing all required forms of relocation assistance to any tenants who qualify as lower-income households.

## **I. Replacement Housing**

As we discussed, for the HCA and SDBL to be workable for cities and applicants, the time at which a project’s “replacement housing” requirements are established must be fixed at a single point in time, rather than constantly shifting as the application and development process progresses. As we also discussed, the time period for fixing the replacement housing requirements is the time of the application.<sup>2</sup> Accordingly, OPC confirmed the income status of each household in occupancy on the basis of the income information that was provided, and the income levels in effect, at the time the Project application was submitted.

For purposes of ensuring a conservative analysis, we have proceeded on the assumption that all 22 of the homes in the Current Development qualify as “protected units.”<sup>3</sup> On that assumption,

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<sup>2</sup> The replacement housing provisions refer numerous times to the date of the application and the five-year period preceding. See Gov. Code § 65915(c)(3)(A), (c)(3)(B)(i), (c)(3)(B)(ii), (c)(3)(C), (c)(3)(E).

<sup>3</sup> None of the units in the Current Development are subject to any law or covenant restricting rents to lower income tenants. However, like most rental units in the state, the units are arguably “protected” since they are subject to the statewide rent cap enacted in 2019. See Gov. Code § 66300(d)(2)(F)(vi).

the Project must provide, for each occupied unit, a new unit that will be “occupied by . . . persons and families in the same or lower income category as those households in occupancy.”<sup>4</sup> For units that are vacant at the time of the application, those units are “replaced” as long as a replacement unit in the new project is affordable to “and occupied, by persons and families in the same or lower income category as the last household in occupancy.”<sup>5</sup>

Three units were vacant at the time of the application. To establish the income category of the last household in occupancy before the time of the application, OPC consulted the lease applications, pay stubs and brokerage account information that the last household to occupy the unit provided at the time that household applied to rent the unit. These documents demonstrate that the last households to occupy each of the three vacant units had incomes above the moderate-income level. As a result, there is no requirement to “replace” these three units with BMR units.<sup>6</sup>

For the remaining nineteen units, OPC asked the tenants to certify whether their income level was or was not below the “moderate income” level, using the form the applicant team provided for City staff’s review and comment in December 2021. (A copy of the self-certification form is attached to this memorandum.) That form described the Project’s requirement to comply with the HCA, the relocation benefits for which tenants would be eligible, and the Marin County income levels in effect at the time. The applicant offered a \$1,000 rent reduction to all tenants who completed the certification and provided the income information necessary to substantiate their income status.

12 households self-certified in response that their income was above the moderate-income level. As a result, there is no requirement to replace any of these 12 units with BMR units.

The remaining seven households responded to indicate that they may qualify as below moderate-income households. Following standard practice for programs of this type, OPC requested information from each such household to document the households’ incomes, and reviewed the income information that was provided.

Two of the seven households submitted information demonstrating their incomes were above moderate-income. One household signed the certification confirming the household income level was above the moderate-income level. Another household provided a tax return showing the household income to be above the applicable moderate-income level. As a result, there is no requirement to replace either of these two units with BMR units.

Three tenants provided tax returns as well as SSI, pension, VA and trust account statements which indicated they qualified as “lower-income” households: two “low-income” and one “very low” income.

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<sup>4</sup> Gov. Code § 66300(d)(2)(F)(vii)(I); Gov. Code § 65915(c)(3)(B)(i).

<sup>5</sup> Gov. Code § 66300(c)(3)(B)(i).

<sup>6</sup> To the extent relevant, these three units have subsequently been rented, and those households are also all above-moderate-income households.

Two households refused, after extensive and repeated requests, to provide the complete income information OPC requested to document their income level. One household provided no information other than the self-certification form, and on that self-certification form the tenant acknowledged ownership of very substantial assets. A second household provided some but not all income information requested, and the income that household reported was less than the annual amount the tenant paid in rent. The tenant refused to provide further documentation. OPC's experience is that under these circumstances, given the incentive that a lower-income household has to document their lower-income status to qualify for relocation assistance benefits, and the additional incentive provided to qualify for the rent reduction the applicant offered, these households' decision not to provide OPC with sufficient documentation supporting their income status strongly supports the conclusion that they are not lower-income households.

