m | r | wolfe
& associates, p.c.
attorneys-at-law

September 26, 2023

Via U.S. Mail & E-Mail

Robert Zadnick, City Manager
City of Belvedere
450 San Rafael Avenue
Belvedere, CA. 94920
rzadnik@cityofbelvedere.org

Re: Mallard Pointe Application Status

Dear Mr. Zadnick:

On behalf of BRIG, this is to respond to some of the points raised by Mallard Pointe developer Bruce Dorfman in his August 28, 2023 letter to you concerning the above-referenced Project application. Preliminarily, BRIG seconds and supports your August 17 letter to Mr. Dorfman, in which you affirm that any perceived delay in scheduling public hearings on the application is in no manner the fault of the City. It is instead due to the developer's failure to pay funds necessary for Ascent to complete its review for a possible CEQA exemption, and its unwillingness to erect story poles at the Project site despite the Zoning Code's clear requirement that it do so. Furthermore, as you correctly observed, the developer itself asked for a delay in completing Ascent's review pending the possible submission of a revised Project application.

The developer's most recent letter repeats the claim that the Zoning Code's prohibition of apartment houses in the R-2 district is inconsistent with the City's General Plan, and that an apartment building is required to meet the General Plan's specified density of 20 units per net acre at the site. BRIG has addressed and refuted this claim on multiple occasions in past correspondence addressed to the City Council and other City officials. More specifically, BRIG has documented how the R-2 district's apartment prohibition is fully consistent with the General Plan, and has provided an architect's schematic plainly showing that 48 duplex units can be built at

the site, thereby meeting the General Plan's density specification in a manner consistent with R-2 zoning. (*See* BRIG memo to Planning Director Irene Borba, July 1, 2022; BRIG letter to City Council, October 18, 2021; BRIG memo to Irene Borba, September 20, 2022; and BRIG memo to Robert Zadnick, May 16, 2023; *see also* letter from Pamela Lee of Aleshire & Wynder, LLP, to Robert Zadnick and Irene Borba, September 7, 2022.)

BRIG has also refuted the developer's claim that the R-2 zone's apartment prohibition can be waived or otherwise made unenforceable pursuant to the State Density Bonus Law. (*See* BRIG memos to Irene Borba, July 1, 2022, August 10, 2022 and November 10, 2022; *see also* letter from Pamela Lee, cited above.) These memos and letters may be found in the attached hyperlinked compendium of BRIG's various submittals to the City dating back to July, 2021.

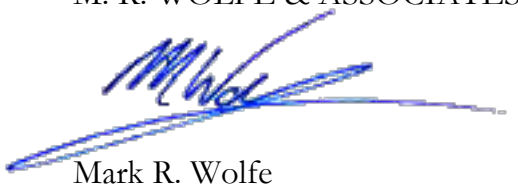
The developer's letter also states that in the event the City determines the current iteration of the Project to be exempt from CEQA, the developer will then submit "alternative plans" that replace the proposed apartment building with three-plexes and four-plexes. Please note that such alternative plans would still be inconsistent with the R-2 zoning designation, which as you know only allows for duplexes or single-family residential uses at the site. Regardless, the Project does not qualify for any categorical exemption from CEQA, as BRIG has also repeatedly explained. (*See* BRIG memos dated April 27, 2022, June 16, 2023, and August 2, 2023.)

Finally, the developer's refusal to provide the City with a story pole plan is simply unfounded. Regardless of whether computer-generated graphics can meaningfully represent the size, scale, and bulk of the Project on paper, story poles are plainly required for any development application seeking design review approval under section 20.04.080 of the Belvedere Zoning Code. Story poles serve an important purpose, providing both the public and City officials with a sense of a project's future volume and spatial placement that cannot be replicated by computer modeling. The City should not waive this requirement for the Mallard Pointe Project.

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe
On behalf of BRIG

cc: Rebecca Markwick, Director of Planning & Building
Beth Haener, City Clerk
Members of the City Council
Members of the Planning Commission
Andrew Shen, City Attorney

Legal Memoranda Submitted by BRIG to the City of Belvedere Addressing the Mallard Pointe Development Proposal

July, 2021 – August, 2023

[Click on a Date/Topic to be Taken to the Corresponding Document]

Date	**Topic**
July 21, 2021	Response (from Mark Wolfe) Refuting Developer's Assertions that: (i) the General Plan Allows Multi-Family Apartments "by Right" Within the R-2 Zone; and (ii) the R-2 Zone Apartment Prohibition is in Conflict with the General Plan
October 18, 2021	Response (from Mark Wolfe) Refuting Developer's Assertions that: (i) the R-2 Zone Apartment Prohibition is Inconsistent with the General Plan; (ii) the Mallard Pointe Project is "Permissible by Right;" (iii) the City Council Lacks Authority Either to Require a Zone Change or to Deny Entitlements; and (iv) the Project Qualifies for Ministerial and Streamlined Approval Under SB 330, SB 35, and/or Various Other Recently Enacted Housing Laws
October 21, 2021	Response (from Mark Wolfe) to Question from City Council Member re the Applicability of SB 8 to the Mallard Pointe Project
April 27, 2022	Response (from Mark Wolfe) Refuting Developer's Assertion that the Mallard Pointe Project Meets the Criteria for the Class 32 Categorical Exemption from CEQA for In-Fill Development Projects and is Therefore Exempt from CEQA Review; Including Letter from Lawrence B. Karp, Ph.D., Addressing Significant Geotechnical Concerns at the Project Site

July 1, 2022	Response (from Mark Wolfe) Refuting Developer's Assertions that: (i) the R-2 Zone Apartment Prohibition is Inconsistent with the General Plan, and (ii) the Mallard Pointe Project is Entitled to a "Waiver" of the Prohibition Under the State Density Bonus Law; with Attachments Including Alex Seidel's, FAIA, Schematic Drawing Showing that 48 Duplex Units Can Lawfully Be Built on the Mallard Pointe Project Site
August 10, 2022	Response (from Mark Wolfe) Refuting Developer's Assertions that the Mallard Pointe Project is: (i) Entitled to a "Waiver" from the R-2 Zone Apartment Prohibition Under the State Density Bonus Law; and (ii) Approvable Under the Streamlined Process Provided by SB 330
September 7, 2022	Response (from Pamela Lee of Aleshire & Wynder, LLP) Refuting Developer's Assertions that: (i) the R-2 Zone Apartment Prohibition is Inconsistent with the General Plan; and (ii) the Mallard Pointe Project is Entitled to a "Waiver" of the Prohibition Under the State Density Bonus Law
September 20, 2022	Response (from Mark Wolfe) Refuting Developer's Criticism of Alex Seidel's Earlier Schematic Drawing, with Attached Revised Schematic Site Plan from Alex Seidel, FAIA, Showing that 48 Duplex Units Can Lawfully be Built on the Mallard Pointe Project Site
November 10, 2022	Response (from Mark Wolfe) Refuting Developer's Assertion that the Mallard Pointe Project is Entitled to Relief from the R-2 Zone Apartment Prohibition as a "Concession" Under the State Density Bonus Law
May 16, 2023	Response (from Mark Wolfe) Refuting HCD's Unsupported Assertion that the R-2 Zone Apartment Prohibition is Inconsistent with the General Plan

June 16, 2023	Response (from Mark Wolfe) to Developer's October 22, 2022 "Updated Geotechnical Report," further refuting Developer's claim that the Mallard Pointe Project is categorically exempt from environmental review under CEQA.
August 2, 2023	Memorandum (from Mark Wolfe) Concerning Floodplain Development Permitting Issues at Mallard Pointe Site, and Including Letter from Lawrence B. Karp, Ph.D., Responding to Developer's October 22, 2022 "Updated Geotechnical Report."

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MEMORANDUM

July 21, 2021

To: Community Venture Partners

From: Mark Wolfe, M. R. Wolfe & Associates, PC

Re: Mallard Pointe Development – Need for Rezoning from R-2

You asked whether the multi-family apartment component of the proposed Mallard Pointe Project ("Project") is permissible "by right" in the City of Belvedere's R-2 Zoning District, as claimed in a March 15, 2021 memo from the developer's attorney. For the following reasons we conclude it is not permissible in the R-2 district, and would at a minimum require an amendment to the City's General Plan and Zoning Code in order to proceed.

The General Plan Designation of the Project Site

The Belvedere General Plan 2030 designates the Project site "Medium Density MFR: 5.0 to 20 units/net acre." The General Plan's Land Use Element clearly states that this Medium Density MFR designation applies to lands in **both** the R-2 **and** R-3/R-3C zones. (*See* Land Use Element, p. 25, attached as **Attachment 1** to this memo, and Table, reproduced below.) Note the Table's use of the conjunction "and" in defining "Medium Density Multi-Family Residential (R-2 **and** R-3/R-3C). In other words, R-2 and R-3/R-3C zoning are both sub-categories of the Medium Density MFR designation.

Residential General Plan land use categories and density and intensity standards are as follows:

Low Density Single Family Residential (R-15 zone)	1 to 3.0 dwelling units per net acre. 2.7 to 8.1 persons per acre. The total floor area permitted, without an Exception Permit, is 33 percent of the lot size, up to a house size cap of 4,850 square feet for R-15 zone.
Medium Density Single Family Residential (R-1L and R-1W zones)	3.1 to 6.0 dwelling units per net acre. 8.2 to 16.2 persons per acre. The total floor area permitted, without an Exception Permit, is 50% percent of the lot size, up to a house size cap of 4,000 square feet in the R-1L (Lagoon Area) zone and 40 percent of the lot size, up to a house size cap of 4,240 square feet in the R-1W (West Shore Road) zone.
High Density Single-Family Residential (R-1C zone)	Over 6.0 units per net acre. More than 16.3 persons per acre. The total floor area permitted, without an Exception Permit, is 50 percent of the lot size, up to a house size cap of 3,500 square feet for R-1C zone.
Medium Density Multi-Family Residential (R-2 and R-3/R-3C zones)	5 to 20 dwelling units per net acre. 13.5 to 54 persons per acre.
High Density Multi-Family Residential (R-3 and R-3/SC-H overlay)	Same as R-3, except density may be increased up to 35 dwelling units per net acre (95 persons per acre) upon Planning Commission's findings of benefit to the community and lack of environmental impact or on residential properties adjacent to commercially-designated properties.

The General Plan's Housing Element, meanwhile, acknowledges this distinction in even more detail, clarifying that the R-2 District is a "Two-Family (Duplex)" residential zoning district, and that the separate R-3 and R-3C Zoning Districts are "Multi-Family" residential zoning district:

> "The following zoning districts allow residential uses:
>
> | | |
> |---|---|
> | R-1C: | Single-family Residential Zoning district for parcels on Corinthian Island |
> | R-1L: | Single-family Residential Zoning district for parcels on the Belvedere Lagoon |
> | R-1W: | Single-family Residential Zoning district for parcels along the Waterfront (West Shore Road) |
> | R-15: | Single-family Residential Zoning district for parcels on Belvedere Island |
> | **R-2:** | **Two-Family (Duplex) Residential Zoning District** |
> | **R-3/R-3C:** | **Multi-Family Residential Zoning Districts** |
> | C-1: | Commercial Zoning District – allows second story residential uses over ground floor commercial" |

See Housing Element, pp. 45-46 (**Attachment 2**.)

Therefore, the General Plan's Land Use Element establishes, and its Housing Element expressly recognizes, that there are **two** distinct sub-categories of "Medium-Density Multi-Family Residential" zoning districts: a two-family/duplex district (R-2), and separate multi-family (apartments) districts (R-3 and R-3C).

The Zoning Code Designation of the Project Site

The City's Zoning Map (*see* **Attachment 3**) indicates that the entirety of the Project site is zoned "R-2," indicating that it is in the "Two-Family (Duplex) Residential Zoning District."

Chapter 19.28 of the Zoning Code, titled "R-2 ZONE," specifies the permitted land uses, regulations, and development standards that govern within the R-2 Two-Family (Duplex) Zoning District. **Section 19.28.010** (copy attached as **Attachment 4**) lists permissible land uses as follows:

> "The following uses are permitted by right (*i.e.* without a use permit) in the R-2 zone:

> A. All uses and accessory uses permitted in the R-1 zone and the R-15 zones,[1] subject to the same requirements and regulations provided in Chapters 19.24 and 19.26 of this Title for the R-1 and R-15 zones;
>
> **B. Two-family dwellings;**
>
> C. Accessory uses necessary to any of the above uses, and accessory buildings located on the same lot;
>
> D. Structures, facilities and uses relating to or convenient or necessary for any function of municipal government;
>
> E. Transitional and supportive housing facilities.

Section 19.28.020 specifies additional uses that are permissible within the R-2 District with a conditional use permit. These are: public buildings, parks and playgrounds; electric substations, and other public utility facilities; large residential or community care facilities serving seven or more individuals; and large family day care. (*See* **Attachment** 4.)

Notably, **Section 19.28.030**, titled "Prohibited uses," states that only the uses described above are permissible in the R-2 district, while expressly prohibiting "apartment houses:"

> The following uses are prohibited in the R-2 zone: All uses not specified in Sections 19.28.010 or 19.28.020 of this Chapter, specifically including, but not limited to, any business, boarding house, rooming house, **apartment court, apartment house**, church, club building, hotel, rental office or any other use. (*See* **Attachment** 4, boldface added.)

Table 36 in the Housing Element does not establish that multi-family apartments are permissible by right in the R-2 Zoning District.

In a memo dated March 15, 2021 (**Attachment 5**), the law firm of Ragghianti & Freitas, LLP ("Ragghianti") opines that the inclusion of Table 36, labeled "Housing Types by Residential Zoning Districts," in the Housing Element's discussion of how the City has zoned for "a Variety of Housing Types" establishes that multi-family apartments are permissible "by right" in the R-2 district. The memo goes so far as to declare: "[t]his table is unequivocal that multi-family housing is permitted as a matter of right in the R-2 zoning district[.]" Ragghianti Memo at p. 3; *see* graphic, below.

---

[1] The R-1 and R-15 districts both allow single-family dwellings and accessory structures (BMC Ch. 19.24, 19.26), but with different development standards.

We believe Ragghianti's opinion is incorrect. Based on the above discussion and analysis of the General Plan and Zoning Code, the General Plan's Medium Density MFR designation and the Zoning Code's R-2 (two family duplex) designation together establish that only one category of multi-family dwelling, duplexes, is permissible by right in the R-2 district. Other forms of multi-family housing, *i.e.*, apartments of various sizes, are permissible by right in the R-3 and R3C districts, but not in the R-2 district.

Ragghianti's reliance on Table 36 in the Housing Element to claim that apartments are permissible "by right" in the R-2 District is misplaced for an additional reason: under the State Planning & Zoning Law (Gov't Code § 65000 et seq.), a General Plan's Housing Element cannot legislate or prescribe land use designations; only the Land Use Element can carry out that function. (Gov't Code § 65302(a) (land use element designates "uses of . . . land for housing, business, industry, open space," etc.); *compare* § 65580 (housing element "shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing.") Viewed in the correct context, and not in isolation, Table 36 is consistent with this mandate. Below is the language from the Housing Element immediately preceding Table 26, which Ragghianti omits from its memo:

"**4. Provision of a Variety of Housing Types.**

Housing Element law specifies that jurisdictions must identify adequate sites to be made available through appropriate zoning and development standards to encourage the development of various types of housing for all economic segments of the population, including multi-family rental housing, factory-built housing, mobile homes, emergency shelters, and transitional housing.

Table 36 summarizes the housing types currently permitted in each of Belvedere's residential zoning districts. Multi-family housing is conditionally permitted in Belvedere's C-1 (Commercial) Zoning District.

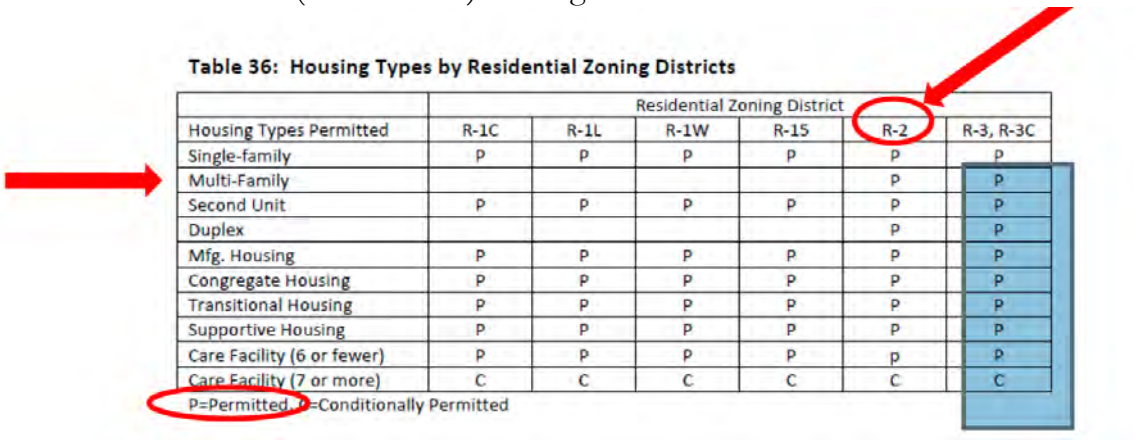

Table 36: Housing Types by Residential Zoning Districts

	Residential Zoning District					
Housing Types Permitted	R-1C	R-1L	R-1W	R-15	R-2	R-3, R-3C
Single-family	P	P	P	P	P	P
Multi-Family					P	P
Second Unit	P	P	P	P	P	P
Duplex					P	P
Mfg. Housing	P	P	P	P	P	P
Congregate Housing	P	P	P	P	P	P
Transitional Housing	P	P	P	P	P	P
Supportive Housing	P	P	P	P	P	P
Care Facility (6 or fewer)	P	P	P	P	P	P
Care Facility (7 or more)	C	C	C	C	C	C

P=Permitted, C=Conditionally Permitted

See Housing Element, p. 59 (**Attachment 2)**; graphic from Ragghianti Memo, at p. 3 (annotations Ragghianti's).

There is no conflict between the General Plan and Zoning Code.

Ragghianti notes, correctly, that in the event of a conflict or inconsistency between a City's General Plan and Zoning Code the provisions of the former will govern. Ragghianti is also correct that the test for consistency between a general plan and zoning ordinance is whether the ordinance "furthers the objectives and policies of the general plan and does not obstruct their attainment." (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1080; *see also* Gov. Code § 65860(c); *see also Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817 ("[a]n action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.")

Here, there is no such conflict or inconsistency between the City's Zoning Code provisions governing the R-2 Zoning District and the General Plan. As discussed, the General Plan clearly dictates separate and distinct zoning classifications within the MFR Medium Density land use designation, namely R-2, and R-3/R-3C. The Zoning Code, meanwhile, is clear that only single-family homes or duplexes are permissible in the R-2, a fact corroborated by the Housing Element's clear statement that R-2 is the "Two-Family (Duplex) Residential Zoning District," and the R-3/R-3C is the "Multi-Family Residential Zoning Districts." Furthermore, there is no plausible basis to argue that the Belvedere Zoning Code's R-2 designation, including its prohibition on multi-family dwellings with more than two units, obstructs the attainment of the objectives and policies of the General Plan, when the General Plan itself expressly identifies and acknowledges the R-2 Zoning District as a separate sub-category of MFR medium density land use designation from the R-3 and R-3C Zoning Districts. No conflict or inconsistency between the General Plan and Zoning Code exists.

Conclusion

Ragghianti's twin assertions that the General Plan allows multi-family apartments "by right" within the R-2 Zone, and that Zoning Code's contrary provisions are in conflict with, and are preempted by the General Plan are both incorrect. The General Plan's "Medium Density MFR: 5.0 to 20 units/net acre" land use designation by its own terms expressly includes separate zoning classifications for different types of multi-family dwelling, namely two-unit (duplex) dwellings in the R-2 Zoning District, and three or more-unit apartment buildings in the R-3 and R-3C Zoning Districts.

Therefore, to the extent the Mallard Pointe Project includes a multi-family apartment building containing three or more units, it will require a General Plan Amendment and change in the R-2 zoning, which currently prohibits such uses.

We hope this addresses your question. Please let us know if we can provide any additional information or analysis.

MRW:sa

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attorneys-at-law

October 18, 2021

By E-Mail

Mayor James Campbell
Members of the City Council
c/o Beth Haener, City Clerk
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920
bhaener@cityofbelvedere.org

Re: Mallard Pointe Development Proposal

Dear Mayor Campbell and Councilmembers:

We are writing on behalf of our client, Belvedere Residents for Intelligent Growth, in response to certain statements made by Riley Hurd, the attorney for the developer of the proposed Mallard Pointe residential project ("Proposed Project"), at the October 11, 2021 City Council meeting. Among other things, Mr. Hurd asserted that under State law, the Proposed Project's multi-family apartment component is permissible "by right" notwithstanding the site's current R-2 (duplex) zoning classification, and that the Belvedere City Council lacks the authority either to require a zone change or to deny entitlements for the apartment component. As explained below, we disagree with Mr. Hurd's views.

Belvedere General Plan & Zoning Framework

Based on the limited information that has been made publicly available, we understand the Proposed Project would be comprised of single-family homes, accessory dwelling units, duplexes, and apartments. The Belvedere General Plan 2030 designates the Proposed Project site "Medium Density MFR: 5.0 to 20 units/net acre." The Belvedere Zoning Code places the site within the "R-2 (Duplex) Two-Family Residential" zoning district, which allows single-family and two-family homes, but not multi-family apartments. Mr. Hurd suggested that there was a conflict or inconsistency between the General Plan's MFR designation and the Zoning Code's R-2 classification because the development standards applicable to the R-2 zoning

district would not allow development of 20 units/net acre, and that in the event of such a conflict, the General Plan's standards would prevail under State law.

