



## CITY OF BELVEDERE

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October 25, 2022

Bruce Dorfman

Re: **Mallard Pointe Replacement Housing and Relocation Requirements**

Dear Mr. Dorfman:

This letter responds to the memo of September 19, 2022, from Daniel R. Golub and Deborah Brundy related to Mallard Pointe replacement housing and relocation requirements.

**Replacement Housing Requirements.** The City cannot approve a project that requires the demolition of any ‘protected’ housing units unless they are ‘replaced’ as required by density bonus law. (Government Code Section 66300(d).<sup>1</sup>) Density bonus law provides that, if any units are occupied on the **date of application**, the number of replacement units depends on the income of the households in residence plus presumptions made about any vacant units. (Section 65915(c)(3)(B).) While the statute does not state specifically that income and other requirements for the purpose of determining the units to be replaced should be determined on the date of application, this seems a reasonable conclusion given the wording of the provision.

However, in determining the replacement housing requirements for Mallard Pointe, we are hampered by your team’s refusal to share any more than your conclusions with the City. In our outside counsel’s experience, cities have been provided with verifications from over-income tenants, with the names and unit information of lower income tenants, with the names and unit numbers of tenants who did not provide income information, and with evidence of the income of past tenants of vacant units. Because Mallard Pointe has provided none of this information, despite the City’s agreement to redact personally identifiable information if it receives Public Records Act requests, the City will contact the tenants directly in an attempt to verify income information. The City has no way to verify the tenants’ past income for the three units that were vacant at the time of application and will assume that their income is unknown unless the applicant team provides evidence to the City of their income.

**Relocation Requirements.** The Housing Accountability Act provides that that the City cannot *approve* the project unless the developer agrees to provide to lower income occupants of “protected units” both relocation benefits and a right of first refusal for a “comparable unit” in the new housing development, available at affordable rent or an affordable housing

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<sup>1</sup> All further references are to the Government Code.

cost. Relocation benefits are those provided in Section 7260 et seq., which are implemented under the regulations contained in 25 CCR 6000 – 6139.

The relocation requirements originally applied only to public agencies. If a public agency acquires property, tenants living in the property from the time the agency commences negotiations with the property owner, until the agency acquires the property, are eligible for relocation assistance, whether or not their move is voluntary or involuntary. If they move before the acquisition is completed, the agency has the obligation to attempt to find them and offer relocation benefits. Post-acquisition tenants are not eligible for assistance provided that they are properly notified of the estimated date of displacement, and the housing is not offered for rent on a permanent basis. (25 CCR Section 6034.)

If these principles are applied in a reasonable manner to Mallard Pointe, then relocation benefits (and the right of first refusal) should be provided to tenants residing in Mallard Pointe between submission of the application (equivalent to “commencement of negotiations”) and any approval of the project (equivalent to “acquisition of the property”). The actual benefits to which they are entitled will be determined based on whether they are lower income, availability of units, etc. at the time they are relocated or when they actually move, if earlier. If lower income tenants move from Mallard Pointe between the date of application and the date of approval, the applicant has an obligation to find them and provide relocation benefits.

Tenants who move to Mallard Pointe after project approval are not entitled to relocation benefits or the right of first refusal provided that they receive notice conforming with the relocation regulations. The relevant provision states that the notice “shall inform post-acquisition tenants regarding the projected date of displacement and, periodically, should inform post-acquisition tenants of any changes in this projection.” If the housing is made available on a permanent basis, the tenant is eligible for relocation benefits. (25 CCR Section 6034(b).)

The City needs to know the names of the tenants who were in occupancy on the date of application and, if the project is approved, any in occupancy between the date of application and the date of approval, to ensure that they will be provided with any relocation benefits that they are eligible for.

Relocation Plan. The relocation regulations (25 CCR Section 6038) state that a relocation plan shall include the following. We’ve highlighted the information that seems reasonable for the applicant to provide at this time. The City also needs the square footage, number of bedrooms, and other features of the apartments of the lower income tenants to be displaced (ideally a floor plan) to ensure that “comparable units” will be provided in the development and available to be offered to the eligible tenants.

(1) A diagrammatic sketch of the project area.

(2) Projected dates of displacement.

October 25, 2022

Page 3

(3) A written analysis of the aggregate relocation needs of all persons to be displaced (as required by section 6048) and a detailed explanation as to how these needs are to be met.

(4) A written analysis of relocation housing resources (as required by section 6052).

(5) A detailed description of the relocation advisory services program, including specific procedures for locating and referring eligible persons to comparable replacement housing.

(6) A description of the relocation payments to be made (pursuant to Article 3) and a plan for disbursement.

(7) A cost estimate for carrying out the plan and identification of the source of the necessary funds.

(8) A detailed plan by which any last resort housing (as described in section 6054 and Article 4) is to be built and financed.

(9) A standard information statement to be sent to all renters who will be permanently displaced (as required by section 6046).

(10) Temporary relocation plans, if any.

(11) A description of relocation office operation procedures.

(12) Plans for citizen participation.

(13) An enumeration of the coordination activities undertaken (pursuant to section 6052).

(14) The comments of the relocation committee, if any (pursuant to section 6012). [NA]

(15) A written determination by the public entity that the necessary resources will be available as required. [NA]

Please feel free to contact me if you have any further questions.

Sincerely,



Irene Borba, Director of Planning & Building