However, even if this were not so, the replacement housing requirements provide a rebuttable presumption that applies to the extent the income level of any household is not known. The law presumes that lower income renter households occupy existing units "in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development's Comprehensive Housing Affordability Strategy database,"<sup>7</sup> which in the case of Belvedere is 42%. As set forth above, the available evidence fully rebuts the presumption that households at the Current Development are lower income at the same proportion as all renter households in the jurisdiction. But even if the statutory presumption were applied to the two households that declined to provide complete income information, assuming that 42% of the two units are occupied by lower income households would only yield a requirement that, at most, one additional lower-income unit would need to be provided. Therefore, the four BMR units being provided in the Project will still satisfy the replacement housing requirements regardless.

The City's August 16, 2022 Compliance Review requests "[a] copy of each of the income certifications provided by all tenants providing certifications" and "identification of which units are occupied by lower income tenants." Additionally, on our September 6, 2022 call, the City requested to be provided the underlying documentation provided to OPC for the purposes of verifying tenant's income levels. It is important to emphasize that residents have not consented to the provision of their private income information and personally identifying information to the City. We are not aware of anything in the law that requires a project applicant to disclose the personal financial information of each tenant to the City, and neither are we aware of any project subject to the SDBL or HCA doing so. Despite this, we are willing to make appropriate arrangements to ensure City officials are aware of the basis of OPC's determinations. We appreciate the City's willingness to do this in a manner that respects the privacy interests of the residents.

## **II. Relocation Plan**

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<sup>7</sup> Gov. Code § 66300(c)(3)(B)(i).

City staff previously requested modifications to OPC's draft relocation plan for the project. OPC is happy to make some of these changes now, but some of the changes appear to require specific offers of benefits be provided to specific tenant households. If it is the City's direction that an entitlement to *relocation* benefits is also fixed at the time of the Project application, OPC can begin making that outreach now. However, the applicant team has been acting on the assumption the City will require relocation benefits be provided to any lower-income households who are in occupancy at the time the project *is approved*, and on the basis of that tenant household's relocation needs and available housing opportunities at the time the tenant is required to relocate. As a result, it is not possible at this time for the relocation plan to go into further detail about the specific benefits that will be provided.

### **III. Conclusion**

The applicant team has provided all information necessary for a complete application, and respectfully submits that it has also gone above and beyond standard practice to demonstrate why the Project will meet or exceed all applicable replacement housing and relocation requirements.

*January 7, 2022*

Mallard Road  
Belvedere, CA 94920

Re: Request for Income Disclosure or Certification of Income

Dear

I hope you had a wonderful Holiday Season and your 2022 has started well!

I am writing to provide an update regarding the plans for the future of Mallard Pointe. As previously shared, ownership proposes to rebuild the property and create 42 new, sustainable residences. In keeping with the character of Belvedere, the project is thoughtfully designed to blend into and complement the neighborhood, while adding 20 much-needed additional housing units within the community. Construction could begin as soon as late-2023.

Once completed, the property will include a variety of floor plans and unit types including single family homes, duplexes, accessory dwelling units, and apartments in 1- to 4-bedroom configurations. More information is available on our project website: [www.MallardPointe2026.com](http://www.MallardPointe2026.com). While we are very excited for this project to proceed, processing entitlements and permitting are anticipated to require 18 to 24 months. We will continue to offer rental housing at Mallard Pointe during this period of time.

I am gathering information related to potential relocation benefits for our existing residents in compliance with Housing Crisis Act of 2019 ("HCA") which governs aspects of this project. Such benefits are dependent on household income levels and include potential relocation benefits and a right of first refusal for a comparable unit available in the new housing development at discounted rental rates for qualifying households.

As of April 2021, the Moderate Income level is \$143,600 for a 2-person household and \$125,650 for a 1-person household (applicable income levels vary by household size as shown in the attached exhibit).