As we explained in our presentation to the City Council on October 11, the General Plan's MFR designation by its express terms includes two distinct zoning classifications, R-2 and R-3/R3-C, the latter comprising the "Multifamily Residential" zoning district. The MFR designation reflects a range of allowable densities, from lower density (5.0 units/net acre) two-family/duplex dwellings in the R-2 district, to higher density (up to 20 units/net acre) multi-family dwellings in the R-3/R3-C district. Therefore, as we also explained, there is no conflict or inconsistency between the General Plan's MFR land use designation and the Zoning Code's R-2 classification. The R-2 classification does not become a nullity simply because the MFR designation allows for 20 units/net acre in the R-3/R-3C.

In sum, the Proposed Project site is subject to the development standards and land use restrictions specified for the R-2 zoning district, which currently allow single-family and two-family residential uses, but prohibit multi-family apartments. *See* Belvedere Municipal Code § 19.280.010

SB 330

While Mr. Hurd did not cite any specific State laws that would mandate approval of the Proposed Project as a ministerial action, he may be referring to SB 330,[1] since that law was cited in the Proposed Project's "preliminary application" submitted to the City on June 18, 2021. Under SB 330, the submittal of a completed "preliminary application" form containing items of information specified in the statute has the practical effect of "locking in" the ordinances, policies, and development standards as they existed in the City's General Plan and Zoning Code as of the date of the submittal. Gov't Code § 65941.1 Simply by virtue of Mallard Pointe's June 18 submittal of the completed form, the Proposed Project cannot (with certain very narrow exceptions for emergency situations and the like) be made subject to any subsequently enacted changes in the applicable City ordinances, policies, and standards. *See* Gov't Code § 65589.5(o)(1). Therefore, only the policies and standards contained in the current Belvedere General Plan and current R-2 zoning classification will apply to the Proposed Project.

However, SB 330 is clear that consistency both with applicable zoning standards and criteria and general plan standards and criteria is required in order for a residential project to qualify for approval under the statute, so long as the zoning for the project site is consistent with the general plan. (Gov't Code §§ 65589.5(j); 65905.5(c).) In this case, the Proposed Project as reflected in the drawings and

[1] SB 330 is codified in various provisions of the California Government Code.

narrative description submitted with the preliminary application does not appear permissible under the existing R-2 zoning classification, which in turn is plainly consistent with the General Plan's MFR designation. The Proposed Project includes a multi-family structure containing 23 apartments, in addition to a mix of single-family residences and duplexes. Section 19.28.010 of the Zoning Code, R-2 zoning allows only two-family dwellings and accessory uses and buildings located on the same lot; government structures and transitional and supportive housing; parks and community facilities; and single-family residential uses allowed in the R-1 and R-15 zoning districts.

With the caveat that further information will likely be forthcoming when the developer submits a final application (see discussion below), we fail to see how the Proposed Project would be permissible "by right" under the existing General Plan and Zoning Code. We therefore do not see how it would qualify for approval as a ministerial action under SB 330.

Applicability of SB 35

Mr. Hurd may also have been referring to SB 35, a separate statute that provides for fast-tracked, CEQA-exempt ministerial approvals of housing projects that include a relatively large number of units affordable to lower income households. Enacted in 2019, SB 35 provides for a streamlined ministerial approval process (*i.e.*, with no requirements for use permits, public hearings or other discretionary actions by the city) for residential projects in cities like Belvedere that are not meeting Regional Housing Needs Assessments (RHNA). To qualify for a streamlined approval process, the Proposed Project would have to satisfy all the following requirements:

- be on land zoned for residential use. (Government Code § 65913.4(a)(2)(C)).[2]
- designate at least 10% of units as below market housing if located in localities that did not meet above moderate income RHNA. (§ 65913.4(a)(4)(B)(i).)
- designate at least 50% of units as below market housing in localities like Belvedere that did not meet low income RHNA. (§ 65913.4(a)(4)(B)(ii).)
- not be constructed in an ecologically protected area, on prime farmland, wetlands, high fire hazard zone, flood plain or floodway, coastal zone, or other sites designated unsuitable for residential development generally. (§ 65913.4(a)(6).)

[2] Further statutory references are to the Government Code unless otherwise indicated.

- be multi-unit and not single-family housing. (§ 65913.4(a)(1).)
- pay construction workers union-level wages. (§ 65913.4(a)(8).)

If the development meets all state mandated criteria, localities must approve the project in either 60 days if the development contains less than 150 housing units or 90 days if the development contains more than 150 units of housing.

There are, however, various exceptions to SB 35's applicability to projects that otherwise nominally qualify for streamlined approval. For example, SB 35 cannot be invoked where:

- less than 75 percent of the perimeter of the project site "adjoins parcels that are developed for urban uses." (§ 65913.4(a)(2)(B).)

- the development is not consistent with existing objective zoning standards related to housing density, including the maximum density allowed within the site's current land use designation. (§ 65913.4(a)(5)(A); emphasis added.)

- the development would require the demolition of "housing that has been occupied by tenants within the past 10 years." (§ 65913.4(a)(7)(A)(iii).)

- the development is within a flood plain as determined by FEMA, unless the development has been issued a flood plain development permit pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations. (§ 65913.4(a)(6)(G).)

- the development is within a floodway as determined by FEMA, unless the development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. (§ 65913.4(a)(6)(H).)

Based on the information available, the Proposed Project appears not to qualify for streamlined approval under SB 35 because: (1) far less than 75% of the site is adjacent to existing urban uses, primarily due to its significant frontage on the Belvedere lagoon; (2) as explained above, the Proposed Project is not consistent with the existing R-2 zoning classification, which does not allow multi-family apartments; and (3) the Proposed Project includes the demolition of existing housing that has been occupied by tenants within the past 10 years. In addition, the site is within a FEMA-designated 100-year flood zone, meaning that the developer would need to

obtain a flood plain development permit after demonstrating an ability to comply with several, onerous technical standards and criteria promulgated by FEMA and codified in the Code of Federal Regulations. Whether the developer can demonstrate that the Proposed Project will comply with such standards and criteria is unknown in the absence of a formal plan.

Other Recent Housing Legislation

Although Mr. Hurd made no specific reference to any of the housing-related bills that were recently signed by the Governor, we offer a very brief summary of some that may superficially appear relevant.

- **SB 7** Extends expedited CEQA review and a fast-tracked CEQA litigation process for certain qualifying small-scale residential projects. Applies to low-income housing projects where at least 15 percent of the units are affordable to low-income households, and where a "net zero" greenhouse gas emissions goal can be achieved.

- **SB 9** Provides for ministerial approvals of residential duplexes on lots currently zoned only for single-family housing. Does not apply to projects requiring demolition of housing currently occupied by tenants.

- **SB 10** Exempts from CEQA a city's voluntary up-zoning action to allow for residential density of up to 10 units per parcel.

- **AB/SB 140** Provides a CEQA exemption for low-income housing projects funded by HCD's multi-family housing program.

Again based on the limited information about the Proposed Project that is currently available, it does not appear that any of these new State housing laws would apply to it.

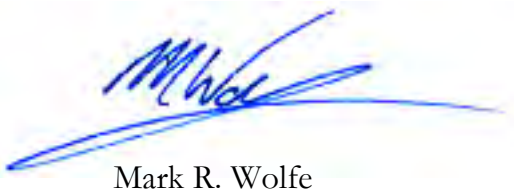
Conclusion

Mr. Hurd did not cite any specific State laws in his presentation to the City Council. Councilmembers may, at the next appropriate opportunity, ask him to do so, as he may very well have intended to reference laws other than those discussed above. That said, based on the limited public information currently available about the Proposed Project, it appears that it will likely need to undergo a standard, discretionary administrative review and approval process, including public hearings before the Planning Commission and City Council.

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe
On behalf of Belvedere Residents for
Intelligent Growth

MRW:sa
cc: Emily Longfellow, City Attorney (elongfellow@cityofbelvedere.org)

m | r | wolfe
& associates, p.c.
attorneys-at-law

October 21, 2021

By E-Mail

Mayor James Campbell
Members of the City Council
c/o Beth Haener, City Clerk
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920
bhaener@cityofbelvedere.org

Re: Applicability of SB 8 to Mallard Pointe Development Mallard Pointe Development

Dear Mayor Campbell and Councilmembers:

In our October 18, 2021 letter to the Belvedere City Council, we provided our opinion that the proposed Mallard Pointe Project ("Proposed Project")'s multi-family apartment component was impermissible under the site's R-2 (Duplex) zoning classification, which in turn is both envisioned by, and consistent with, the Belvedere General Plan's Medium Density MFR land use designation. We concluded that the Proposed Project's apartment component thus did not qualify for ministerial or streamlined approval under SB 330, SB 375, or various other recently enacted State housing laws. We understand a member of the City Council has asked whether an additional recently enacted law, SB 8, might apply to the Proposed Project. As explained below, we conclude it does not.

Approved by the Governor on September 21 of this year, SB 8 (Skinner) amends SB 330 in a number of ways, most of them administrative. First and foremost, SB 8 functionally extends SB 330's ministerial approval provisions for qualifying project by five years, from 2025 to 2030. (*See e.g.* Gov't Code §§ 65589.5(h)(5) (definition of "deemed complete" extended to 2030); 65589.5(h)(8) (definition of "objective" standards extended to 2030); 65589.5(k)(1)(A)(i) (provisions governing legal challenges to project denials extended to 2030); 65589.5(o)(8) (provision that projects are subject only to land use standards in effect at the time preliminary application submitted extended to 2030). SB 8 also specifies that local

agencies may subject a project to subsequently adopted ordinances, policies, or standards if the project has not commenced construction within 3.5 years of final approval, where SB 330 originally provided for a 2.5-year window. (Gov't Code § 65589.5(o)(1).)

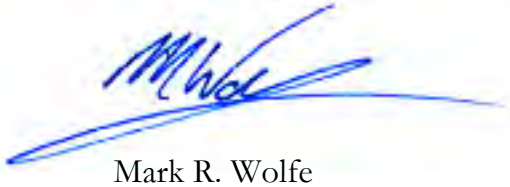
SB 8 contains additional provisions that clarify certain aspects of SB 330 that were arguably ambiguous. These include expanding the definition of "hearing" to include any appeals, and the definition of "housing development project" to include projects that involve no discretionary approvals, projects that involve both discretionary and nondiscretionary approvals, and proposals to construct a single dwelling unit. (Gov't Code § 65905.5(b)(2), (3).) SB 8 also includes a provision stating that the receipt of a density bonus, including any incentives, concessions, or waivers do not constitute a valid basis on which to find that a proposed housing project is inconsistent with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision. (*Id.*, subd. (c)(1).)

In our view, these and the various other provisions of SB 8, including those not specifically addressed here, operate primarily to extend SB 330's sunset date by five years, from 2025 to 2030, or to clarify other aspects of State law enacted under SB 330. Therefore, we do not believe that SB 8 affects the procedural posture of the Mallard Pointe Project's apartment component, and our opinion as expressed in our October 18, 2021 letter to the City Council remains the same.

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe
On behalf of Belvedere Residents for
Intelligent Growth

MRW:sa
cc: Emily Longfellow, City Attorney (elongfellow@cityofbelvedere.org)

m | r | wolfe
& associates, p.c.
attorneys-at-law

April 27, 2022

Via E-Mail

Hon. Sally Wilkinson, Mayor
Members of the City Council
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920

Re: CEQA Compliance for Proposed Mallard Pointe Project

Dear Mayor Wilkinson and Councilmembers:

On behalf of Belvedere Residents for Responsible Growth (BRIG), please accept and consider the following points addressing the appropriate mode of compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., with respect to the proposed Mallard Pointe development project (Project). As described in application materials, the Project would demolish 22 existing residential duplex units on a 2.8-acre site immediately adjacent to the Belvedere Lagoon, and replace them with 42 new residential units comprising five duplexes (10 units); six single-family homes; three accessory dwelling units; and 23 apartment units in a single apartment building.

A March 15, 2022 memorandum from Riley F. Hurd III (Hurd Memo) asserts that the Project satisfies the criteria for the Class 32 categorical exemption from CEQA for in-fill development projects and is therefore exempt from CEQA review. We respectfully disagree. After consulting applicable legal authorities, including those cited in the Hurd Memo, it is quite apparent that the Project does **not** qualify for the Class 32 categorical exemption, nor indeed any other statutory or categorical exemption from CEQA. The City therefore should prepare an initial study pursuant to section 15063 of the CEQA Guidelines to determine whether the Project may have potentially significant environmental impacts, and if such impacts are found, the City must prepare an environmental impact report (EIR) before taking any action to approve the Project.

Preliminarily, we would emphasize that our State Supreme Court has repeatedly affirmed that "[t]he foremost principle under CEQA is that the Legislature

intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Laurel Heights Improvement Association v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 390; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) CEQA's broader framework accordingly "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317.) Based on these foundational principles of CEQA, if the City is presented with conflicting factual and legal assessments as to whether environmental review is required for the Mallard Pointe Project, it should resolve any doubts in favor of finding the Project not exempt from such review.

With these principles in mind, set forth below is the basis for our conclusion that the Project does not qualify for the Class 32 categorical exemption, nor indeed any exemption from CEQA.

I. The Project does not qualify for CEQA's categorical exemption for in-fill development projects.

The California Resources Agency's CEQA Guidelines (14 Cal.Code.Regs. § 15000 et seq.) define the Class 32 categorical exemption from CEQA as follows:

> 15332. IN-FILL DEVELOPMENT PROJECTS
>
> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
>
> (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.
>
> (e) The site can be adequately served by all required utilities and public services.

CEQA Guidelines, § 15332, emphasis added.

In order to qualify for the Class 32 categorical exemption cited above, a project must satisfy each of the five conditions listed in section 15332 of the CEQA Guidelines. As discussed below, the Project here demonstrably fails to satisfy at least two of these conditions, and possibly a third as well.

A. The Project is not consistent with the applicable zoning designation and regulations as the Applicant has acknowledged.

The Belvedere General Plan 2030 designates the Project site "Medium Density MFR: 5.0 to 20 units/net acre." The Belvedere Zoning Code places the site within the "R-2 (Duplex) Two-Family Residential" zoning district. Chapter 19.28 of the Zoning Code specifies the permitted land uses, regulations, and development standards that apply in the R-2 Zoning District. Specifically, section 19.28.030, titled "Prohibited uses," expressly prohibits "apartment courts" and "apartment houses" in the R-2 District. Thus, the Project's apartment building component is not consistent with the applicable R-2 zoning designation and its prohibition on apartment uses, as the Applicant has acknowledged. (*See* Density Bonus Application (Jan. 26, 2022), p. 2 (seeking waivers from "[t]he prohibition on apartment courts and/or apartment houses in the R-2 zone"); *see also* Hurd Memo, p. 3.)

Citing *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the Hurd Memo asserts that the R-2 zoning prohibition on apartment structures does not apply to the Project because the R-2 zoning restrictions in general are inconsistent with the General Plan's Medium Density MFR designation, and that "the R-2 density formula could never achieve the density allowed under the General Plan, and is therefore inapplicable under state law." (Hurd Memo, p. 3.) Note that the Applicant has presented the City with no evidence whatsoever to support this bald assertion that the General Plan's 20-unit per net acre density specification cannot be achieved without building a prohibited apartment building. To the contrary, and as BRIG has previously explained in earlier correspondence with the City,[1] there is no inconsistency between the General Plan's MFR classification and the R-2 zoning designation, and the latter's prohibition of apartment buildings plainly applies. The Project accordingly does not meet the first condition for the Class 32 in-fill development exemption, and is therefore not exempt from environmental review.

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[1] *See* July 21, 2022 memorandum, available on the City's website at: https://www.cityofbelvedere.org/DocumentCenter/View/7637/Final_Ltr-to-City-Council_10-18-21

B. The Project site is not substantially surrounded by urban uses.

Even if the R-2's prohibition against apartment structures did not apply, the Project still would not qualify for the Class 32 exemption because it is not on "a site of no more than five acres substantially surrounded by urban uses." Guidelines, § 15332(b). Although less than five acres, the 2.8-acre site is in no manner whatsoever "substantially surrounded" by urban uses. To the contrary, approximately 56 percent of the site is bounded by the Belvedere Lagoon. While the Class 32 exemption does not define "substantially surrounded," the CEQA statute itself defines the term for purposes of residential or mixed-use housing projects as follows:

> "substantially surrounded" means at least 75 percent of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses. The remainder of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that have been designated for qualified urban uses in a zoning, community plan, or general plan for which an environmental impact report was certified.

See Pub. Resources Code § 21159.25(a)(2).

Here, according to the Applicant's site boundary survey, the Project's perimeter totals 1,638.53 linear feet, of which 921.43 (56.2 percent) is water and 717.10 feet (43.8 percent) is land arguably developed with urban uses.[2] Thus, under the foregoing statutory definition, not to mention basic reason, the Project plainly is not "substantially surrounded" by urban uses. To the contrary, the General Plan's Sustainability and Resources Conservation Element specifically affirms that the Lagoon provides habitat for a variety of migratory bird species, as well as wetland habitat. (General Plan 2030 pp. 90-104.) Accordingly, the General Plan specifies Policy SUST-11.1 : "Manage the Lagoon using the most effective, environmentally friendly methods available, considering that the waters of the Lagoon empty into Richardson Bay." (*Id.*, p. 104.) Given the stated importance of protection and conservation of biological resources in the Lagoon, any proposed development with this much frontage on the Lagoon should not as a matter of policy be deemed fully exempt from environmental review.

The Hurd Memo, however, cites *Bankers Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, to argue that the Lagoon is in fact an "urban use" by operation of law. With due respect, the Memo

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[2] *See* site boundary survey (10/13/20), available on the City's website at: https://www.cityofbelvedere.org/DocumentCenter/View/7835/MALLARD-POINTE_Site-Boundary-Survey

mischaracterizes *Bankers Hill* and is otherwise incorrect on this point. In that case, the Court of Appeal agreed with the City of San Diego that that city's famed Balboa Park was an "urban use" for purposes of the Class 32 in-fill exemption. The court explained its reasoning as follows:

> we focus on the fact that Balboa Park is a quintessential urban park, heavily landscaped, surrounded by a densely populated area, and containing urban amenities such as museums, theaters and restaurants. Accordingly, it is "characteristic of a city or a densely populated area," and we conclude that it constitutes an urban use.

Id. at p. 271.

The *Bankers Hill* court's rationale simply does not extend to the Belvedere Lagoon, which is a body of water, not an urban park. Needless to say, the Lagoon is not "heavily landscaped" as Balboa Park is, nor does the Lagoon contain any "urban amenities." It is also not itself "surrounded by a densely populated area." As should be plain, *Bankers Hill* is simply inapt. The Project is not "substantially surrounded by urban uses" and therefore is not categorically exempt from CEQA under the Class 23 in-fill development exemption.

C. The Project is likely to result in significant effects relating to traffic, noise, air quality, or water quality.

BRIG is aware that the Applicant has already submitted, and will continue to submit, technical studies of its own purporting to show that neither construction nor operation of the Project will result in significant impacts on traffic, noise, air quality, and/or water quality. BRIG intends to review the Applicant's studies in consultation with its own technical consultants, and will report its findings to the City Council at the appropriate time.

Suffice it to say for the present time that it is plainly foreseeable that demolition of the existing 22 residential units, and construction of the 42 replacement units, may cause significant noise and air quality impacts affecting neighboring residential uses, and water quality impacts affecting the Lagoon. These impacts are likely to be compounded by the geotechnical/structural engineering that will be necessary to stabilize the proposed buildings, particularly the apartment building, on unstable fill soils in a seismically active environment. This latter point is discussed in further detail below.

II. Even if the Class 32 categorical exemption applied on its own terms, the Project is not exempt from CEQA due to a reasonable possibility of significant impacts due to "unusual circumstances" relating to its site characteristics.

The CEQA Guidelines provide a "blanket exception" to the applicability of any categorical exemption, including the Class 32 exemption, "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Guidelines, § 15300.2(c); *Bankers Hill, supra,* 139 Cal.App.4th at p. 260.) Here, there is a reasonable possibility that demolition of the existing duplex structures, and the subsequent construction of new structures including an apartment building, will have significant adverse impacts relating to geology and soils, given the prevalence of unstable fill soils underlying the site. We note there also appears to be a seismic fault running directly across the property. (*See* California Geological Survey (2014), *Geology of Ring Mountain and Tiburon Peninsula, Marin County, California*, and enlargement, attached to this letter as **Attachment 1**.)

The Applicant has submitted a "Preliminary Geotechnical Report" dated January 18, 2022, prepared by Miller Pacific Engineering Group ("Miller Report"), which concludes that site conditions are generally suitable for the proposed new buildings, so long as recommended design and engineering specifications are adhered to. (*See* Miller Report, pp. 12-18.) Skeptical of the Report's analysis and conclusions, BRIG consulted Lawrence Karp, PhD, an expert in geotechnical engineering, structural engineering, and architecture, to review it. Dr. Karp holds a PhD in civil engineering from U.C. Berkeley, is a licensed architect, and has served as a court-appointed expert assigned to engineering design and construction disputes throughout California for over 40 years. Dr. Karp specializes in soil-structure interaction and resistance to lateral forces with applications to foundations for buildings and other structures including all types of ground support systems, deep foundations and retained excavations, bulkheads, tiebacks, anchors, underpinning and shoring. Dr. Karp's letter addressing some of the geotechnical engineering concerns relating to the Project is attached as **Attachment 2**, together with a statement of his credentials.

As Dr. Karp explains, the Miller Report does not address the unusual circumstances potentially giving rise to significant impacts as a result of building the Project's structures on marshland that was dredged, filled, and flooded in the 1950s, and that is highly prone to settlement. Miller did not undertake a subsurface exploration program to assess foundation features for the apartment building, nor did it perform physical field tests or Index borings to support its conclusions. Notably, the Miller Report does not provide actual foundation design and construction recommendations for the Project's structures.

These omissions are significant. The existing duplex structures, which were built in the 1950s, are "settlement forgiving," meaning they have length-to-width aspect ratios that are close to equal, such that settlement occurs uniformly across the structure. By contrast, as Dr. Karp notes, the Project's apartment building would be approximately five times as long as it is wide, with no structural or design features that would accommodate large differential settlements. Dr. Karp's recent experience with projects including long, narrow structures built on fill in Foster City and Redwood Shores confirms that the Project's long, narrow apartment building will likely experience differential settlement and subsidence unless major subgrade foundation systems are implemented. Installing such systems, which may include pile-driving, is environmentally intrusive, and will very likely cause significant adverse impacts on neighboring structures and the Lagoon.

Dr. Karp's opinion affirms that there is a reasonable possibility that the Project will cause significant impacts due to unusual circumstances relating to geology and soils, and that the Project therefore is not exempt from CEQA. As our Supreme Court has explained: "when there is a reasonable possibility of a significant environmental effect from a project belonging to a class that generally does not have such effects, the project necessarily presents "unusual circumstances," and section 15300.2(c) applies." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1127.[3]

For these reasons, regardless of whether the Class 32 exemption might nominally apply to the Project under its own terms, the Project is still not exempt from environmental review by operation of the "blanket exception" to CEQA exemptions pursuant to section 15300.2 of the Guidelines.

III. The City's determination that the Project is not exempt from CEQA would almost certainly be upheld in court were the Applicant to challenge it.

In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, the State Supreme Court explained that courts are to afford great deference to public agencies such as the City in their determinations whether a given project is subject to the "unusual circumstances" blanket exception to CEQA's various categorical exemptions. The Court reasoned:

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[3] The Supreme Court further underscored that "an agency invoking a categorical exemption may not simply ignore the unusual circumstances exception; it must 'consider the issue of significant effects ... in determining whether the project is exempt from CEQA where there is some information or evidence in the record that the project might have a significant environmental effect.'" (*Id.* at p. 1103, *citing Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732.)

> Whether a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry, "founded on the application of the fact-finding tribunal's experience with the mainsprings of human conduct." [Citation.] Accordingly, as to this question, the agency serves as "the finder of fact" (citation), and a reviewing court should apply the traditional substantial evidence standard that [CEQA] incorporates.
> [¶]
> Under that relatively deferential standard of review, the reviewing court's " 'role' " in considering the evidence differs from the agency's. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.) " 'Agencies must weigh the evidence and determine "which way the scales tip," while courts conducting [traditional] substantial evidence ... review generally do not.' " (*Ibid.*) **Instead, reviewing courts, after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it**.

Berkeley Hillside Preservation at p. 1114, boldface added.

The next prong of the analysis, *i.e.*, whether unusual circumstances will give rise to a reasonable possibility of significant environmental impacts, is subject to a less stringent "fair argument" standard. Under this standard, if there is <u>any</u> substantial evidence that the Project <u>may</u> have significant impacts, then the blanket exception applies and the Project cannot be found categorically exempt from CEQA. *Berkeley Hillside Preservation* at p. 1115-1116.

Here, after weighing the evidence, the City Council will ultimately determine whether the scales tip in favor of exempting the Project from environmental review and therefore considering it in an informational vacuum, or in favor of requiring an initial study to evaluate whether it may have potentially significant impacts on one or more areas of the environment. Given the high degree of deference that courts are required to afford to local agency determinations of "unusual circumstances," the City Council's ultimate conclusion is highly unlikely to be overturned should the Applicant choose to challenge it in court.

IV. Conclusion

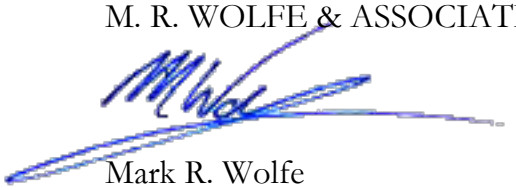
In sum, BRIG submits that the Project plainly fails to meet all the required conditions for the Class 32 categorical exemption for in-fill development, and that even if it did, it would still not be exempt from CEQA due to the demonstrated reasonable possibility of significant impacts resulting from unusual circumstances

relating to construction on unstable fill soils at this particular location. The City should therefore prepare an initial study consistent with the requirements of CEQA to determine whether the Project may have one or more significant environmental effects. If such effects are found, then a full environmental impact report (EIR) will be required before the City may lawfully act to approve the Project.

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe
On behalf of BRIG

MRW:sa

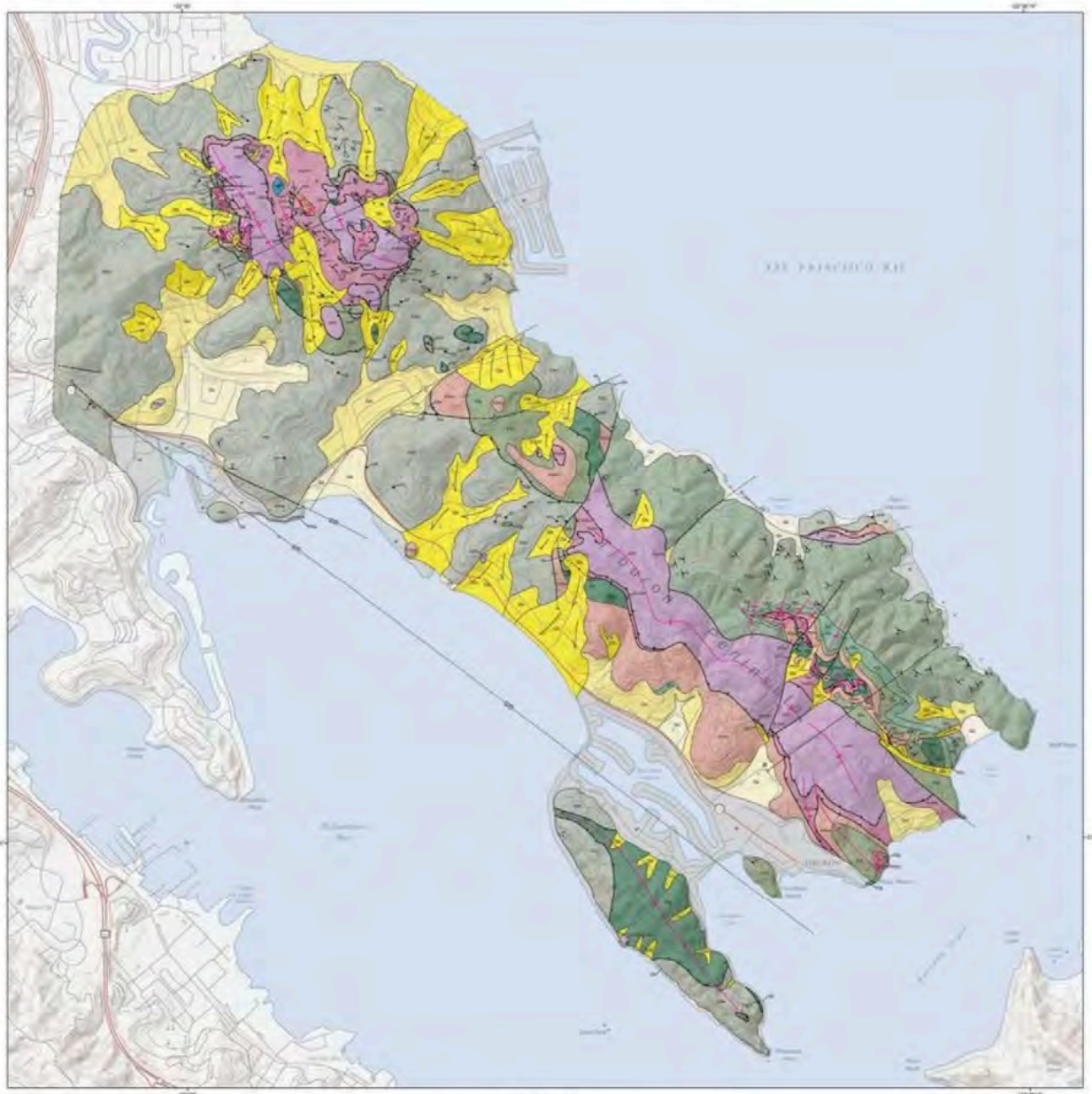
cc: Craig Middleton, City Manager
Patricia Carapiet, Planning Commission Chairperson
Irene Borba, Director of Planning and Building

ATTACHMENT 1

CALIFORNIA GEOLOGICAL SURVEY
JOHN G. PARRISH, Ph.D., STATE GEOLOGIST

STATE OF CALIFORNIA - EDMUND G. BROWN JR., GOVERNOR
THE NATURAL RESOURCES AGENCY - JOHN LAIRD, SECRETARY FOR NATURAL RESOURCES
DEPARTMENT OF CONSERVATION - MARK NECHODOM, DIRECTOR

GEOLOGY OF RING MOUNTAIN AND TIBURON PENINSULA, MARIN COUNTY, CALIFORNIA
MAP SHEET 62
PLATE 1



Projection: Universal Transverse Mercator, Zone 10N.
North American Datum 1927 (meters).

Topographic contours, shaded relief image, and hydrography derived from LiDAR data (USGS-ARRA Golden Gate LiDAR Project, 2012). Culture and transportation data modified from USGS 7.5-minute image maps for Point Bonita, San Francisco, San Quentin, and San Rafael, California (2012).

SCALE 1:12 000

Contour interval= 20 feet

APPROXIMATE MEAN DECLINATION, 2014

DESCRIPTION OF MAP UNITS

SURFICIAL DEPOSITS (Quaternary)

Beach sand - Composed mostly of well to moderately sorted, medium-to coarse-grained sand.

Artificial fill - Includes rock fragments, sand, silt, clay, and man-made debris; highly variable composition, degree of compaction, etc., from location to location.

Landslide deposits - Largely bedrock debris composed of unconsolidated and unsorted mixtures of soil, rock fragments, sand, silt and clay that have moved downslope en masse or in incements by staggered flow.

Slope debris and ravine fill - Composed of angular rock fragments in an unconsolidated sand, silt and clay matrix derived by weathering and accumulated on or at the base of slopes by natural processes.

Alluvium - Mainly composed of unconsolidated gravel, sand, silt, and clay along stream channels and on low terraces related to present drains.

FRANCISCAN COMPLEX (Cretaceous)

Mesablonnette at Point Bonita

Metablairmite - Limited outcrops of weathered, fine- to medium-grained massive metablairmite and vesicular fine-bedded shale of the pumice-pumpellyite facies assemblage quartz + albite + white mica + chlorite + pumpellyite ± stilpnomelane(?). Unit is locally brecciated (**KBm$_{br}$**).

Tiburon Ridge Terrane

Metagraywacke - Fine- to medium-grained graywacke and minor shale. This unit is very similar to the structurally higher KIs, unit but is commonly fine-grained, and although it exhibits a semi-planar foliation locally, it is generally less strongly foliated. When present, cleavage is defined by anastomosing chlorite + white mica ± stilpnomelane within the matrix. The phyllosilicates enclose porphyroclasts of relict quartz grains elongated by deformation and fabric-parallel overgrowths, together with fine-grained rectolasts of the blueschist facies assemblage lawsonite ± albite ± aragonite ± jadeitic-pyroxene ± glaucophane. This unit is found only in the south Tiburon Peninsula area.

Metaconglomerate - Unit commonly contains well-rounded, cobble-sized clasts of chert with lesser clasts of course-grained plutonic and/or porphyritic rock, all entrained within a fine- to medium-grained sacchitone matrix. The sandstone matrix exhibits a planar foliation and contains rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

Metagraywacke - Fine- to medium-grained graywacke and minor shale exhibiting a semi-planar foliation and common foliation-normal quartz veins. Cleavage is defined by anastomosing chlorite, white mica ± stilpnomelane. The phyllosilicates enclose porphyroclasts of relict quartz elongated by deformation and fabric-parallel overgrowths together with rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

Metachert - Unit composed of pale green to white chert with or without interbedded shale and commonly exhibiting tightly folded beds and a micro-brecciated texture. Most outcrops composed of re-crystallized, interlocking quartz grains ± stilpnomelane ± lawsonite. Also, local outcrops of dark gray, nodular bearing chert (**KMmc**).

Metabasalt - Most commonly appears massive and fine-grained, gray-green in color, sheltered in appearance, and exhibiting a weathered orange to yellow iron oxidation surface; locally porphyritic in texture. Commonly contains rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

RING MOUNTAIN MÉLANGE (Jurassic to Cretaceous)

Serpentinite-matrix melange - Tectonite composed of lizardite with minor antigorite and chrysotile, exhibiting a pervasive shear-fracture fabric characterized by anastomosing shear-fracture surfaces enclosing small, pale green to black, disk-shaped serpentinite phacoids. Includes:

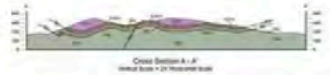
- hgb - High-grade blocks include medium- to coarse-grained schight, amphibolite, and glaucophane schist blocks. Overprints of glaucophane schist on eclogite and amphibolite types are common and overprints of actinolite ± talc ± chlorite schist occurring as rinds on all block types are common.
- mgb$_s$ - Greenschist facies antigorite-(bearing?) elongated moderate to dark green serpentinite blocks and clasts (up to 50 cm ± diameter) either ± pervasively sheared and foliated, but relatively coherent, dark green to bright turquoise, antigorite-serpentinite matrix.
- mgb$_a$ - Greenschist facies metavolcanic rocks consisting of aphanitic to aphanitic-porphyritic chlorite-bearing blocks.
- mgb$_c$ - Greenschist-like facies, talc schist and talc-actinolite schist similar to the overprint rinds on hgb. In many cases, these may be rinds associated with hgbs, but they occur within the KJsm without an obvious hgb association at the present level of erosion.

COAST RANGE OPHIOLITE (Jurassic)

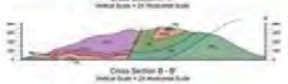
Ultramafic rocks - Composed of partially serpentinized peridotite (lanzburgite) containing relict grains of olivine + orthopyroxene ± clinopyroxene ± spinel in a matrix of lizardite giving the unit a blocky appearance in outcrop.

MAP SYMBOLS

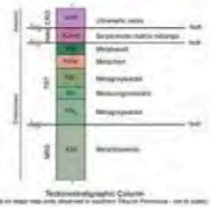
- Contact between map units - Solid where accurately located; dashed where approximately located; dotted where concealed
- Fault - Solid where accurately located; dashed where approximately located; dotted where concealed; queried where uncertain; U = upthrown side, D = downthrown side; arrows along fault indicate relative or apparent direction of lateral movement
- Thrust fault - Solid where accurately located; dashed where approximately located; dotted where concealed; queried where uncertain; teeth on upper plate
- Antiform - Solid where accurately located; dashed where approximately located; arrowhead indicates direction of plunge
- Synform - Solid where accurately located; arrowhead indicates direction of plunge
- Strike and dip of bedding
- Strike and dip of foliation
- Sample location - showing Map No. (see Table 1 in report)
- Boundary of geologic mapping



Cross Section A - A'
Vertical Scale = 2X Horizontal Scale



Cross Section B - B'
Vertical Scale = 2X Horizontal Scale



Tectonostratigraphic Column
(based on major map units observed in southern Tiburon Peninsula - not to scale)

GEOLOGY OF RING MOUNTAIN AND TIBURON PENINSULA, MARIN COUNTY, CALIFORNIA

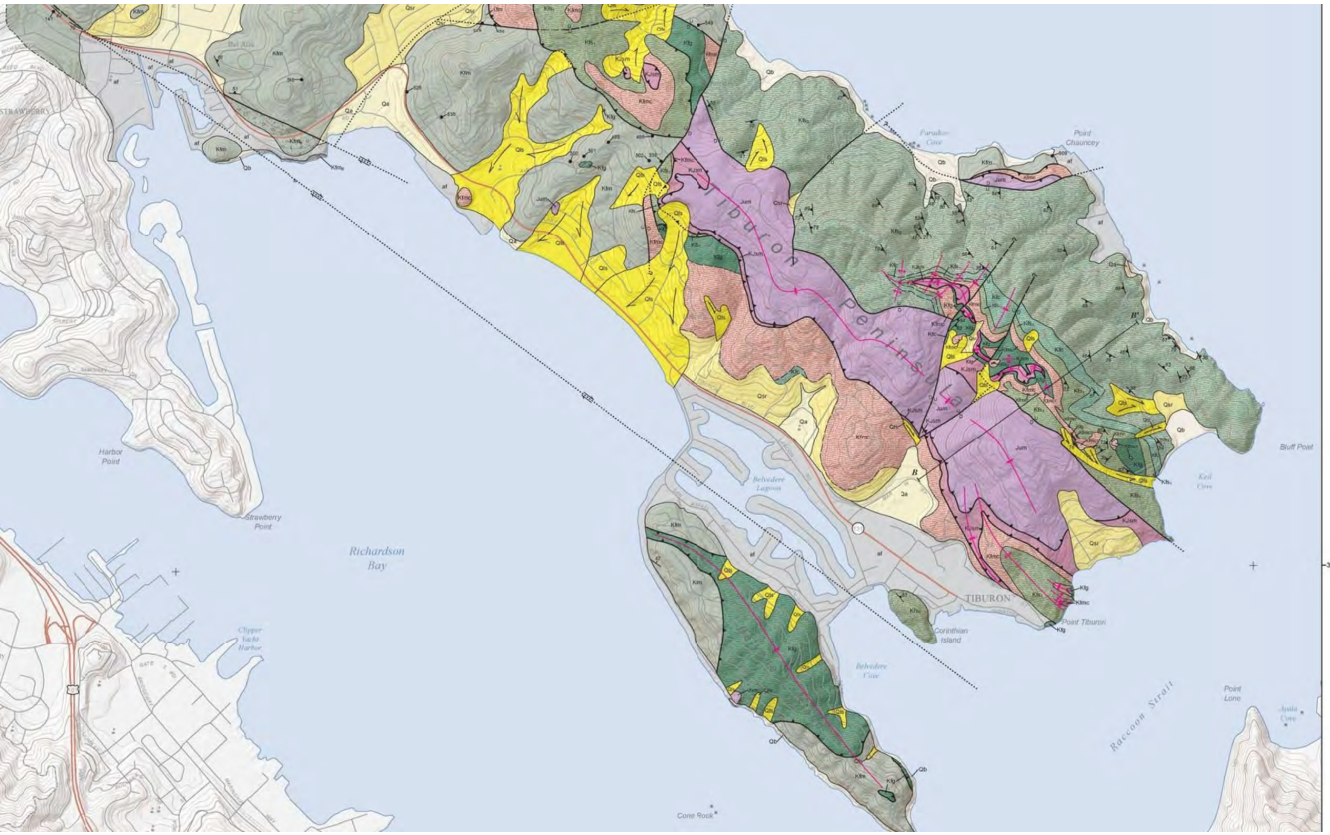
By

DAVID A. BERO

2014

Digital Preparation by
Carlos I. Gutierrez and Matt D. O'Neal

U.S.G.S. Topographic (7.5') Quadrangle Maps used as base maps in this study. Red box indicates map extent



contains neoblasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

RING MOUNTAIN MÉLANGE (Jurassic tc Creteaceous)

KJsm

Serpentinite-matrix mélange - Tectonite composed of lizardite with minor antigorite and chrysotile, exhibiting a pervasive shear-fracture fabric characterized by anastomosing shear-fracture surfaces enclosing small, pale green to black, disk-shaped serpentinite phacoids. Includes:

hgb - High grade blocks incude medium- to coarse-grained eclogite, amphibolite, and glaucophane schist blocks. Overprints of glaucophane schist on eclogite and amphibolite types are common and overprints of actinolite ± talc ± chlorite schist occurring as rinds on all block types are common.

$elgb_s$ - Greenschist facies antigorite-bearing(?), elongated moderate to dark green serpentinite blocks and clasts (up to 50 cm in diameter) within a pervasively sheared and foliated, but relatively coherent, dark green to bright turquoise, antigorite-serpentinite matrix.

$elgb_v$ - Greenschist facies metavolcanic rocks consisting of aphanitic to aphanitic-perphyritic chlorite-bearing blocks.

$elgb_r$ - Greenschist-like facies, talc schist and talc-actinolite schist similar to the overprint rinds on hgb. In many cases, these may be rinds associated with hgbs, but they occur within the KJsm without an obvious hgb association at the present level of erosion.

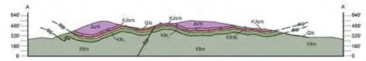
COAST RANGE OPHIOLITE (Jurassic)

Jum

Ultramafic rocks - Composed of partially serpentinized peridotite (harzburgite) containng relict grains of olivine + orthopyroxene ± clinopyroxene ± spinel in a matrix of lizardite giving the unit a blocky appearance in outcrop.