- If your household income is **at or below the Moderate Income levels**, we are asking that you **complete the enclosed Income Disclosure Form** so we can assess your eligibility to benefits under the HCA and determine the number of rent-restricted units required in the new development.
- If your household income is **above the Moderate Income level**, we request that you **complete the enclosed Certification of Income form** indicating that your household income is greater than the moderate income limits for your household size. **This form does not ask for disclosure of your actual income.**

Since we want to ensure full compliance with the HCA, it is important for us to be acting on current income information. **In consideration for your timely response to this request for income information, we are offering each household who completes and returns whichever form is applicable to them either a one thousand dollar (\$1,000) direct payment or February rent credit, at your option. In order to be eligible for this benefit, please return the applicable form to me no later than January 21, 2022.**

In addition, as part of our relocation program, all residents who complete and return the applicable form for their household by January 21<sup>st</sup> will also be offered the following:

- \$6,500 rent credit to offset anticipated relocation expenses if you are still a resident when notices are sent out that the construction will be commencing within 90-days;
- Additional \$7,500 rent credit to offset anticipated relocation expenses to those residents who return to the rebuilt Mallard Pointe;
- First priority to reserve a newly constructed rental unit of any 1 to 4-bedroom floorplan in a single-family, duplex, or apartment building; and
- Minimum of 6 months' notice prior to the termination of your tenancy for relocation planning.

For lower income households, the payments outlined above may enhance the benefits to which you are entitled and will be receiving under the HCA. By completing these forms and providing the information requested, you are not waiving any additional rights you may have under the HCA.

For any residents who are interested, the owners of Mallard Pointe will be working with local property managers to identify residences for relocation. We will start working with current residents 6 months prior to the targeted construction start date to help coordinate relocation.

Please note that irrespective of your income levels, in order to receive the above relocation benefits, you must accurately complete and return the applicable form. Residents who do not respond as requested will not be offered any of the discretionary benefits outlined above.

On behalf of ownership and management, I want to convey that we value your tenancy at Mallard Pointe and it is our hope that you will find a new residence that fits your needs among the single-family residences, duplexes, and apartments at the new Mallard Pointe. To that end, our current residents will have priority over the general public when they are marketed. We invite you join our interest list by filling out the form at [www.mallardpointe2026.com/interest-list](http://www.mallardpointe2026.com/interest-list).

If you have any questions, please contact me ([ccorbin@blvdresidential.com](mailto:ccorbin@blvdresidential.com)). Otherwise, I look forward to receiving the requested information from you at your earliest opportunity.

Thank you and have a healthy and happy New Year!

Sincerely,

Casey Corbin  
Manager  
Mallard Pointe Apartments

**Marin County Income Exhibit**

(Source: California Department of Housing and Community Development, April 26, 2021)

<b>Number of Persons in Household:</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
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Marin County Area Median Income: \$149,600	Extremely Low	38400	43850	49350	54800	59200	63600	68000	72350
	Very Low Income	63950	73100	82250	91350	98700	106000	113300	120600
	Low Income	102450	117100	131750	146350	158100	169800	181500	193200
	<b>Median Income</b>	<b>104700</b>	<b>119700</b>	<b>134650</b>	<b>149600</b>	<b>161550</b>	<b>173550</b>	<b>185500</b>	<b>197450</b>
	Moderate Income	125650	143600	161550	179500	193850	208200	222600	236950







## CERTIFICATION OF INCOME ABOVE MODERATE INCOME LIMITS

As of the date indicated below, I am a resident of \_\_\_\_\_ Mallard Road, Belvedere, CA 94920 (the "Premises") in the complex commonly known as Mallard Pointe (the "Property" or "Community").

The current owner of the Property has disclosed its intention to demolish the existing twenty-two rental units that comprise the Community to construct multiple residential units, including single family homes, accessory dwelling units, duplexes, and apartments in a multi-family building ("Project").

The owner has further disclosed that The Housing Crisis Act of 2019 ("HCA"), as amended requires the owner to replace all of the existing twenty-two residential units and restrict rents in the replacement units to affordable rents for households in the same or lower income categories as the households existing at the Project site at the time of the owner's full development application, which it anticipates making in January 2022.

The owner has also disclosed that, under recent amendments to the HCA, in 2022 households comprised of individuals who collectively earn 80% or less of the Area Median Income will be entitled to relocation benefits and a right of first refusal for a comparable unit available in the new housing development at a rent level that is affordable to the household based on the household's income at the time the new comparable unit is available for occupancy.