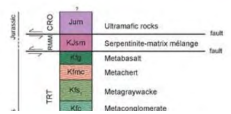
MAP SYMBOLS

- Contact between map units - Solid where accurately located; dashed where approximately located; doted where concealed
- Fault - Solid where accurately located; dashed where approximately located; dotted where concealed; queried where uncertain; U = upthrown side, D = downthrown side; arrows along fault indicate relative or apparent direction of lateral movement.
- Thrust fault - Selid where accurately located; dashed where approximarely located; dotted where concealed; queried where uncertain; teeth on upper plate
- Antiform - Solid where accurately located; dashed where approximately located; arrowhead indicates direction of plunge
- Synform - Solid where accurately located; arrowhead indicates direction of plunge
- Strike and dip of bedding
- Strike and dip of foliation
- Sample locatios - showing Map No. (see Table 1 in report)
- Boundary of geologic mapping



Cross Section A - A'
Vertical Scale = 2X Horizontal Scale

Cross Section B - B'
Vertical Scale = 2X Horizontal Scale



ATTACHMENT 2

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
UNDERPINNING, TIEBACKS
DEEP RETAINED EXCAVATIONS
SHORING & BULKHEADS
CEQA, EARTHWORK & SLOPES
CAISSONS, COFFERDAMS
COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

April 16, 2022

Mark R. Wolfe, Esq.
580 California Street, Suite 1200
San Francisco, CA 94104 USPS & <mrw@mrwolfeassociates.com>

Subject: Proposed Mallard Pointe Development, Belvedere
Significant Environmental Impacts Not Identified by Developer
Environmental Impact Report Required

Dear Mr. Wolfe:

Geotechnical and structural engineering are specialty fields within civil engineering; "geotechnical" is a collective term for "soil mechanics and foundation" engineering adopted by California in 1986, which expertise is entirely missing from the specious 1/18/22 report by Miller Pacific prefaced with the disclaimers "document is for the sole use of the client and consultants on this project" and "No other use is authorized."; however, the report was submitted to the City by the developer of the subject project in an attempt to gain advantage by circumventing important safeguards provided by the California Environmental Quality Act.

Projects for multi-family residential use on reclaimed land in the locally sensitive and seismically active marine environment of San Francisco Bay have been proven to be environmentally problematical; examples are Redwood Shores and recent experiences in Foster City where long narrow buildings have experienced distress due to ground movements causing differential settlements and subsidence. For the subject project it will be worse; damage to nearby structures and the Lagoon including shallow shoreline bulkheads, first during demolition then second during implementation of the necessary subgrade foundation system for the proposed multi-family building that will not damage nearby buildings and the Lagoon during construction as there will be activities having significant effects upon the environment due to unusual circumstances.

The 1/18/22 Miller Pacific report does nothing to show why demolition of residences and construction of the apartment house will not have significant effects upon the environment and does nothing (termed "Preliminary") to explain the unusual circumstances of the project's environment. Dredged, filled, and flooded marshland between Belvedere Island and Tiburon was opened in 1955 without any environment oversight and modern engineering; settlement-forgiving homes were built before and after having length-width aspect ratios near equal so differential settlements would be almost uniform. Not so with the proposed building being five times as long as it will be wide with no architectural features to accommodate large differential settlements.

Instead of a genuine subsurface exploration program for foundations for the apartments (e.g. driven piles), the report contains only public maps and CPT (cone penetration tests) logs without Index borings (physical field tests, sampling, and laboratory tests) to correlate electronic CPT results gathered distant from the apartments operated within a van. No foundation design and construction recommendations exist and the architectural drawings also do nothing to show foundation support below the ground surface for the apartment house, which would be unusual and much different than were built for existing houses which essentially float on fill. A full environmental impact report is necessary.

Lawrence B. Karp

LICENSED ARCHITECT LAWRENCE B. KARP No. 10130 STATE OF CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER LAWRENCE B. KARP No. 452 GEOTECHNICAL STATE OF CALIFORNIA

100 TRES MESAS, ORINDA CA 94563 (415) 860-0791 ★ fax: (925) 253-0101 e-mail: lbk@berkeley.edu

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
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CAISSONS, COFFERDAMS
COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

February 20, 2022

Mark R. Wolfe
Attorney at Law
580 California Street, Ste 1200
San Francisco, CA 94104 USPS & <mrw@mrwolfeassociates.com>

Subject: Proposed Mallard Pointe Development, Belvedere

Dear Mr. Wolfe:

The following is a summary résumé of qualifications and expertise, and general consulting conditions, that was used recently in an expert disclosure statement:

> "Lawrence B. Karp holds an earned doctorate in civil engineering and other degrees from the University of California, Berkeley (with honors), and he is licensed as a civil and geotechnical engineer and architect in California, as an architect and a professional engineer, civil and/or structural engineer in other states, and as a marine engineer/naval architect in Washington.
>
> Dr. Karp was awarded a post-doctoral Earthquake Engineering certificate by the University of California, Berkeley (with distinction). He has been issued national certifications in structural engineering and architecture. Dr. Karp taught advanced foundation design and construction at Berkeley for 11 years and at Stanford for 3 years, and he has been a court appointed expert assigned to engineering design and construction disputes at various times and in California counties over the last 40 years. In 1989 he was appointed Special Inspector of buildings in San Francisco following the Loma Prieta Earthquake. He has membership in various professional societies, and he has authored numerous engineering and technical reports as well as conference and journal papers.
>
> With over 50 years experience in design and construction, Dr. Karp specializes in soil-structure interaction and resistance to lateral forces with applications to foundations for buildings and other structures including all types of ground support systems, deep foundations and retained excavations, bulkheads, tiebacks, anchors, underpinning and shoring, CEQA and environmental analyses, controlled grading and slope stabilization including repair of ground failures and landslides, investigation of causation and remediation of subsidence and foundation failures, seismic upgrades of foundations for buildings and other structures, reinforced and prestressed and marine concrete technology, determination of defects in construction and building materials, stability evaluation of excavations, bracing, slopes, earthwork, groundwater hydrology, demolition and construction logistics, and coastal engineering."

The undersigned has a professional claim and complaint free history, and maintains, subject to continuing availability, a $1M policy of professional liability insurance.

Yours truly,

Lawrence B. Karp

REGISTERED PROFESSIONAL ENGINEER
LAWRENCE B. KARP
No. 452
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m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

July 1, 2022

To: Irene Borba, Director of Planning and Building

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz

Re: Mallard Pointe Project – General Plan & Zoning Consistency Review

On June 23, 2022 the City of Belvedere's Director of Planning and Building determined that Mallard Pointe 1951, LLC's application for development entitlements for the Mallard Pointe residential development project ("Project") was complete. According to the City's "Process for Review of the Mallard Pointe Housing Development," a next step is for City staff to review the Project for consistency with adopted land use plans, policies, and standards in the City's General Plan and Zoning Ordinance.

The Project consists of the demolition of 22 existing duplex units and the construction of five duplex structures containing a total of ten units, six single-family homes, and a 23-unit apartment house on Mallard Road in Belvedere. Three of the single-family homes would have accessory dwelling units ("ADUs") attached. Four of the units in the apartment house would be restricted to very low and low-income households.

The purpose of this memorandum is to document the Project's lack of consistency with the applicable "R-2 (Duplex)" classification of the City's Zoning Ordinance, which flatly prohibits apartment houses, and the resulting need for the City to rezone the Project site before granting entitlements to the developer. A rezoning is necessary despite the developer's claims that the R-2 zoning requirements conflict with the General Plan and therefore do not apply, or that they must be

waived pursuant to the State Density Bonus Law ("SDBL") because the Project contains affordable units. The Project therefore does not qualify for any expedited review under SB 330. Issues relating to the Project's compliance with the California Environmental Quality Act ("CEQA") will be addressed in a future memorandum.

I. Background

In June, 2021 the developer submitted a "Preliminary Application Form" to the City pursuant to SB 330, the Housing Crisis Act of 2019. Under SB 330, submittal of a completed preliminary application form had the effect of "locking in" the ordinances, policies, and development standards in the City's General Plan and Zoning Code as of the submittal date. (Gov't Code § 65941.1)[1] Thus, the Project cannot be made subject to subsequently enacted changes to the General Plan and Zoning Code. (*See* Gov't Code § 65589.5(o)(1).)

On January 26, 2022 the developer submitted a formal application for design review approval for the Project, together with a Density Bonus Application under the SDBL, Government Code section 65915. Included with these applications was a memorandum from Riley F. Hurd III dated January 20, 2022 titled "Housing Law Analysis for Mallard Pointe." A copy of this memo is attached here as **Attachment 1** for reference. The memo argued that the R-2 zoning prohibition of apartment houses did not apply to the Project because the General Plan density of 20 units per net acre could not be achieved with only duplex units, and that the R-2 zoning was inconsistent with the General Plan. The memorandum also argued that because the Project included a percentage of affordable units, it was entitled to a waiver of the apartment house prohibition pursuant to the SDBL, which authorizes waivers of "development standards" for projects with deed-restricted affordable units in certain circumstances.

On February 24, 2022 the City notified the developer that its application was incomplete, providing a list of missing or incomplete items as required by that statute (§ 65943(a).) The developer submitted additional materials on May 24, 2022 , and the City formally deemed the application complete on June 23, 2022. According to the City's "Mallard Pointe Process Memo" posted online, a next step is for City staff to "Review Project for Consistency with Adopted Plans and Policies," and provide the developer with a written determination within 30 days.

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[1] Further statutory citations are to the Government Code unless otherwise stated.

II. SB 330's requirements for General Plan and Zoning Code consistency.

Under SB 330, if the Project in fact "complies with applicable, objective general plan and zoning standards in effect at the time the application is deemed complete," then it can qualify for expedited review and approval in accordance with that statute. (§ 65905.5(a).)[2]

The Belvedere General Plan 2030 designates the Project site "Medium Density MFR: 5.0 to 20 units/net acre," meaning up to 20 residential units per **net** acre may lawfully be developed on it. The General Plan defines "net acreage" as including "only the size of the actual developable parcels themselves," as distinct from "gross acreage," which "typically includes all acreage across a land use designation, including rights-of-way such as streets and sidewalks." (General Plan Land Use Element, p. 40.)

As the developer itself has acknowledged, the net acreage of the Project site is 2.4 acres, while the gross acreage is 2.8 acres. (*See* **Attachment 1**, p. 2; *see also* May 23, 2022 Tentative Subdivision Map submittal, "Title Sheet," **Attachment 2**.) Thus, the maximum number of units allowable under the applicable General Plan density standard is 48 units, and the Project's overall unit count of 42 units is consistent with the General Plan's Medium Density MFR designation.

The Project site is zoned "R-2 (Duplex) Two-Family Residential" pursuant to the City's Zoning Ordinance. (Belvedere Municipal Code ("BMC"), Chapter 19, "R-2 Zone.") A complete copy of Chapter 19 is attached as **Attachment 3**. Under R-2 zoning, single family and two-family duplex homes are permissible, but "apartment houses" and "apartment courts" are expressly prohibited. (§ 19.280.030.) Thus, the Project's 23-unit apartment house is prohibited by, and inconsistent with, the R-2 zoning requirements. Since SB 330 is clear that consistency with **both** general plan **and** zoning criteria is required for a project to qualify for approval under the statute, the Project on its face is not eligible for expedited review or approval under SB 330.

There are, however, two important caveats to SB 330's requirement that a project be consistent with zoning as well as general plan criteria. First, the statute provides that "[a] proposed housing development project is not inconsistent with the applicable zoning standards and criteria, and shall not require a rezoning, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan." (§ 65905.5(c)(2).) Thus, if it can be shown that the R-2 zoning classification is

---

[2] For example, no more than five public hearings may be held on the Project before it is considered for final approval, and the agency must make its final approval determination within 60 days after certification of an EIR, adoption of a negative declaration, or determination of exemption under CEQA. (§§ 65905.(a)); 65950(a).)

inconsistent with the General Plan's Medium Density MFR designation, then no rezoning would be required for the Project despite the R-2's prohibition of apartment houses.

Second, under the SDBL, if a residential project is eligible for a density bonus by virtue of including a certain number of affordable units, then it qualifies for waivers from any applicable "development standards" that would otherwise prevent the project from being built at the bonus density. (§ 65915(e).) Thus, if the Project qualifies for a density bonus based on its inclusion of four affordable units, then the City would be obligated to waive any applicable "development standards" that would prevent construction of the Project at the permitted density.

With regard to the first of these caveats, the developer has argued that the R-2 zoning is inconsistent with the General Plan's Medium Density MFR land use designation, and that no rezoning is required. The developer claims (with no evidentiary support) that the General Plan density of 20 units/net acre cannot be achieved with only duplex units,[3] while asserting that a table in the Housing Element indicating that "multi-family" uses are permissible in the R-2 Zone is proof that no rezoning is necessary to accommodate the Project's apartment component. (*See* Jan. 20, 2022 Memo, **Attachment 1** at p. 1.) The developer goes so far as to accuse the City of failing to conform its Zoning Code to its General Plan as required by law, declaring that because the R-2 zoning district was adopted in 1989, and the current Housing Element was adopted in 2015, "[c]learly, the zoning code has not been timely updated to be consistent with the general plan as required by Government Code, Section 65860(c)." (*Id.*, p. 4.)

With regard to the second SB 330 caveat, the developer asserts that because the Project contains four affordable units, it is eligible for a waiver from applicable "development standards" under the SDBL. Accordingly, in addition to waivers from certain setback and lot coverage requirements, the developer claims entitlement to a waiver from the R-2's prohibition on apartment buildings, characterizing the prohibition as a "development standard" under the SDBL.

As discussed in detail below, the developer is mistaken on both counts. The R-2 zoning is fully consistent with the General Plan, as the City expressly acknowledged when it adopted the current Housing Element in 2015. Furthermore, the General Plan density of 20 units/net acre, or 48 total units, is demonstrably achievable with duplex construction, and without a prohibited apartment building.

---

[3] The developer claims that the total allowable unit count is 56, which would be the number permissible at 20 units/**gross** acre. However, the General Plan plainly specifies the applicable density as 20 units/**net** acre. The developer's statement is incorrect, and the total allowable unit count is 48, as explained.

Finally, even if the Project were to qualify for a density bonus (the City has stated in its June 23, 2022 completeness review letter that it does not), the R-2 zoning prohibition on apartment buildings is not a "development standard" as that term is defined in the SDBL, the BMC, and interpreted by the courts. It is a **use prohibition** and therefore not subject to waiver under the SDBL.

III. The R-2 zoning classification is fully consistent with the General Plan.

The General Plan's Land Use Element states that the Medium Density MFR designation applies to lands in **both** the R-2 and R-3/R-3C zones. (*See* Table, reproduced below.) The Table expressly uses the conjunction "and" in defining "Medium Density Multi-Family Residential (R-2 and R-3/R-3C)." In other words, R-2 and R-3/R-3C zoning are each sub-categories within the Medium Density MFR designation.

Residential General Plan land use categories and density and intensity standards are as follows:

Low Density Single Family Residential (R-15 zone)	1 to 3.0 dwelling units per net acre. 2.7 to 8.1 persons per acre. The total floor area permitted, without an Exception Permit, is 33 percent of the lot size, up to a house size cap of 4,850 square feet for R-15 zone.
Medium Density Single Family Residential (R-1L and R-1W zones)	3.1 to 6.0 dwelling units per net acre. 8.2 to 16.2 persons per acre. The total floor area permitted, without an Exception Permit, is 50% percent of the lot size, up to a house size cap of 4,000 square feet in the R-1L (Lagoon Area) zone and 40 percent of the lot size, up to a house size cap of 4,240 square feet in the R-1W (West Shore Road) zone.
High Density Single-Family Residential (R-1C zone)	Over 6.0 units per net acre. More than 16.3 persons per acre. The total floor area permitted, without an Exception Permit, is 50 percent of the lot size, up to a house size cap of 3,500 square feet for R-1C zone.
Medium Density Multi-Family Residential (R-2 and R-3/R-3C zones)	5 to 20 dwelling units per net acre. 13.5 to 54 persons per acre.
High Density Multi-Family Residential (R-3 and R-3/SC-H overlay)	Same as R-3, except density may be increased up to 35 dwelling units per net acre (95 persons per acre) upon Planning Commission's findings of benefit to the community and lack of environmental impact or on residential properties adjacent to commercially-designated properties.

The General Plan's Housing Element acknowledges this distinction in even more detail, clarifying that the R-2 District is a "Two-Family (Duplex)" residential zoning district, and that the separate R-3 and R-3C Zoning Districts are "Multi-Family" residential zoning district:

The following zoning districts allow residential uses:

R-1C: Single-family Residential Zoning district for parcels on Corinthian Island
R-1L: Single-family Residential Zoning district for parcels on the Belvedere Lagoon
R-1W: Single-family Residential Zoning district for parcels along the

	Waterfront (West Shore Road)
R-15:	Single-family Residential Zoning district for parcels on Belvedere Island
R-2:	**Two-Family (Duplex) Residential Zoning District**
R-3/R-3C:	**Multi-Family Residential Zoning Districts**
C-1:	Commercial Zoning District – allows second story residential uses over ground floor commercial

See Housing Element, pp. 45-46. Therefore, the Land Use Element establishes, and the Housing Element recognizes, that there are two distinct sub-categories of "Medium-Density Multi-Family Residential" zoning districts: a two-family/duplex district (R-2), and separate multi-family (apartments) districts (R-3 and R-3C). Thus, the developer's claim that the Housing Element somehow allows apartments in the R-2 zoning district (and that the R-2 zoning is inconsistent with the Housing Element) is wholly without merit.

Underscoring the fact that the R-2 zoning is fully consistent with the General Plan is the record of the City's deliberations leading to the adoption of the Housing Element in 2015, where the City Council affirmed its understanding that the R-2 zoning was consistent with the General Plan. Specifically, the CEQA Initial Study and Negative Declaration adopted by the City Council for the Housing Element in 2015 states repeatedly that the housing mix described in the Housing Element, including duplexes in the R-2 district, is consistent with the Zoning Code. Following are examples of such statements:

- "All new development under the proposed Housing Element would be consistent with the City's General Plan and current zoning." (Initial Study, p. 12.)
- "The number of dwelling units that could be developed under the proposed Housing Element would not result in significant cumulative impacts to air quality as growth and land use intensity are consistent with the City's current General Plan and current zoning." (p. 15.)
- "All new development under the proposed Housing Element would be consistent with the General Plan and current zoning." (p. 17.)
- "All new development would be consistent with the General Plan and current zoning and development regulations." (p. 20.)

The above-cited pages 12 through 20 from the 2015 Initial Study are attached for reference as **Attachment 4**. These findings in the CEQA Initial Study formally

adopted by the City Council for the current Housing Element[4] plainly negate the developer's claim that the City has "failed" to conform its Zoning Code to its General Plan "as required by law."

In sum, the developer's claims that the R-2 zoning is inconsistent with the General Plan, and that apartments are somehow permissible in the R-2 zoning district notwithstanding the Zoning Code's clear prohibition against them, are without merit.

IV. The General Plan density of 20 units per net acre is fully achievable with duplex construction consistent with R-2 zoning.

As explained, at the General Plan-specified density of 20 units per net acre, 48 total units may be built at the Project site. Yet after erroneously claiming that the unit count is actually 56,[5] the developer baldly asserts that "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." (*See* Jan. 20, 2022 memo, **Attachment 1** p. 1.) Despite repeated requests to the City from BRIG that the developer be required to provide evidence and analysis to support this assertion, to our knowledge none has been forthcoming.

In point of fact, the Project site can easily accommodate 48 duplex units. To demonstrate this, BRIG engaged Alex Seidel, FAIA (Seidel Associates), a Belvedere resident well familiar with the development standards and building requirements in the City's municipal code. Mr. Seidel has produced a schematic drawing, attached as **Attachment 5**, showing the placement of 48 units on the Mallard Pointe site that meet all applicable development standards in the R-2 zoning, with no waivers or variances needed.[6] This drawing repudiates the developer's still unsupported assertion that an apartment house is required to "fit" the necessary units at the site.

---

[4] California courts "accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that 'the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies[.]" (*Golden Door Properties, LLC v. City of San Diego* (2020) 50 Cal.App.5th 467, 501.)

[5] Again, the developer incorrectly used the site's **gross** acreage of 2.8 to calculate 56 units, rather than the **net** acreage of 2.4 as required by the General Plan.

[6] BRIG submits this plan **not** as an alternative development plan for the site, but rather to abrogate the developer's claim that the General Plan density cannot be achieved with only duplexes.

In sum, there is no support in fact or law for the developer's assertion that the General Plan's maximum density of 20 units per net acre cannot be achieved at the Project site with duplex construction consistent with R-2 zoning.

V. The R-2's prohibition of apartment buildings is not a "development standard" that can be waived under the SDBL; it is a use restriction that applies as a matter of law to the Project unless the site is rezoned.

The developer's SB 330 application was accompanied by a separate Density Bonus Application (both in **Attachment 6**) that sought waivers from "development standards" in the R-2 zone, including height limits, setback requirements, lot area and lot coverage standards. It also sought a waiver from "the prohibition on apartment courts and/or apartment houses in the R-2 zone." (**Attachment 6**, Density Bonus Application, p. 2.). According to the developer:

> Because the Project includes 10% Low-income units, the Project is entitled to a density bonus of 20% beyond the maximum allowable density. The Project does not seek the additional density bonus units. However, waivers, concessions, reduced parking standards, and all other provisions of the State Density Bonus Law are benefits that apply to the project.
>
> The Project seeks waivers for height, certain side setbacks, the lot area/unit requirements, lot coverage, the construction time limit, **and the prohibition on apartment courts and/or apartment houses in the R-2 zone**. Each of these requirements physically precludes the construction of the Project at the density permitted for the property. The Project seeks a concession for usable open space. (May 24, 2022 Project Narrative, **Attachment 6**, pp. 2-3; boldface added.)

The developer thus characterizes the R-2's prohibition on apartment houses as a "development standard" under the SDBL, such that the City must waive it as a result of the Project including 10 percent low-income units.[7] As explained below, the developer's characterization is without legal basis and is incorrect.

Preliminarily, we note that the City's June 23, 2022 completeness review letter (**Attachment 7**) states that the Project does not qualify for any density bonus or waivers under the SDBL in the first instance:

> The proposed very low-income unit equals only two percent of the total number of units and is insufficient to establish eligibility for a density bonus;

[7] The developer has stated that is not seeking entitlements for additional units under the Density Bonus Law.

> three very low-income units would be required. Similarly, the four lower income units proposed (total of very low- and low-income units) is less than 10 percent of the 'total units,' as defined by the statute; five lower income units are required to be eligible for a density bonus. Accordingly, the project as proposed is not eligible for the requested waivers and concessions, and they cannot be approved by the City. (**Attachment 7**, pp. 1-2.)

Since the developer presumably may simply agree to add more affordable units to nominally qualify for a density bonus, we present the following analysis to show that the developer's characterization of the R-2's apartment prohibition as a "development standard" that must be waived under the SDBL conflicts with the plain language of the SDBL itself, the Belvedere Zoning Code, and with relevant published appellate opinions.

A. Waiver of "Development Standards" under the SDBL.

Under the SDBL, a project that includes a certain percentage of below market rate (BMR) units can request entitlements for additional units beyond what would be permissible under the local government's density restrictions (i.e., a density bonus), and can also seek and obtain "waivers or reductions" from "development standards." (§ 65915.) If a project qualifies for a density bonus, the local agency may not apply any development standard that would preclude construction of the project at the densities permitted by law. (§ 65915(e).) In other words, when a developer agrees to include a specified percentage of affordable housing in a project, the SDBL grants that developer not only a "density bonus," but also "waivers or reductions" of "development standards." (§ 65915, subd. (b)(1).) The question here is whether the apartment prohibition in the R-2 zone is a "development standard" that can be waived under the SDBL. It is not.

The SDBL defines "development standard" as follows:

> "Development standard" includes **a site or construction condition**, including, but not limited to, **a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio** that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation. (§ 65915(o)(1), boldface added.)

Absent from this definition is any mention, explicit or implicit, of a use restriction or use prohibition.

Consistent with the above definition, the Belvedere Zoning Code's R-2 provisions list with specificity the various "development standards" that apply in the

R-2 district. (BMC § 19.28.040; *see* **Attachment 3**.) These include minimum lot size, width, and area per unit; front, side, and rear yard setbacks; minimum lot coverage; maximum height; usable open space; and off-street parking requirements. (*Id.*). Notably absent from the list of "development standards" in the R-2 is the prohibition of apartment buildings. Instead, the apartment prohibition appears in an entirely separate section of the Zoning Code as follows:

> **19.28.030 Prohibited uses.**
>
> The following uses are prohibited in the R-2 zone: All uses not specified in Sections 19.28.010 or 19.28.020 of this Chapter, specifically including, but not limited to, any business, boarding house, rooming house, **apartment court, apartment house**, church, club building, hotel, rental office or any other use. (Ord. 89-1 § 1, 1989; boldface added.)

Thus, the Zoning Code obviously considers "development standards" to be limitations and restrictions on **construction, design, and layout**, and "prohibited uses" to be proscriptions against specified **land uses**, including apartment houses.

In its May 24, 2022 submittal, the developer supplied a table titled "Mallard Pointe Project Data Sheet – Comparison of Proposed Plan to R-2 Development Standards" (copy attached as **Attachment 8**). The Table was supplied in response to the City's February 24, 2022 Revised Letter of Incompleteness which requested: "a comprehensive project data sheet, in one place, that summarizes the requirement for and compliance with each development standard applicable to the project." The developer's Table accordingly tracks the table of development standards in BMC § 19.28.040, showing whether and how each of the Project's 12 lots complies with the listed development standards in the code section.

Notably absent from the developer's Table of applicable "R-2 Development Standards" is, once again, any mention of the apartment prohibition. This indicates that the developer itself is well aware that the prohibition on apartments specified in BMC section 19.28.030 is not a "development standard" that can be waived or reduced under either the SDBL or Belvedere Zoning Ordinance.

B. Cases interpreting the term "development standards" under the SDBL.

Case law amply supports the view that the R-2's apartment prohibition is not a "development standard" that can or must be waived under the SDBL. In *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, the Court of Appeal upheld the City of San Diego's approval of a 20-story mixed use building with 204 residential units. Opponents had argued that the project was inconsistent with governing

policies of the General Plan and an applicable Community Plan. (*Id.* at 762.) The Court explained:

> The law states that **a "site development standard" includes setbacks, height limitations, and other requirements** imposed by "any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation." (*Id.* at subds. (k)(1), (o)(1).)
>
> [A] city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives, permitted by the Density Bonus Law. (§ 65915, subd. (e)(1).) For example, if a city ordinance imposes **a building height limitation,** a city must waive that limitation for a development that is eligible for a density bonus if imposing the height limit would physically preclude construction of the proposed building with the requested incentives and at the density allowed by the Density Bonus Law. There are no financial criteria for granting a waiver. (*Id.* at p. 770; boldface added.)

The developer in *Bankers Hill* had sought a density bonus in the form of additional units (204 instead of 147 permissible under existing zoning), and "also requested incentives, **including one to avoid the setback requirement of 15 feet** for a portion of the building along Olive Street." (*Id.* at 772, boldface added.). The City granted a waiver from the setback requirement, and opponents sued, arguing "because of the deviation from the setback requirement, the Project did not 'maintain and enhance views of Balboa Park,' included inadequate 'façade articulation,' improperly transitioned from the neighboring shorter buildings, and did not respect the scale of neighboring buildings." (*Id.* at 773.)

The Court rejected the opponents' challenge. The Court noted that the evidentiary record showed that "including the affordable units in the Project was possible "only if the building was designed as proposed. In other words, imposing the setback requirement, decreasing the height, or redistributing the units would preclude construction of the Project." (*Id.* at 774.) The Court held that once the developer established its eligibility for a density bonus based on the inclusion of affordable units, the City was obligated to grant the requested waiver from the otherwise applicable setback requirement upon a showing that but for the waiver the project could not be built at the increased density. (*Ibid.*)

Bankers Hill thus stands as a straightforward interpretation of the term "development standards" as defined by the SDBL. The developer sought a waiver from a setback requirement, which the Law indisputably includes in its list of "development standards" that are subject to waiver when affordable units are

included in a project. Nothing in *Bankers Hill* supports the Mallard Pointe developer's assertion that a **use prohibition** such as the R-2's prohibition on apartments is a "development standard" for purposes of the Law, or that it is subject to waiver for any reason under the Law.

Likewise in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the Court of Appeal upheld Berkeley's approval of a five-story building with 98 residential units, including 15 affordable units, based on a density bonus. An opponent sued, arguing in part that the City unlawfully accommodated certain project "amenities" in granting a waiver from development standards **for height, number of stories and setbacks, while granting variances to allow an additional story and a higher building height, and to forego setbacks on two corners**. (*Id.* at 1346, boldface added.) The developer had sought the waivers in part to accommodate an interior courtyard, a community plaza, and higher ceilings in the units. The Court rejected this argument as well, noting that nothing in the SDBL "requires the applicant to strip the project of amenities, such as an interior courtyard, that would require a waiver of development standards. Standards may be waived that physically preclude construction of a housing development meeting the requirements for a density bonus, period. (§ 65915, subd. (e)(1).) The statute does not say that what must be precluded is a project with no amenities, or that amenities may not be the reason a waiver is needed." (*Id.* at 1346-1347.)

As with *Bankers Hill*, *Wollmer* stands for the straightforward proposition that once a developer establishes entitlement to a density bonus or waivers from "development standards" by virtue of including affordable units in a project, a city is obligated to grant those waivers, even if they are intended to accommodate what would otherwise be described as arguably unnecessary "amenities." Again, in *Bankers Hill* the waived development standards were setbacks, and in *Wollmer* they were setbacks, height limits, and number of stories. In neither case did the city waive a use restriction similar to the R-2's prohibition on apartments. Indeed, we are aware of no case construing "development standard" under the SDBL as including a use restriction or use prohibition.

In sum, it may well be appropriate for the City to waive setback requirements, height limits, or other construction and layout-related limitations that would otherwise prevent the Project from being built at the allowable density of 20 units per net acre (assuming the Project in fact qualifies for a density bonus). However, nothing in the SDBL, the Belvedere Zoning Code, or the cases cited requires the City to forego enforcement of an unambiguous use prohibition in its Zoning Code that is clearly consistent with the General Plan, including both the Land Use Element and Housing Element, as the City itself repeatedly affirmed when it adopted the Initial Study and Negative Declaration for the Housing Element in 2015.

C. Even if the R-2 zoning's apartment prohibition was a "development standard" under the SDBL (it is not), it still may not be waived because it does not phyically preclude construction of the Project at the General Plan density.

Importantly, the SDBL only requires a local agency to grant waivers from development standards that have the effect of "physically precluding the construction" of a project eligible for a density bonus, *i.e.,* by including a percentage of affordable units, at the densities permitted by the SDBL. (Gov't Code § 65915(e); *Bankers Hill, supra,* at p. 770.) Here, as explained above, the developer has provided no facts, evidence, or documentation to support its claim that General Plan density cannot be achieved with only duplex structures. BRIG, however, has supplied a site rendering prepared by a licensed architect well familiar with the development standards in the R-2 zone and elsewhere in the Zoning Code, showing that 48 units, the General Plan-specified density, can be achieved with duplexes. (*See* **Attachment 5**.)

There accordingly is no evidence showing that the R-2 zoning's apartment prohibition would "physically preclude" construction of a residential project at the General Plan-allowed density. Thus, even if the apartment prohibition were to constitute a "development standard" under the SDBL, the City would not be required to waive it for this Project.

VI. Conclusion

The Project's apartment house component squarely conflicts with the R-2 zoning district's prohibition on apartment houses. The only remaining questions are: (1) whether this prohibition is unenforceable as a result of an inconsistency between the R-2 zoning standards and the General Plan; and (2) whether this prohibition constitutes a "development standard" that can be waived if the Project in fact qualifies for a density bonus under the SDBL.

We submit that based on the foregoing analysis, the R-2 zoning prohibition is fully consistent with the General Plan's Medium Density MFR designation, as the City itself has long understood, and the apartment restriction is by no means a "development standard" as that term is defined in the SDBL, the Belvedere Zoning Code, and interpreted by the courts.

Furthermore, BRIG's consulting architect has plainly shown what the City has long affirmed – that the Project site's 20 units/net acre General Plan designation and R-2 zoning classification are fully consistent with one another and not in conflict. 20 units/net acre is readily achievable with duplex units that are fully permissible under the R-2 zoning. The developer's claims that General Plan density can only be

achieved by building an apartment house are unsupported by any facts or evidence, and are demonstrably false.

In order for the City to approve the Project in its current form, a rezoning will be required, following all applicable procedures for processing such approvals under the State Planning & Zoning Law. The Project may not lawfully be approved under the streamlined process provided under SB 330, since it is not consistent with the City's Zoning Ordinance.

MRW:sa

Attachments

ATTACHMENT 1

Ragghianti|Freitas LLP

MEMORANDUM

DATE: January 20, 2022

FROM: Riley F. Hurd III

RE: **Housing Law Analysis for Mallard Pointe**

EXECUTIVE SUMMARY

1. The Mallard Pointe project proposes 39 new residential units and 3 ADUs in place of 22 dated market-rate residential units.

2. **The General Plan allows for 56 units at the property**. To ever 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.

3. The Housing Element, a part of the General Plan, states that multifamily housing is allowed in the R2 zone. In contrast, the older zoning code prohibits "apartment houses."

4. It is well-settled law that general plans control when in conflict with a zoning ordinance, and that general plans are required to be internally consistent.

5. More importantly, state law is clear that if the density allowed under the zoning ordinance is inconsistent with the density allowed under the general plan, **the general plan density shall prevail.**

6. As a housing project providing a percentage of affordable units, Mallard Pointe is entitled to waivers of **any** local law, policy, or regulation that physically precludes development at the allowable density. This includes a purported ban on apartments, height limits, and any other standard that prevents the full project.

Introduction

The purpose of this memorandum is to analyze the framework of state and local housing laws applicable to the Mallard Pointe project. These laws inform the planning process for the project, which is also addressed herein.

The Project

Mallard Pointe (the "Project") is a proposed new residential development to be located on Mallard Road in Belvedere, CA (the "Property"). The size of the Property is 2.8 gross acres, and 2.4 net acres (subtracting Mallard Road).

The Project proposes 39 new residential units on 12 newly configured lots. Of these units, 23 would be apartments contained in a single building, 10 would be contained in a series of 5 duplexes, and the remaining 6 would be freestanding single-family homes. Of the single-family homes, 3 are proposed to have Accessory Dwelling Units ("ADUs") on their respective lots. ADUs are not counted towards density calculations pursuant to state law and Belvedere Municipal Code ("BMC") 19.79.050(G).

Of the 39 units, 2 are currently proposed to be restricted to very low-income occupants, and 2 are currently proposed to be restricted to moderate income residents.

General Plan and Zoning

The Property is designated as Medium Density Multifamily Residential (MFR) in the City's General Plan, and is zoned R-2. The MFR General Plan designation has a density range of 5 to 20 units per net acre, and anticipates 13.5 to 54 persons per acre. (General Plan, p. 25.)

In contrast to the General Plan, the R-2 zoning uses a density formula of lot area/unit, with a requirement that varies based on bedroom count. Units with 2 or fewer bedrooms require 3,000 square feet of lot area, and units with 3 or greater bedrooms require 4,000 square feet of lot area. (BMC 19.28.040.) The R-2 zoning also implements various additional development standards such as setbacks, lot coverage, FAR, and height limits.

The R-2 zone allows for single family homes and duplexes, but prohibits "apartment courts" and "apartment houses." (BMC 19.28.030.) However, multiple sections of the City's General Plan, specifically within the Housing Element, explicitly state that multifamily housing, not just duplexes, is allowed in the R-2 zoning district.

Table 36 on page 59 in the Housing Element identifies the "permitted" and "conditionally permitted" housing types in the various Belvedere zoning districts. **This table is unequivocal that multi-family housing is permitted as a matter of right in the R-2 zoning district:**

Table 36: Housing Types by Residential Zoning Districts

	Residential Zoning District					
Housing Types Permitted	R-1C	R-1L	R-1W	R-15	R-2	R-3, R-3C
Single-family	P	P	P	P	P	P
Multi-Family					P	P
Second Unit	P	P	P	P	P	P
Duplex					P	P
Mfg. Housing	P	P	P	P	P	P
Congregate Housing	P	P	P	P	P	P
Transitional Housing	P	P	P	P	P	P
Supportive Housing	P	P	P	P	P	P
Care Facility (6 or fewer)	P	P	P	P	P	P
Care Facility (7 or more)	C	C	C	C	C	C

P=Permitted C=Conditionally Permitted

Importantly, Table 36 distinguishes between "multi-family" and "duplex" housing types, and allows **both** in the R-2 zone.

The Housing Element doubles down on the allowance of multifamily housing in the R-2 zone on page 61 with the following statement:

> "The Zoning Ordinance provides for **multi-family developments by-right in the R-2** and R-3 Zoning Districts, …."

It is well-settled that zoning codes must be consistent with general plans. (*Government Code* § 65860(a).) This concept is known as "vertical consistency," and requires that the subservient document, the zoning code, be consistent with the document at the top of the hierarchy, the general plan. The test for consistency is whether the zoning ordinance "**furthers the objectives and policies of the general plan and does not obstruct their attainment.**" (*City of Morgan Hill v. Bushey*, (2018) 5 Cal.5th 1068, 1080; See also, Gov. Code §65860(c).)

It is self-evident that a zoning code provision prohibiting "apartment houses" does not further the clear policy of the general plan allowing not just duplexes, but true multifamily development in the R-2 zone. The R-2 prohibitions clearly obstruct the attainment of the relevant General Plan goals and policies (particularly the density), are vertically inconsistent with the General Plan, and are therefore inapplicable to the Project.

To the extent a general plan is internally inconsistent, the zoning is invalid. (*Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704.) Here, there is an arguable contradiction between the Land Use Element of the General Plan and the Housing Element. However, each of these elements are of equal legal status; the recently adopted Housing Element cannot be read as subordinate to the previously adopted Land Use Element. The two must be reconciled, and the proper reconciliation is that multifamily use is allowed in the R-2 zone.

It is noted that the municipal code section applicable to the R-2 zoning district, Title 19.28, was adopted in 1989, while the current Housing Element was adopted on May 11, 2015. Clearly, the zoning code has not been timely updated to be consistent with the general plan as required by *Government Code,* Section 65860(c). Also, the Housing Element was a commitment to the State, and the promises therein are what led to certification by HCD.

As will be discussed below, the issue of inconsistencies within the City's planning documents is squarely addressed by state housing law, thereby somewhat obviating the need to rely on the traditional general plan case law cited above to establish what the maximum density is for the Property and that true multifamily housing is allowed in order to achieve said density.

Density

Pursuant to the MFR General Plan Designation, the Property has an allowable density range of 12 to 48 units if Mallard Rd were to remain. However, in a development program that no longer utilized an interior roadway, the allowable density would range from 14 to 56 units. Determining the allowable density under the R-2 zoning is a less precise calculation because the lot area/unit formula would need to be applied to a hypothetical project and bedroom count. Assuming a reasonable mix of unit sizes and duplexes only, the R-2 lot would yield between approximately 28 and 32 units after considering the necessary minimum lot sizes.

If there is a disparity between the density permitted under the General Plan, and that of the zoning, the General Plan prevails. The Project is a "housing development" as defined by Government Code, Section 65915. Because the Project will incorporate a percentage of Below Market Rate units, Government Code 65915(o)(4) applies, which defines the "Maximum allowable residential density" as:

> "the density allowed under the zoning ordinance and land use element of the general plan, or, **if a range of density is permitted**, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. **If the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail**."

The "Maximum allowable residential density" definition above confirms two things:

1. If there is a disparity between the density permitted under the General Plan, and that of the zoning, the General Plan prevails.

2. If there is a range of density set forth in the General Plan, the top end of the range is the applicable density.

Accordingly, the allowable base density for the Property is 56 units (48 units if the road remains.)

State Density Bonus Law

Because the Project is a "housing development" that will incorporate a percentage of Below Market Rate units, the applicants can avail themselves of the provisions of the State Density Bonus Law ("SDBL"). (Government Code 65915 et seq.)

Because the Project includes 5% Very 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%). However, the applicant has elected not to seek the additional units, and is applying for 39 at this time.

Although the Project does not seek the density bonus units, it is still entitled to waivers, concessions, reduced parking standards, and all other provisions of the SDBL because of the inclusion of the Below Market Rate units. (Government Code 65915(f).)

Government Code 65915(e)(1), states: "**In no case may a city ... apply any development standard that will have the effect of physically precluding the construction of a development**" that includes a certain percentage of BMR units.

Government Code 65915(o)(1) defines "**Development standard**" as:

> "a site or construction condition, including, but not limited to, a **height limitation**, a **setback requirement**, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, **or other local condition, law, policy, resolution, or regulation.**"

Here, there are multiple development standards within the R-2 zone that would physically preclude a project at the "maximum allowable residential density." Perhaps the most significant is the standard prohibiting apartment houses, and only allowing duplexes. As noted above, only 28-32 units could be built if only duplexes were allowed. Accordingly, the apartment prohibition *must* be waived by the City, as it physically precludes the development.

The same rationale applies to the height limit, certain required setbacks, the lot area/unit calculation, and lot coverage on a per lot basis, each of which must be waived in order to fit the Project on the Property.

If a city refuses to grant a needed waiver or reduction of development standards, an applicant is entitled to recover reasonable attorney's fees and costs of suit in any enforcement action. (Government Code 65915(e)(1).)

SB 330 Preliminary Application

The Project applicant submitted a complete Preliminary Application pursuant to SB 330 on August 6, 2021. The primary effect of submitting the Preliminary Application is that the Project is only subject to Belvedere's ordinances, policies, standards, and fees in place as of August 6, 2021. (Govt. Code 65589.5 (o)(1).) For example, assuming the full Project application is submitted within 180 days of August 6, 2021, the Objective Design and Development Standards (ODDS) currently being considered for adoption by the City would not be applicable to the Project, as they were not in place as of August 6, 2021.

Project Processing

Multiple provisions of state law govern the City's processing of the Project. Certain key provisions include the following:

- The Project is only required to comply with objective development standards.
- The Property does not need to be rezoned if the zoning is inconsistent with the General Plan.
- The City may only deny the Project, or reduce it in size, if there is a specific, adverse impact on public health or safety that cannot be mitigated.
- The Project may only be considered at a maximum of 5 hearings.
- The Project must be approved within certain timeframes based on the level of environmental review.

The Housing Accountability Act ("HAA") greatly limits a city's ability to reject or reduce housing development projects that comply with "applicable, objective general plan and zoning standards and criteria." (Govt. Code § 65589.5(j).)