As of April 2021, I understand the current income limits for the City of Belvedere are:

Number of Persons in Household:		1	2	3	4	5	6	7	8
Marin County Area Median Income: \$149,600	Extremely Low	38400	43850	49350	54800	59200	63600	68000	72350
	Very Low Income	63950	73100	82250	91350	98700	106000	113300	120600
	Low Income	102450	117100	131750	146350	158100	169800	181500	193200
	<b>Median Income</b>	<b>104700</b>	<b>119700</b>	<b>134650</b>	<b>149600</b>	<b>161550</b>	<b>173550</b>	<b>185500</b>	<b>197450</b>
	Moderate Income	125650	143600	161550	179500	193850	208200	222600	236950

**By signing below, I hereby certify and affirm that the combined household income of all current occupants in the Premises exceeds the Moderate Income limits set forth above.** I understand that by providing this Certification of Income Above Moderate Income Limits, I will not be entitled to relocation benefits or a right of first refusal for a comparable unit in the Project under the HCA. I further understand that the unit replacing the Premises will not be rent restricted as a result of this certification. The owner may rely on this certification in processing the application for the Project.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name





## INCOME DISCLOSURE FORM

*The purpose of this Income Disclosure Form is to help us determine whether your household may be entitled to relocation benefits and a comparable unit in our new development after it is completed at a rent level that is affordable to you. The information will also be used to help us ensure we provide replacement units in the new development at appropriate rent levels under applicable law. The information will be verified with appropriate third parties. Information provided will only be used for these purposes. (Please Print Clearly)*

### HOUSEHOLD COMPOSITION INFORMATION:

	Full Legal Name (Last, First, M.I.)	Date of Birth	Social Security Number
1			
2			
3			
4			

Are any household members listed above Live-in Aides? Yes  No

Does anyone live with you now that is not listed above? Yes  No

Does anyone plan to live with you in the future who is not listed above? Yes  No

If you answered "Yes" to any of the above questions, please explain: \_\_\_\_\_

### ANNUAL INCOME

List all income of all persons in your household, including those under 18.

<b>Gross Monthly Income Source:</b> <i>Indicate whether anyone in your household receives income from the following:</i>			HH Member 1	HH Member 2	HH Member 3	HH Member 4	Total
Salary/Hourly Wages	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Overtime Pay	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Commissions and Fees	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Tips and Bonuses	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Net Income from Business	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Rental Income	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Social Security	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Pensions/Retirement Funds (Received Periodically)	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Contributions from Friends or Family	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Scholarships/Grants/ Work Study	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Unemployment Benefits	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Worker's Compensation	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Do you have a <b>Court Order</b> for Child Support/Alimony (whether or not paid)?	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Do you <b>receive</b> Child Support/Alimony?	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
TANF / AFDC	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Veteran's Administration	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$
Other	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$	\$	\$	\$

If "other income" please explain: \_\_\_\_\_

**ASSETS**

List all assets for every person in the household, including those under the age of 18.

Listing of All Assets			Cash Value	Annual Interest, Dividends, or Rent from Assets	Name of Financial Institution or Description of Asset	Account Number
Checking Account(s)	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Savings Account(s)	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Cash on Hand	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Stocks/Bonds	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
CD/Money Market	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Mutual Funds	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
IRA/401K Account	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Trust Fund	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Whole Life Insurance (cash value)	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Real Estate or Home	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		
Other	yes <input type="checkbox"/>	no <input type="checkbox"/>	\$	\$		

If "other assets" please explain: \_\_\_\_\_

**CERTIFICATION AND ACKNOWLEDGMENT.** By signing below, the undersigned is certifying that all the above information is true and correct and accurately reflects all income and assets of the household. The undersigned understands and acknowledges that the owner/developer will be relying on the information provided. The undersigned will provide documentation evidencing the above upon request and authorizes the disclosure of income and financial information from employer(s), financial institutions, and other sources identified. The provision of this information does not guaranty entitlement to relocation benefits or a right of first refusal, but is the first step in the process.

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

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Signature Date

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Print Name