Very importantly, a proposed housing development project is **not** inconsistent with the applicable zoning standards and criteria, **and shall not require a rezoning**, if the housing development project is consistent with the objective general plan standards and criteria, but the zoning for the project site is inconsistent with the general plan. A local agency may require a project to comply with the objective standards and criteria of the zoning that **are** consistent with the general plan, however, the standards and criteria shall be applied **to facilitate and accommodate development at the density allowed on the site** by the general plan and proposed by the proposed housing development project. (Govt. Code § 65589.5(j)(4).) Accordingly, because the R-2 zoning is inconsistent with the MFR General Plan designation, **a rezoning is not required for the Project.**

It is important to note that AB 1584 amended the HAA to clarify that the receipt of an incentive, concession, waiver, or reduction of development standards under the SDBL is **not** a valid basis on which to find a proposed housing development project inconsistent with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision for purposes of the HAA.

Once it is established that a project complies with applicable objective standards, a city's discretion to disapprove or reduce the density of the project is very limited. A City can only disapprove a project or reduce its density if the city can prove, based on a preponderance of the evidence, that the project will have **unavoidable public health and safety impacts**, which "must be a "significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Govt Code 65589.5 (j)(1)(B).) Furthermore, it must be proven that any such impacts cannot be mitigated. The State Legislature has emphasized its expectation that this type of "public health or safety" impact will "**arise infrequently**." (Govt Code 65589.5(a)(3).) So, other than determining noncompliance with applicable objective standards, **this is the only manner in which the Project could be denied or reduced by the City.**

Conclusion

- The allowable density for the Property is 48-56 units, with an opportunity to go higher with a density bonus.
- A zoning change is not required in order to allow an apartment building at the Property.
- Only objective development standards consistent with the General Plan can be considered by the City.
- Any development standards that physically preclude the construction of the Project must be waived.
- The Project can only be denied if it does not comply with the objective development standards or if it poses a significant threat to public health or safety that cannot be mitigated.

ATTACHMENT 2

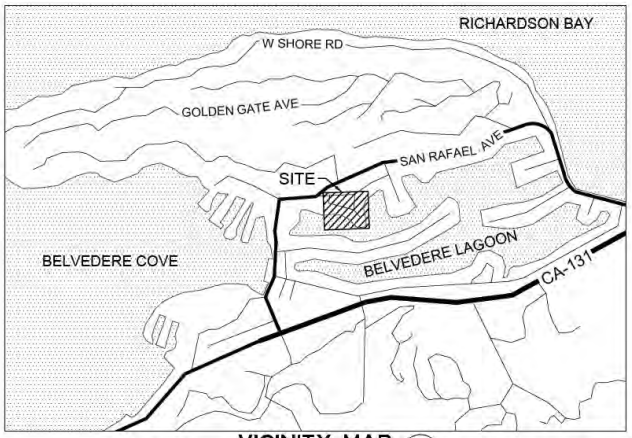
TENTATIVE MAP
MALLARD POINTE
CITY OF BELVEDERE, MARIN COUNTY, CALIFORNIA

PROJECT SUMMARY

1.	OWNER/SUBDIVIDER	MALLARD POINTE 1951 LLC CONTACT: BRUCE DORFMAN 39 FORREST STREET, SUITE 202 MILL VALLEY, CA 94941 PHONE NUMBER: 415-823-3001
2.	ENGINEER	BKF ENGINEERS 1646 N. CALIFORNIA BLVD., SUITE 400 WALNUT CREEK, CA 94596 925-940-2200 CONTACT: CHRIS MILLS
3.	UTILITIES:	
	WATER SUPPLY:	MARIN MUNICIPAL WATER DISTRICT
	FIRE PROTECTION:	TIBURON FIRE PROTECTION DISTRICT
	SEWAGE DISPOSAL:	SANITATION DISTRICT NO.5
	STORM DRAIN:	CITY OF BELVEDERE
	GAS:	PACIFIC GAS & ELECTRIC
	ELECTRIC:	PACIFIC GAS & ELECTRIC
	TELEPHONE:	AT&T
	CABLE TELEVISION:	COMCAST
4.	PROJECT ADDRESS & ASSESSOR PARCEL NUMBERS	1 MALLARD RD, APN 060-072-27 9 MALLARD RD, APN 060-072-28 17 MALLARD RD, APN 060-072-18

VERTICAL DATUM

VERTICAL DATUM IS NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88)



VICINITY MAP
NTS

SHEET INDEX

Sheet Number	Sheet Title
TM-1	TITLE SHEET
TM-2	EXISTING CONDITIONS
TM-3A	LOTTING AND LAYOUT PLAN
TM-3B	PARKING LAYOUT AND TURN PLAN
TM-4A	GRADING, DRAINAGE, & UTILITIES
TM-4B	STREET PROFILES
TM-5	EROSION CONTROL PLAN
TM-6	STORMWATER CONTROL PLAN

LAND USE SUMMARY

GROSS AREA OF SITE:	120,079 SQUARE FEET, 2.8 ACRES
NET AREA OF SITE:	106,354 SQUARE FEET, 2.4 ACRES
ALLOWABLE AND PROPOSED FLOOR AREA RATIO (FAR):	N/A (FLOOR AREA RATIO IS NOT REQUIRED IN R2 ZONING)
GENERAL PLAN DENSITY CALCULATION:	18.25 UNITS/ACRE (EXCLUDES ADU UNITS)
ZONING DENSITY CALCULATION:	N/A (ZONING DENSITY IS NOT REQUIRED IN R2 ZONING)
FLOOD ZONE:	ZONE AE (ELEVATION 10 NAVD88) BASED ON FEMA FLOOD MAP 06041C0489E EFFECTIVE 3/16/16 AND MAP 06041C0527E EFFECTIVE 3/16/16.

LOT SUMMARY TABLE No. 1 - STRUCTURES

LOTS	LOT AREA (SF)[1]	NET LOT AREA (SF)[2]	COVERAGE AREA (SF)[3]	LOT COVERAGE (%)[3]	ALLOWABLE LOT COVERAGE (%)[4]
LOT 1	7,826	7,299	2,414	33.1	
LOT 2	7,830	7,053	3,445	48.8	
LOT 3	7,215	6,377	2,966	46.5	
LOT 4	6,871	6,028	2,176	36.1	
LOT 5	10,073	10,073	3,676	36.5	
LOT 6	6,830	6,015	2,176	36.2	50%
LOT 7	7,871	7,011	2,966	42.3	
LOT 8	8,287	7,490	3,445	46.0	
LOT 9	7,848	7,015	3,146	44.8	
LOT 10	5,840	6,148	1,970	32.0	
LOT 11	9,822	8,933	3,651	40.9	
LOT 12	32,766	26,911	16,905	62.8	40%
TOTAL	120,079	106,354	48,036	42.2	N/A

NOTES:
1. LOT AREAS REPRESENT THE TOTAL AREA WITHIN THE PROPOSED LOT LINES SHOWN.
2. NET LOT AREA THAT EXCLUDES THE PROPOSED ROADWAY (AREA BETWEEN CURBS)
3. LOT COVERAGE: AREA OF STRUCTURES **EXCLUDING** UNCOVERED DECKS ABOVE 4 FEET.
4. LOT AREA AND LOT COVERAGE ARE DEFINED IN SECTIONS 19.08.300 & 19.08.310 OF THE BELVEDERE MUNICIPAL CODE.
5. ALLOWABLE LOT COVERAGE IS DEFINED IN SECTION 19.52.020 OF THE BELVEDERE MUNICIPAL CODE

LOT SUMMARY TABLE No. 2 - TOTAL COVERAGE

LOTS	LOT AREA (SF)[1]	NET LOT AREA (SF)[2]	COVERAGE AREA (SF)[3]	LOT COVERAGE (%)[3]	ALLOWABLE LOT COVERAGE (%)[4]
LOT 1	7,826	7,259	2,803	38.4	
LOT 2	7,830	7,053	3,819	54.1	
LOT 3	7,215	6,377	3,191	50.0	
LOT 4	6,871	6,028	2,360	39.2	
LOT 5	10,073	10,073	3,963	39.3	
LOT 6	6,830	6,015	2,360	39.2	60%
LOT 7	7,871	7,011	3,189	45.5	
LOT 8	8,287	7,490	3,823	51.0	
LOT 9	7,848	7,015	3,330	47.5	
LOT 10	5,840	6,148	1,994	32.4	
LOT 11	9,822	8,933	3,741	41.9	
LOT 12	32,766	26,911	16,905	62.8	
TOTAL	120,079	106,354	51,478	45.1	N/A

NOTES:
1. LOT AREAS REPRESENT THE TOTAL AREA WITHIN THE PROPOSED LOT LINES SHOWN.
2. NET LOT AREA THAT EXCLUDES THE PROPOSED ROADWAY (AREA BETWEEN CURBS)
3. LOT COVERAGE: AREA OF STRUCTURES **INCLUDING** UNCOVERED DECKS ABOVE 4 FEET.
4. LOT AREA AND LOT COVERAGE ARE DEFINED IN SECTIONS 19.08.300 & 19.08.310 OF THE BELVEDERE MUNICIPAL CODE.
5. ALLOWABLE LOT COVERAGE IS DEFINED IN SECTION 19.52.020 OF THE BELVEDERE MUNICIPAL CODE

TITLE SHEET

May 23, 2022

Graphic Scale

1"=30'

30' 15' 0 30' 60'

MALLARD POINTE
Belvedere, California

MALLARD POINTE
1951 LLC
Project Sponsor

BKF ENGINEERS
1646 N. CALIFORNIA BLVD.
SUITE 400
WALNUT CREEK, CA 94596
(925) 940-2200
www.bkf.com

TM-1

ATTACHMENT 3

Chapter 19.28
R-2 ZONE

Sections:

19.28.010 Permitted uses.

The following uses are permitted in the R-2 zone:

A. All uses and accessory uses permitted in the R-1 zone and the R-15 zones, subject to the same requirements and regulations provided in Chapters 19.24 and 19.26 of this Title for the R-1 and R-15 zones;

B. Two-family dwellings;

C. Accessory uses necessary to any of the above uses, and accessory buildings located on the same lot;

D. Structures, facilities and uses relating to or convenient or necessary for any function of municipal government;

E. Transitional and supportive housing facilities. (Ord. 2014-3 § 8, 2014; Ord. 89-1 § 1, 1989.)

19.28.020 Uses permitted under permit.

The following uses are permitted in the R-2 zone with a conditional use permit from the Planning Commission:

A. Public buildings, parks and playgrounds;

B. Electric substations, and other public utility facilities.

C. Large residential or community care facilities serving seven or more individuals;

D. Large family day care. (Ord. 2011-4 § 17, 2011; Ord. 89-1 § 1, 1989.)

19.28.030 Prohibited uses.

The following uses are prohibited in the R-2 zone: All uses not specified in Sections 19.28.010 or 19.28.020 of this Chapter, specifically including, but not limited to, any business, boarding house, rooming house, apartment court, apartment house, church, club building, hotel, rental office or any other use. (Ord. 89-1 § 1, 1989.)

19.28.040 Development standards.

The following standards apply to construction within the R-2 zone. The full text of the requirements summarized here are located in Chapters 19.44 through 19.68 of this Title. In addition, all applicable structures must receive Design Review approval pursuant to Chapter 20.04 of the Belvedere Municipal Code. In the event of a discrepancy between the following chart and the Code section, the Code section shall prevail.

Minimum	lot size	6,000 square feet
	lot width	60 foot average
	lot frontage	60 feet
Lot area/unit	3 or more bedrooms	4,000 square feet
	2 or fewer bedrooms	3,000 square feet
Front yard setback ***NOTE: For the full text of these requirements, please see Sections 19.48.010, 19.48.060, and Chapter 19.56 (Height Limits). Maximum Height is only allowed if there is no significant view blockage. See Chapter 19.56.***	Building less than 15 feet high within first 40 feet from front property line	5 feet
	Building less than 25 feet high within first 40 feet	10 feet
	Building over 25 feet high within first 40 feet	15 feet
Side yard setback ***NOTE: See §19.48.145 and Chapter 19.56 (Height Limits). Maximum Heights are only allowed if there is no significant view blockage.***	For buildings 15 feet or less in height	5 feet
	For buildings 16-25 feet high	10 feet
	For buildings over 25 feet high	15 feet
Rear yard setback ***NOTE: See §19.48.170 for additional comments***	Abutting another lot	20 feet
	Abutting a street	15 feet

	Abutting water, an alley or private way	10 feet
Setback for conditional use	10 feet, or minimum for that yard, whichever is greater	
Maximum lot coverage	Structures, excluding uncovered decks, etc.	40 percent (increases to 50 percent if adjacent to open water)
	Total coverage	60 percent
Maximum height ***NOTE: See Chapter 19.56 for the full text of Height limitations requirements. Maximum Heights are only permitted if there is no significant view blockage.***	22 feet as measured from the highest point of the structure (excluding chimneys) to Base Flood Elevation plus one foot of freeboard. *(See §19.56.040)*	
	Up to 26 feet as measured from the highest point of the structure (excluding chimneys) to Base Flood Elevation plus one foot of freeboard may be allowed only as follows: A bonus of one foot of additional height may be allowed when an additional foot is added to the second story setbacks, to a maximum height of 26 BFE+1 and not structure may exceed a maximum height of 29 feet from Existing Grade as defined in §19.08.224. *(See §19.56.090)*	
Usable open space	300 square feet/unit/public	
	450 square feet/unit/private	
Off-street parking	2 spaces per unit, with a minimum of 4 units. Must be on the same lot as main building.	

For all regulations concerning the determination and measurement of slope, height, setbacks, floor area ratio and other development standards, see Chapters 19.44 through 19.68 of this Title. (Ord. 2015-3 Exhibit B, 2015; Ord. 89-1 § 1, 1989.)

19.28.050 Design review required.

All new structures, and all exterior remodeling, alteration, addition or other construction, including retaining walls, swimming pools, fences and the like, shall be subject to the design review process as required in Title 20 of this Code. (Ord. 89-1 § 1, 1989.)

The Belvedere Municipal Code is current through Ordinance 2022-03, passed March 14, 2022.

Disclaimer: The City Clerk's office has the official version of the Belvedere Municipal Code. Users should contact the City Clerk's office for ordinances passed subsequent to the ordinance cited above.

Note: This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

City Website: www.cityofbelvedere.org
Code Publishing Company

ATTACHMENT 4

Initial Study

For the

The City of Belvedere General Plan Housing Element Update

City of Belvedere

March 2015

PREPARED BY

City of Belvedere Planning Department

C. EVALUATION OF ENVIRONMENTAL IMPACTS

Note: For each topic listed below, a reference source was used to complete the Environmental Checklist. The reference sources are listed by number in Section B of this document.

1. Aesthetics Would the project have:				
	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Have a substantial adverse effect on a scenic vista? (Sources: 1, 2, 3, 9, 10, 11)	☐	☐	☒	☐
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? (Sources: 1, 2, 3, 9, 10, 11)	☐	☐	☒	☐
c) Substantially degrade the existing visual character or quality of the site and its surroundings? (Sources: 1, 2, 3, 9, 10, 11)	☐	☐	☒	☐
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area? (Sources: 1, 2, 3, 9, 10, 11)	☐	☐	☒	☐

Discussion:

A substantial adverse effect to visual resources could result in situations where a project introduces physical features that are not characteristic of current development, obstructs an identified public scenic vista, or has a substantial change to the natural landscape. All new development under the proposed Housing Element would be consistent with the City's General Plan and current zoning. The revisions to the current 2010 Housing Element that are proposed in this project (the 2015-2013 Housing Element) will not result in a significant increase in visual impacts over those identified in the mitigated negative declaration for the 2010 Housing Element, or more recently adopted CEQA documents. The proposed Housing Element will not affect scenic

vistas or damage scenic resources because any new development, including possible homeless facilities, would be subject to the City's zoning and design review requirements intended to protect the visual character and quality of areas and to limit light sources on any property to avoid any new sources of substantial light or glare. The City's current development standards are consistent with the proposed Housing Element in the regulation of building height, setbacks, massing, and overall design in Belvedere. These general guidelines are to provide property owners and project designers certain basic development and design criteria in order to reinforce the desired building and character within the City. No rezoning that would permit new or increased construction in areas near scenic vistas or State scenic highways is proposed in the 2015-2023 Housing Element. Based on the above, the project would have a less than significant impact on aesthetics and visual resources.

Mitigation Measures. None Required.

2. Agriculture and Forestry Resources:

Would the project:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? (Sources: 1, 2, 3, 9, 10, 11, 12)	☐	☐	☐	☒
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? (Sources: 1, 2, 3, 12)	☐	☐	☐	☒
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))? (Sources: 1, 2, 10, 12)	☐	☐	☐	☒

d) Result in the loss of forestland or conversion of forestland to non-forest use? (Sources: 1, 2, 10, 12)	☐	☐	☐	☒
e) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? (Sources: 1, 2, 9, 10, 11, 12)	☐	☐	☐	☒

Discussion:

There is no land within the City of Belvedere that is shown as Prime Farmland, Unique Farmland or Farmland of Statewide Importance on the Marin County Important Farmland map produced by the State Department of Conservation, Division of Land Resource Protection, Farmland Mapping and Monitoring Program. There would be no impact. The proposed Housing Element does not change any boundaries or the potential for agricultural activities. There are no proposals contained in the proposed Housing Element to convert Prime Farmland or any farmland of unique or State-wide importance. In addition, there is no rezoning or development proposed on forest land or land or timber property zoned Timberland Production. There are also no proposals that would conflict with existing agricultural zoning or a Williamson Act contract, or result in the conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance to non-agricultural use, or conversion or loss of forest land. Based on the above, the proposed project would result in no impacts to agricultural or forest resources.

Mitigation Measures. None Required.

3. Air Quality

Would the project:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Conflict with or obstruct implementation of the applicable air quality plan? (Sources: 1, 2, 3, 10, 12, 13, 17)	☐	☐	☐	☒
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? (Sources: 1, 2, 3, 10, 12, 13, 17)	☐	☐	☒	☐

c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? (Sources: 1, 2, 3, 10, 12, 13, 17)	☐	☐	☒	☐
d) Expose sensitive receptors to substantial pollutant concentrations? (Sources: 1, 2, 3, 9, 10, 11, 12, 13, 17)	☐	☐	☒	☐
e) Create objectionable odors affecting a substantial number of people? (Sources: 1, 2, 3, 9, 10, 11, 12, 13, 17)	☐	☐	☐	☒

Discussion:

The project (updated Housing Element) would not conflict with or obstruct implementation of the *Bay Area Clean Air Plan* (BAAQMD, 2000). The project site (City of Belvedere) is within the San Francisco Bay Area Air Basin. The Bay Area Air Quality Management District (BAAQMD) is the regional government agency that monitors and regulates air pollution within the air basin. Three pollutants are known to exceed the state and federal standards in the Town: ozone, particulates (PM10), and carbon monoxide. Both ozone and PM10 are considered regional pollutants, because their concentrations are not determined by proximity to individual sources, but show a relative uniformity over a region. Carbon monoxide is considered a local pollutant, because elevated concentrations are usually only found near the source (e.g., congested intersections).

The proposed Housing Element will not generate more vehicle trips as compared with the 2010 Housing Element or create more vehicle trips than permitted under the City's current zoning or General Plan. The number of dwelling units accommodated by the proposed Housing Element is less than that accommodated by the 2010 Housing Element. In addition, there are several City policies intended to address air pollutants and/or odors in the City. The number of dwelling units that could be developed under the proposed Housing Element would not result in significant cumulative impacts to air quality as growth and land use intensity are consistent with the City's current General Plan and current zoning. Development under the proposed Housing Element is also consistent with ABAG's projections for Belvedere. Since the proposed Housing Element is consistent with ABAG projections and the City's current General Plan and zoning, development under the proposed Housing Element will not conflict with or obstruct implementation of the applicable air quality plans. Because they generate few vehicle trips traffic and few air pollutants, homeless facilities, transitional and supportive housing uses will not violate any air quality standard or contribute substantially to an existing or projected air quality violation, nor would they result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in "non-attainment" under an applicable federal or state ambient air quality standard.

The project would not expose sensitive receptors to substantial pollutant concentrations or create objectionable odors affecting a substantial number of people. Based on the above, the proposed project would result in no impact or less than significant impact to air quality.

Mitigation Measures. None Required.

4. Biological Resources Would the project:	**Potentially Significant Impact**	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? (Sources: 1, 2, 3, 9, 10, 11, 12, 18, 22)	☐	☐	☒	☐
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? (Sources: 1, 2, 3, 9, 10, 11, 12, 18, 22)	☐	☐	☐	☒
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? (Sources: 1, 2, 3, 9, 10, 11, 12, 18, 22)	☐	☐	☐	☒
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? (Sources: 1, 2, 3, 9, 10, 11, 12, 18, 22)	☐	☐	☒	☐

Discussion:

Depending on the location, any future urban development in the City has the potential to affect important biological resources by disturbing or eliminating areas of remaining natural communities. This could include (a) a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service, (b) a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service, (c) a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act, or (d) interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. However, the proposed Housing Element would not modify the location or amount of residentially-designated land allowed in the City's current General Plan and zoning. Development of possible homeless facilities, transitional and supportive housing would be allowed in current zoned residential and commercial areas. All new development under the proposed Housing Element would be consistent with the General Plan and current zoning, and would be consistent with local policies or ordinances protecting biological resources, and would not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan. Biological impacts would not be intensified over those analyzed in the 2010 Housing Element mitigated negative declaration. Based on the above, the proposed project (2015-2023 Housing Element update) would result in no impact or less than significant impact to biological resources.

Mitigation Measures. None Required.

5. Cultural Resources

Would the project:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5? (Sources: 1, 2, 3, 9, 10)	☐	☐	☐	☒
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5? (Sources: 1, 2, 3, 9, 10, 11, 12)	☐	☐	☒	☐

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (Sources: 1, 2, 3, 9, 10, 11)	☐	☐	☒	☐
d) Disturb any human remains, including those interred outside of formal cemeteries? (Sources: 1, 2, 3, 9, 10, 11, 12)	☐	☐	☒	☐

Discussion

Depending on the location, any future urban development in the City has the potential to (a) cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5, (b) cause a substantial adverse change in the significance of an archaeological resource pursuant to Guidelines Section 15064, (c) directly or indirectly destroy a unique paleontological resource or site or unique geologic feature, or (d) disturb any human remains, including those interred outside of formal cemetery. The current General Plan and zoning, City development standards, and project review are intended to protect any impact to cultural resources. All new development identified in the Housing Element and the changes from the 2010 Housing Element would be consistent with the General Plan and current zoning. Development of possible homeless facilities, transitional and supportive housing would be allowed in currently zoned residential and commercial areas. No development is being permitted where it is not currently permitted under the General Plan and Zoning Ordinance. Based on the above, the proposed project would result in no impact or less than significant impact to cultural resources as compared to the impacts analyzed in the 2010 Housing Element negative declaration.

Mitigation Measures. None Required.

6. Geology And Soils

Would the project:

a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other	☐	☐	☒	☐

substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. (Sources: 1, 2, 3, 9, 10, 11, 12, 20)				
ii) Strong seismic ground shaking? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☒	☐
iii) Seismic-related ground failure, including liquefaction? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☒	☐
iv) Landslides? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☒	☐
b) Result in substantial soil erosion or the loss of topsoil? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☐	☒
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☐	☒
d) Be located on expansive soil, as defined in California Building Code, creating substantial risks to life or property? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☐	☒
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? (Sources: 1, 2, 3, 9, 10, 11, 12, 20)	☐	☐	☐	☒

Discussion:

There are no Alquist-Priolo Earthquake Fault Zones within the City of Belvedere and the city is not near any known active faults. The nearest known active faults are the San Andreas Fault, approximately 8 miles to the southwest, and the Hayward fault, approximately 8 miles to the northeast. Therefore, the potential for fault

surface rupture (as opposed to ground shaking) within the City limits is low. There would be no impact. Most lowland areas with relatively level ground surface are not prone to landslides. Other forms of slope instability, such as the formation of slumps, translational slides, or earth flows, are also unlikely to occur except along stream banks and terrace margins. The highland areas are more susceptible to slope instability. The strong ground motion that occurs during earthquakes is capable of inducing landslides and debris flow (mudslides). These types of failure generally occur where unstable slope conditions already exist. The City has in place regulations and geologic review procedures to address these hazards. Hillside areas with landslide potential are of particular concern, and slope stability requires appropriate treatment of vegetative cover during and after residential development. The City's General Plan and zoning do not prohibit new development on areas of geologic hazard, however many precautionary recommendations and restrictions are established in the policies and City requirements in order to minimize potential impacts from developing on geologically hazardous land. City regulations and policies cover slope stability, landslides, earthquake faults, seismic shaking requirements, requirements for sewerage, and expansive soils. All new development would be consistent with the General Plan and current zoning and development regulations.

Depending on the location, any future urban development in the City has the potential to expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death. This could include (a) rupture of a known earthquake fault, strong seismic ground shaking, and seismic-related ground failure, including liquefaction, (b) result in substantial soil erosion or the loss of topsoil, (c) be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse, (d) be located on expansive soil, as defined in the California Building Code (CBC), creating substantial risks to life or property, or (e) have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water. No development is being permitted where it is not currently permitted in the General Plan, Zoning Ordinance, and 2010 Housing Element, and all new development under the proposed Housing Element would be in areas already designated for residential or mixed use development. Any new construction would be required to meet CBC requirements and all development regulations of the City of Belvedere. Based on the above, the proposed project would result in no impact or less than significant impact on geology and soils as compared to the 2010 Housing Element.

Mitigation Measures. None Required.

7. Greenhouse Gas Emissions

Would the project:

	Potentially Significant Impact	**Less Than Significant with Mitigation Incorporated**	**Less Than Significant Impact**	**No Impact**
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? (Sources: 1, 2, 10, 12, 17, 21)	☐	☐	☒	☐

ATTACHMENT 5

R2 ZONING

REQUIRED		PROVIDED
FRONT YARD SETBACK	10'	15'
SIDE YARD SETBACK	10'	10'
REAR YARD SETBACK	10'	10'
HEIGHT	25' *	25'
USABLE OPEN SPACE	300 SF	1267 SF
COVERAGE	50%	27%
OFF STREET PARKING	2 SP/DU	2 SP/DU

*MAXIMUM 25' HEIGHT FOR 10' SIDEYARD SETBACK

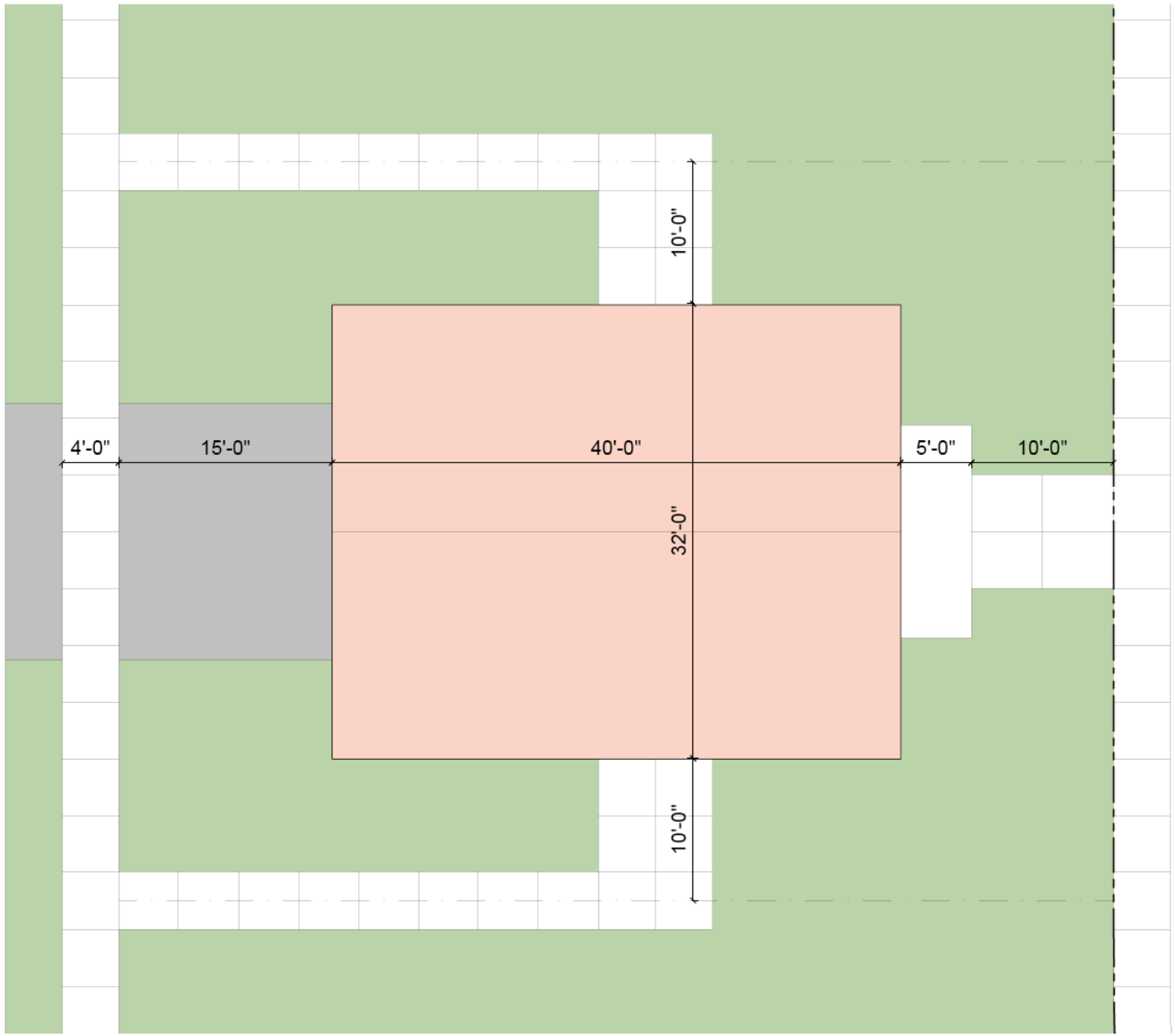
PROJECT TABULATION

TYPE	#
1 BR, 1 1/2 BA	8
2 BR, 2 1/2 BA	40
TOTAL UNITS	48
PARKING SPACES	96

COMMUNITY ROAD, BELVEDERE

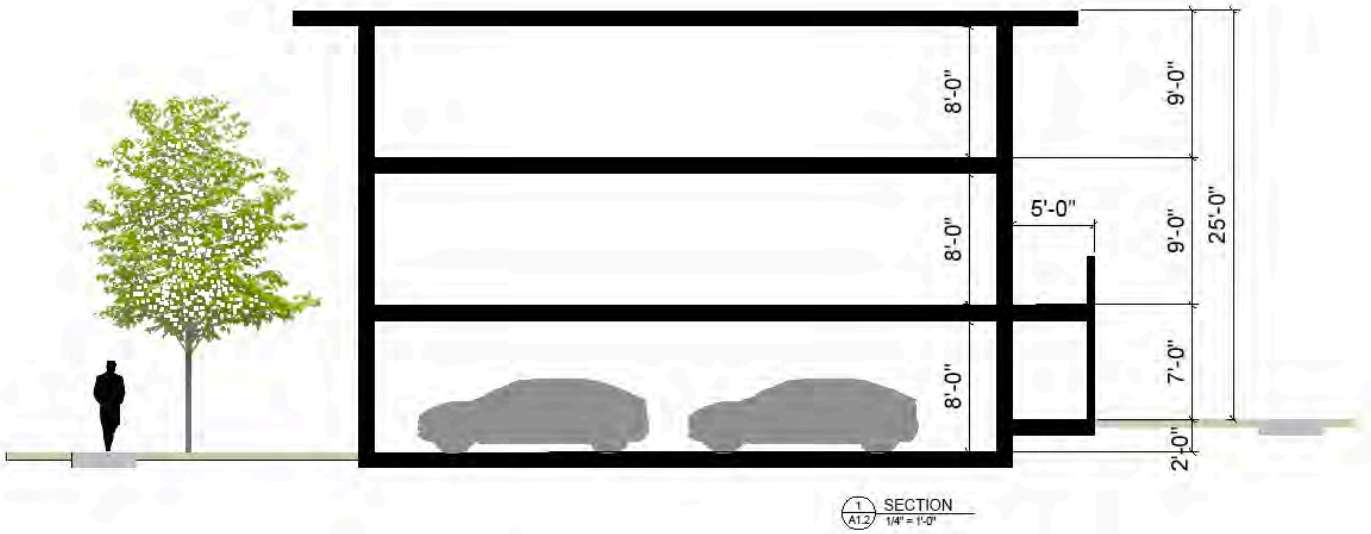
0' 10' 20' 40'

SITE STUDY
2/28/2022



1 A1.1 UNIT PLAN
1/4" = 1'-0"

COMMUNITY ROAD, BELVEDERE



1 / A1.2 SECTION
1/4" = 1'-0"

COMMUNITY ROAD, BELVEDERE

SECTION
2/28/2022

LEGEND

USABLE OPEN SPACE

ROAD AREA

USABLE OPEN SPACE	62269 SF
ROAD AREA	20229 SF
NET SITE AREA	2.33 ACRE

COMMUNITY ROAD, BELVEDERE

0' 10' 20' 40'

OPEN SPACE PLAN
2/28/2022

ATTACHMENT 6

MALLARD POINTE – PROJECT NARRATIVE

Project Description

The proposed project ("Project") is a residential infill development on a previously developed 2.8-acre site located on a private road in Belvedere (1-22 Mallard Rd). The Project would replace 22 dated market-rate residential units with 42 new residential units (including 3 ADUs). The Project site is a half mile from shopping, neighborhood services and transit, including the Tiburon ferry terminal.

Originally built in 1951, the existing 22 units are spread through nine (9) duplex buildings and one (1) fourplex building; eight (8) of the duplex buildings are adjacent to the Belvedere Lagoon, and one (1) duplex building and the fourplex building are adjacent to Community Road. The existing unit mix includes eighteen (18) two bedroom, one bath units and four (4) two bedroom, two bath units. The new residential units would consist of: five (5) lagoon-fronting duplexes (10 units); six (6) lagoon-fronting single-family homes; three (3) accessory dwelling units (ADUs); and 23 apartment units in a single apartment building. The ADUs are proposed as one-bedroom units to be located above three of the single-family-home attached garages. The apartment building would be adjacent to Community Road and include two residential stories above a semi-subterranean parking structure. The apartment unit mix would include one-, two-, and three-bedroom units. The lagoon-fronting single-family homes and duplexes would be a mix of one- and two-story homes containing two, three, or four bedrooms. Four (4) of the apartment units would be below-market rate, with two (2) very-low income units and two (2) moderate income units. In addition, the three (3) ADUs and remaining five (5) one-bedroom apartment units would be affordable by design to moderate-income households.

On-site parking for 102 cars is incorporated with 29 garage spaces in single-family homes and duplexes, 46 garage spaces in the apartment parking structure, and 27 unassigned or apron parking spaces. The proposed project also includes 114 bicycle parking stalls.

The Project site plan follows the existing development pattern of the surrounding area. Single-family and duplex homes are situated along the Lagoon and the apartment building is situated on the inland portion of the site. The site plan improves on the existing conditions at the property and provides separation between units, providing more porosity from the Lagoon edge, more privacy for

the residents, and view corridors for residents surrounding the property and from the apartment building. The apartment building's location near Community Park and City Hall helps frame the public realm. Pedestrian enhancements include wider sidewalks, new sidewalks, traffic calming features on Community Road, and crosswalks to further improve the connection from Mallard Pointe and the neighboring properties to Community Park.

The proposed architecture is designed to be contextual with Belvedere and the property's neighboring uses. The traditional architectural style of the apartment building is complementary to City Hall and is heavily influenced by well-regarded buildings in Belvedere designed by Albert Farr. The lagoon homes include a mix of traditional and contemporary design as seen among other lagoon homes. The apartment building materials include shingle and textured siding with a shingled roof. The proposed materials for the single-family and duplex homes include a mix of vertical board, smooth panel, and shingle siding, with weathered teak decks, concrete walls, and shingled roofs. An earth-tone color palette would be used throughout the Project with variations in colors between buildings.

The apartment building is proposed to be Type VA 1-hour rated construction over a Type I concrete parking structure; the single-family and duplexes are proposed to be Type V. The proposed construction methods include deepened conventional foundations. Some single family residences and duplexes may incorporate augured piles. The current width of Mallard Road does not comply with Fire Department requirements so it would be reconfigured and moved to accommodate the proposed site plan as well as widened to conform with City standards and provide emergency vehicle access. Mallard Road would remain private.

The Project will be designed to LEED standards and sustainability features would include drought-tolerant landscaping, permeable pavers, energy-efficient appliances, increased insulation, low-flow fixtures, solar panels, and electric vehicle (EV) charging stations. The Project is also designed to be FEMA compliant, with the first residential floor in each building raised to Base Flood Elevation plus one foot (11' above sea level). All parking on the site including the semi-subterranean garage is designed to meet FEMA standards.

Affordable Housing Data/Density Bonus

Pursuant to the MFR General Plan Designation, the Project site has a maximum density of 56 units. However, only 39 units are proposed (which excludes the proposed ADUs). Of the 39 units, 2 are proposed to be restricted to very low-income households, and 2 are proposed to be restricted to moderate income households.

Because the Project includes 5% Very Low-income units, the Project is entitled to a density bonus of 20% beyond the maximum allowable density. The Project does not seek the additional density bonus units. However, waivers, concessions, reduced parking standards, and all other provisions of

the State Density Bonus Law are all still available because of the inclusion of the Below Market Rate units.

The Project seeks waivers for height, certain side setbacks, the lot area/unit requirements, lot coverage on a per lot basis, and the prohibition on apartment courts and/or apartment houses in the R-2 zone. Each of these requirements physically precludes the construction of the Project at the density permitted for the property. The Project seeks a concession for the full amount of usable open space.

Currently, as of the time of this application, 19 of the 22 existing units are occupied. The Project sponsor has prepared a Relocation Program and will meet or exceed all State relocation requirements for residents in the 22 existing units that will be demolished to accommodate the Project.

Project Timing

Belvedere's zoning code, and the initial time limits therein, is primarily designed to address the review and development of individual single family homes. Given the increased scope of this Project, the following timelines are requested to be increased as a part of this application:

1. **Design Review** – BMC Section 20.04.060(A) states that design review applications shall be valid for one year, but that, "the Planning Commission may designate a later expiration date if it determines that the criteria of this Chapter would still be served." It is hereby requested that any design review approval for this project be valid for **2 years**. The complexity of developing the construction drawings for a project of this scope necessitates such a timeframe and there is no detriment if the existing housing remains slightly longer.

2. **Demolition** – BMC Section 20.04.060(C) states, "when demolition or removal of any existing structure is a part of design review approval, said demolition or removal shall be completed, and all debris removed from the site, within ninety days of design review approval **or such other date as the Planning Commission or the Director of Planning and Building determines to be in furtherance of the criteria of this Chapter**." Here, there are multiple reasons why the demolition of the existing buildings on the property should not occur within 90 days of design review approval, including tenant occupancy, erosion control, and aesthetics. Demolition is best accomplished as part of the building project, therefore this application seeks a demolition requirement **within 6 months of the issuance of the building permit for the project**.

3. **Construction time limit** - BMC Section 20.04.035(C)(1) sets an initial construction time limit for a project of this value of 18 months. BMC Section 20.04.035(D)(2) states that "the Planning Commission has the authority to grant, conditionally grant, or deny a time limit

extension request made at the time of a design review hearing based on the reasonable anticipation of one or more of the factors in this Subsection." Per BMC Section 20.04.035(D)(5), the maximum extension length is 6 months, for a total time limit of 24 months. Accordingly, it is hereby requested that the construction time limit for this project be 24 months.[1]

Replacement Housing Data

As previously disclosed, there are twenty-two existing residential units which are proposed to be demolished. Because the existing units are covered by the rent limitations of California Civil Code Section 1947.12, they may be considered "protected units" under the Housing Crisis Act of 2019, as amended ("HCA"). Accordingly, all of the existing residential units will be replaced in the new development as required by the HCA. The Project sponsor has solicited information from existing residents regarding current income levels and, from the information available, the Project sponsor anticipates the proposed below market rate units discussed earlier in this application will also satisfy the affordability requirements of the HCA. Further, if the application is approved, the Project sponsor will, at a minimum, provide relocation payments and other statutory benefits required by the HCA to eligible residents, if any.

Environmental Data

No point sources of air or water pollutants are proposed. The property is not located in a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178. No known historic and cultural resources are on the property. The property does not contain a hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code. The property is not located within a delineated earthquake fault zone as determined by the State Geologist. The property does not include a stream or any other resource that may be subject to a streambed alteration agreement pursuant to Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code.

The property is located in Special Flood Hazard Area Zone AE and the Project would meet all applicable FEMA construction requirements. The Project is located on the Belvedere Lagoon, which has not traditionally been subject to State or Federal regulatory jurisdiction, but does appear as a "lake" on certain agency maps.

[1] It should be noted that Belvedere's CTL ordinance is clearly designed for individual single family home construction and not multifamily housing projects of this type.

SUBMITTAL DATE: 01/26/2022

DENSITY BONUS APPLICATION

CITY OF BELVEDERE • PLANNING COMMISSION
450 SAN RAFAEL AVE • BELVEDERE, CA 94920-2336
PH. 415-435-3838 • FAX 415-435-0430 • WWW.CITYOFBELVEDERE.ORG

PROJECT NAME: Mallard Pointe PROJECT ADDRESS: 1-22 Mallard Rd.

ASSESSOR'S PARCEL NUMBER(S): APN 060-072-27, APN 060-072-28, APN 060-072-18

PROJECT DESCRIPTION:

1. LOT SIZE (SQUARE FEET/ACRES): 120,079 sq. ft.
2. TOTAL NUMBER OF UNITS ALLOWED WITHOUT DENSITY BONUS: 56
3. TOTAL NUMBER OF UNITS PROPOSED WITH DENSITY BONUS: 39 (plus 3 ADUs)
4. TOTAL NUMBER OF PROPOSED RENTAL UNITS AFFORDABLE TO:
   - A. VERY-LOW INCOME HOUSEHOLDS: 2
   - B. LOWER INCOME HOUSEHOLDS: _____
   - C. MODERATE INCOME HOUSEHOLDS: 2
5. TOTAL NUMBER OF PROPOSED OWNERSHIP UNITS AFFORDABLE TO:
   - A. VERY-LOW INCOME HOUSEHOLDS: _____
   - B. LOWER INCOME HOUSEHOLDS: _____
   - C. MODERATE INCOME HOUSEHOLDS: _____
6. TOTAL NUMBER OF PROPOSED UNITS FOR SPECIFIC POPULATIONS:
   - A. SENIOR CITIZENS: _____
   - B. TRANSITIONAL FOSTER YOUTHS: _____
   - C. HOMELESS PERSONS: _____
   - D. DISABLED VETERANS: _____
7. DOES THE PROJECT INCLUDE A CONDOMINIUM CONVERSION? No
8. DOES THE PROJECT INCLUDE THE REMOVAL OF PRE-EXISTING CONTRACTED UNITS? Yes

9. DOES THE PROJECT INCLUDE DONATION OF LAND TO THE CITY? No

   A. SIZE OF LAND TO BE DONATED TO THE CITY? _____

10. DOES THE PROJECT INCLUDE A CHILD CARE FACILITY? No

    A. SIZE OF PROPOSED CHILD CARE FACILITY: _____

11. PROVIDE PLANS (MAY BE COMBINED WITH DESIGN REVIEW PLANS) THAT SHOW THE LOCATION OF THE AFFORDABLE/SPECIFIC POPULATION UNITS.

DEVELOPMENT CONCESSIONS/INCENTIVES/WAIVER-REDUCTION OF DEVELOPMENT STANDARDS:

PLEASE PLACE A CHECK NEXT TO ALL DEVELOPMENT CONCESSIONS/INCENTIVES REQUESTED. ALL REQUESTED MUST BE CLEARLY INDICATED ON PLANS. SUBMIT AN ATTACHMENT DESCRIBING REQUESTED CONCESSION(S)/INCENTIVE(S) AND EXPLAIN HOW THEY RESULT IN IDENTIFIABLE, FINANCIALLY SUFFICIENT AND ACTUAL COST REDUCTIONS.

CONCESSIONS/INCENTIVES:

1. _____ INCREASE IN MAXIMUM LOT COVERAGE
2. _____ REDUCTION IN MINIMUM LOT SIZE
3. _____ REDUCTION IN MINIMUM BUILDING SETBACKS
4. X REDUCTION IN MINIMUM PRIVATE OUTDOOR OPEN SPACE
5. _____ INCREASE IN MAXIMUM BUILDING HEIGHT AND/OR NUMBER OF STORIES
6. _____ REDUCTION IN SETBACKS BETWEEN BUILDINGS
7. _____ INCREASE IN FLOOR AREA (FAR)
8. _____ REDUCTION IN THE MINIMUM NUMBER OF PARKING SPACES
9. _____ OTHER: _____

IN ADDITION TO ANY CONCESSION/INCENTIVE REQUESTED ABOVE, PLEASE LIST REQUESTED WAIVERS OR REDUCTIONS OF DEVELOPMENT STANDARDS THAT PHYSICALLY PREVENT THE PROJECT FROM BEING BUILT AT THE PERMITTED DENSITY.

WAIVER OF REDUCTION OF DEVELOPMENT STANDARDS:

1. Height; Side setbacks; Lot area/unit; Lot coverage on a per lot basis
2. The prohibition on apartment courts and/or apartment houses in the R-2 zone

PARKING RATIOS. PLEASE INDICATE THE NUMBER OF REQUIRED AND PROPOSED PARKING SPACES. THIS INFORMATION SHOULD ALSO BE INCLUDED ON THE SITE PLAN.

1. TOTAL NUMBER OF PARKING SPACES REQUIRED: 65 (per Density Bonus legislation)

2. TOTAL NUMBER OF PARKING SPACES PROVIDED: 102 total (75 assigned spaces; 27 unassigned or apron spaces)

OWNER ACKNOWLEDGEMENTS

I DECLARE UNDER PENALTY OF PERJURY THAT I AM THE OWNER OF SAID PROPERTY. I CERTIFY THAT ALL OF THE SUBMITTAL INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY MISREPRESENTATION OF SUBMITTED DATA MAY INVALIDATE ANY APPROVAL OF THIS APPLICATION.

PROPERTY OWNER SIGNATURE(S) _____ **DATE:** _____

_____ **DATE:** _____

APPLICANT ACKNOWLEDGEMENTS

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE WRITTEN AUTHORITY FORM PROPERTY OWNER TO FILE THIS APPLICATION. I CERTIFIED THAT ALL OF THE SUBMITTED INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY MISREPRESENTATION OF SUBMITTED DATA MAY INVALIDATE ANY APPROVAL OF THIS APPLICATION.

APPLICANT SIGNATURE(S) _____ **DATE:** _____

_____ **DATE:** _____

PARTNERSHIPS AND CORPORATIONS

IN THE CASE OF A PARTNERSHIP, ALL GENERAL UNLIMITED PARTNERS SHALL BE IDENTIFIED. IN THE CASE OF A CORPORATION, ALL SHAREHOLDERS OWNING 10% OR MORE OF THE STOCK AND ALL OFFICERS AND DIRECTORS SHALL BE IDENTIFIED.

NAME	ADDRESS	SIGNATURE	DATE
Bruce Dorfman	39 Forrest St. Suite 202 Mill Valley, CA 94941	Mallard Pointe 1951, LLC By: TDP-Belvedere-2020, LLC, its Managing Member By: Bruce Dorfman, Manager	8/26/2022

APPLICANT INDEMNIFICATION AGREEMENT

AS PART OF THIS APPLICATION, THE APPLICANT AGREES TO DEFEND, INDEMNIFY, RELEASE AND HOLD HARMLESS THE CITY OF BELVEDERE, IT'S AGENTS, OFFICERS, ATTORNEYS, COUNCIL MEMBERS, EMPLOYEES, BOARDS, AND COMMISSIONS FROM ANY CLAIM, ACTION OR PROCEEDING BROUGHT AGAINST ANY OF THE FOREGOING INDIVIDUALS OR ENTITIES, THE PURPOSE OF WHICH IS TO ATTACK, SET ASIDE, VOID OR ANNUL ANY APPROVAL OF THE APPLICATION OR RELATED DECISION, OR THE ADOPTION OF ANY ENVIRONMENTAL DOCUMENTS WHICH RELATE TO THE APPROVAL.

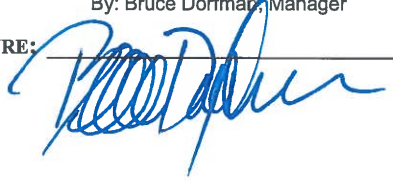
THE INDEMNIFICATION SHALL INCLUDE, BUT IT'S NOT LIMITED TO, ALL DAMAGES, COSTS, EXPENSES, ATTORNEY FEES OR EXPERT WITNESS FEES THAT MAY BE ASSERTED BY ANY PERSON OR ENTITY, INCLUDING THE APPLICANT, ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OF THE APPLICATION OR RELATED DECISION, WHETHER OR NOT THERE IS CONCURRENT, PASSIVE OR ACTIVE NEGLIGENCE ON THE PART OF THE CITY, IT'S AGENTS, OFFICERS, ATTORNEYS COUNCIL MEMBERS, EMPLOYEES, BOARDS, AND COMMISSIONS.

IF FOR ANY REASON ANY PORTION OF THIS INDEMNIFICATION AGREEMENT IS HELD TO BE VOID OR UNENFORCEABLE BY A COMPETENT JURISDICTION, THE REMAINDER OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

I HAVE READ AND AGREE WITH ALL OF THE ABOVE.

APPLICANTS PRINTED NAME: Mallard Pointe 1951, LLC **DATE:** _____
By: TDP-Belvedere-2020, LLC, its Managing Member
By: Bruce Dorfman, Manager

APPLICANTS SIGNATURE: _____ **DATE:** 01/26/2022



ATTACHMENT 7

CITY OF BELVEDERE

450 San Rafael Avenue • Belvedere, CA 94920-2336
Tel: 415/435-3838 • Fax: 415/435-0430 • www.cityofbelvedere.org

June 23, 2022

SENT VIA EMAIL

Mallard Point 1951, LLC Bruce Dorfman
39 Forrest Street
Suite 202
Mill Valley, CA 94941

RE: **Mallard Pointe 1951, LLC – Completeness Review**

Dear Mr. Dorfman:

Thank you for your resubmitted plans dated May 24, 2022. Pursuant to Government Code Section 65943, the purpose of this letter is solely to determine whether all of the items included on the City's application forms have been submitted to the City. Within 30 days of the date of this letter, as required by Government Code Section 65589.5((j)(2), the City will provide a detailed list of items describing any inconsistencies between the project and adopted City plans, policies, ordinances, standards, and code requirements. If inconsistencies are found, additional applications or project modifications may be needed to correct the inconsistencies.

The City finds that the application contains all of the items listed in the City's application forms and is therefore found to be complete. As provided by Government Code Section 65944, the City may in the future request the applicant to clarify, amplify, correct, or otherwise supplement the information submitted and may request and obtain information needed to comply with the California Environmental Quality Act.

As noted, the City will provide a comprehensive review of the conformance of the project with the City's standards within 30 days of the date of this letter. However, as a courtesy to you, this letter includes a preliminary list of concerns regarding the project's compliance with adopted standards:

Density Bonus Application/Number of Affordable Units. To be eligible for a density bonus, the

project must provide a minimum of five percent very low-income units based on the total number of units excluding any bonus units, or ten percent low-income units based on the total number of units excluding any bonus units. (See Government Code Sections 65915 (b)(1)(A), (b)(1)(B), (o)(6).) The project must be eligible for a density bonus to apply for and receive concessions and waivers. The project includes 42 units, with no bonus units requested. The proposed very low-income unit equals only two percent of the total number of units and is insufficient to establish eligibility for a density bonus; three very low-income units would be required. Similarly, the four lower income units proposed (total of very low- and low-income units) is less than 10 percent of the "total units," as defined by the statute; five lower income units are required to be eligible for a density bonus. Accordingly, the project as proposed is not eligible for the requested waivers and concessions, and they cannot be approved by the City.

Requested Waivers (Item # 17). The cover letter states that a waiver is requested for construction time limits, but the Density Bonus application does not list this as a requested waiver. We note that a separate application was filed for an Extension of Construction Time. As this application is a separate consideration from waivers under State Density Bonus Law, it should not be listed as a waiver.

Parking (Item #6). The application states that parking standards pursuant to State Density Bonus law are used in lieu of compliance with City parking standards, as outlined in the Project Data Sheet. The project description and application should clearly state that the project is requesting an exception to City parking standards by using the parking standards under State Density Bonus Law.

Signage (Item #12). The cover letter states that "The condition that each lot have a maximum of 4 square feet of signage does not make any sense for a project like this." Belvedere Municipal Code Section 19.72.030 applies to this project. The project must either comply or request a waiver of development standards. As noted above, the project must provide a minimum of three very low-income units or five lower income units to qualify for a waiver.

Replacement Housing and Relocation Plan. While the replacement housing and relocation plan contains the items included in the City's application form, it does not contain sufficient information to determine if the project conforms with state law (Section 66300(d)). The City will provide a comprehensive list of additional items required with the 30-day consistency letter. However, to approve the project the City will require preparation of a relocation plan to ensure that the lower income tenants will receive the benefits provided by state law and evidence that the existing lower income tenants will receive a right of first refusal to comparable units. Income limits for lower income households have substantially increased since the initial survey was completed, and additional households may qualify as low or very low-income households.

Public Works/Engineering Comments. Please see attached comments from the Public Works Department with comments related to the merits and adequacy of submitted plans.

Tiburon Fire Department. Please see attached comments from the Tiburon Fire Department with comments related to the merits and adequacy of submitted plans.

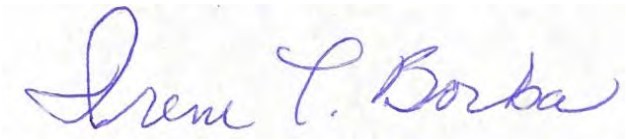
Marin Municipal Water District (MMWD). Please see attached comments from Marin Water with comments related to the merits and adequacy of submitted plans.

Sanitary District No. 5. The Sanitary District has no additional comments from the February 11, 2022, comment letter.

Also attached are comments from the Belvedere Lagoon Property Owners Association for your reference.

Thank you for your attention to these items. Please contact me at iborba@cityofbelvedere.org or (415) 435-8907, or MIG project planner Tricia Stevens at tstevens@migcom.com or (916) 698-4592, if you have any questions.

Sincerely,



Irene Borba
Director of Planning and Building
City of Belvedere

Cc: File
Robert Zadnik, City Manager

Attachment 1: Public Works comments
Attachment 2: Fire Department comments
Attachment 3: Water District comments
Attachment 4: Sewer District comments
Attachment 5: BPLOA comments

ATTACHMENT 8

Mallard Pointe
Project Data Sheet

COMPARISON of PROPOSED PLAN to R-2 DEVELOPMENT STANDARDS
(Section 19.28 of Belvedere Municipal Code)

5/21/2022

		R-2 Development Standard		Proposed Project											
				Lot 1	Lot 2	Lot 3	Lot 4	Lot 5	Lot 6	Lot 7	Lot 8	Lot 9	Lot 10	Lot 11	Lot 12
Unit Count:				2	2	1	1	1	1	1	2	2	1	2	23
Dwelling Type				Duplex	Duplex	Single Family	Single Family	Single Family	Single Family	Single Family	Duplex	Duplex	Single Family	Duplex	Apartment
Unit Mix				Two (2) 2 BD units	One (1) 2 BD unit/ One (1) 3 BD unit	One (1) 4 BD unit + 1 BD ADU	One (1) 4 BD unit	One (1) 4 BD unit + 1 BD ADU	One (1) 4 BD unit	One (1) 4 BD unit + 1 BD ADU	One (1) 2 BD unit/ One (1) 3 BD unit	One (1) 2 BD unit/ One (1) 3 BD unit	one (1) 4 BD unit	Two (2) 3 BD units	Six (6) 1 BD unit/ Twelve (12) 2 BD unit/ Five (5) 3 BD unit
Minimum	lot size	6,000 square feet		7,826	7,830	7,215	6,871	10,073	6,830	7,871	8,287	7,848	6,840	9,822	32,766
	lot width	60-foot average		61	70	65	90	96	77	67	76	77	68	79	110
	lot frontage	60 feet		95	78	85	97	27 (Waiver)	85	90	80	84	69	89	165
Lot area/unit	3 or more bedrooms	6,000 square feet		6,000 SF required	7,000 SF required	6,000 SF required (minimum lot size)	6,000 SF required (minimum lot size)	6,000 SF required (minimum lot size)	6,000 SF required (minimum lot size)	6,000 SF required (minimum lot size)	7,000 SF required	7,000 SF required	6,000 SF required (minimum lot size)	8,000 SF required	74,000 SF required (Waiver)
	2 or fewer bedrooms	5,000 square feet													
Front yard setback	Building less than 15 feet high within first 40 feet from front property line:	5 feet		N/A	N/A	N/A	***Lots 4, 5, 6 are located on private driveway and front setback is measured from center of driveway (property line)			N/A	N/A	N/A	N/A	N/A	N/A
	Building less than 25 feet high within first 40 feet	10 feet		14'	13'7"	14'5"	16'3"	17'10"	21'	10'	10'11"	10'	12'9"	10'9"	N/A
	Building over 25 feet high within first 40 feet	15 feet		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Sideyard setback	For buildings 15 feet or less in height	5 feet		5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum	5 feet minimum
	For buildings 16-25 feet high	10 feet		10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum
	For buildings over 25 feet high	15 feet		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	(Waiver)
Rear yard setback	Abutting another lot	20 feet		20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum	20 feet minimum
	Abutting a street	15 feet		NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	N/A
	Abutting water, an alley or private way	10 feet		10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	10 feet minimum	15 feet minimum
Maximum lot coverage (1)	Structures, excluding uncovered decks, etc.	40 percent (increases to 50 percent if adjacent to open water)		33%	49%	47%	36%	36%	36%	42%	46%	45%	32%	41%	63% (Waiver)
	Total coverage	60 percent		38%	54%	50%	39%	39%	39%	45%	51%	47%	32%	42%	63% (Waiver)
Maximum height	A bonus of one foot of additional height may be allowed when an additional foor is added to the second story setback, to a maximum height of 26 feet from BFE+1 and no structure may exceed 29 feet from Existing Grade as defined in section 19.08.224			25'9"	29'	26'11"	27'9"	21'	27'9"	26'11"	28'11"	29'	29'	27'9"	34'9" to roof/ 42' to top of elevator shaft (Waiver)
Usable open space		300 square feet/unit /private or 450 square feet/unit/public		~946 SF	~1052 SF	~644 SF	~519 SF	~877 SF	~506 SF	~638 SF	~1029 SF	~834 SF	~554 SF	~1066 SF	2868 SF (Concession)
Maximum floor area ratio		Not applicable in R-2 zone		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

COMPARISON PROPOSED PLAN to OFF-STREET PARKING STANDARDS
(Section 19.68 of Belvedere Municipal Code)

Off-street parking (2)(3)	Single-Family Dwellings	2 spaces		N/A	N/A	3 garage/ 3 uncovered	2 garage/ 1 uncovered	2 garage	2 garage/ 1 uncovered	3 garage/ 1 uncovered	N/A	N/A	2 garage/ 1 uncovered	N/A	N/A
	Two-Family Dwellings	4 spaces		3 garage/ 2 uncovered	3 garage/ 2 uncovered	N/A	N/A	N/A	N/A	N/A	3 garage/ 3 uncovered	3 garage/ 1 uncovered	N/A	4 garage/ 1 uncovered	N/A
	Apartments	1.25 spaces/1-2 BD units;2.0 spaces/3 BD units		N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	46 garage
		Garage Parking	**Total**												
		Compact	14	0	0	0	0	0	0	0	0	0	0	0	14
		Standard	59	2	3	3	2	2	2	3	3	3	2	4	30
		Accessible	2	0	0	0	0	0	0	0	0	0	0	0	2
		Apron/Surface													
		Compact	11	1	2	1	1	0	0	1	3	0	1	0	1
		Standard	15	1	0	2	0	0	1	0	0	1	0	1	9
		Accessible	1	0	0	0	0	0	0	0	0	0	0	0	1
			102												

(1) Lot Coverage (Structures) of the proposed project is 42.5%. Total Lot Coverage of the proposed project is 45%.

(2) State Density Bonus Law allows for maximum parking requirements of 1.5 spaces per 2 bedroom unit. Per SDBL, on-site spaces may be provided through tandem or uncovered parking. This requirement is requested for Lot 1, Lot 2, Lot 8, and Lot 9. Per Section 19.68.020 B. of the Belvedere Municipal Code, "When measurements determining the number of required spaces result in a requirement of a fractional space, any fraction up to and including one half shall be disregarded, and fractions over one-half shall require one off-street parking space."

(3) 19.68.070 Compact spaces permitted. In cases where more than ten total parking spaces are required, the applicant may propose to allow up to twenty-five percent of said spaces to be designated for small or compact cars. Such spaces shall not be less than nineen feet in length and seven and one-half feet in width, and are subject to the approval of the Planning Commission as to their location and distribution in the project. (Ord. 89-1 § 1 (part), 1989.)

Project Data Sheet

May 23, 2022

Graphic Scale

1" = 8'-0"

8' 4' 0 8' 16'

MALLARD POINTE

Belvedere, California

MALLARD POINTE 1951 LLC
Project Sponsor

m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

August 10, 2022

To: Irene Borba, Director of Planning and Building

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz

Re: Mallard Pointe Project – Revised Density Bonus Application and forthcoming General Plan & Zoning Consistency Review

This memo supplements our July 1, 2022 memo sent on behalf of BRIG.

On June 23, 2022 the Director of Planning and Building determined that Mallard Pointe 1951, LLC's application for development entitlements for the Mallard Pointe residential development project ("Project") was complete. The Director found, however, that the Project did not include the minimum percentage of affordable units to be eligible for waivers and concessions from City standards under the State Density Bonus Law ("SDBL"). Accordingly, on July 20, 2022 the Director documented the Project's ineligibility for such waivers and concessions, and provided a detailed list of the Project's inconsistencies with various provisions and standards in the R-2 zone, as set forth in Chapter 19.28 of the Belvedere Municipal Code.

On July 18, 2022 the developer submitted a modified development application that nominally removed two accessory dwelling units ("ADUs") from the Project, resulting in a total of 40 units, including four for lower income households. The developer submitted a revised density bonus application, asserting that 56 units are currently allowed at the site, and again seeking waivers and concessions from City standards including "[t]he prohibition on apartment courts and/or apartment houses in the R-2 zone." As discussed below, the revised density donus application is flawed,

and the developer cannot legally force the City to waive the prohibition on apartment houses.

First, as BRIG has previously explained, the City's General Plan designates the Project site "Medium Density MFR: 5.0 to 20 units/**net acre**," meaning up to 20 residential units per **net** acre may permissibly be developed on it. The General Plan expressly defines "net acreage" as including "**only** the size of the actual developable parcels themselves" distinguishing this term from "gross acreage," which "typically includes all acreage across a land use designation, including rights-of-way such as streets and sidewalks." (General Plan Land Use Element, p. 40, boldface added.) As the developer has repeatedly acknowledged in its own submittals, the net acreage of the Project site is 2.4 acres, and the gross acreage is 2.8 acres. (*See* Jan. 20, 2020 Memorandum from Riley Hurd, p. 2; May 23, 2022 Tentative Subdivision Map submittal, "Title Sheet"). Thus, the maximum number of units allowable under the applicable General Plan density standard is **48**, not 56 as the developer continues to assert.

Second, it remains abundantly clear from the plain language of both the SDBL and the Belvedere Zoning Code that the prohibition of apartment buildings in the R-2 zone is a **use prohibition**, and by no means a "development standard" that can or must be waived under the SDBL for density bonus-eligible projects. The SDBL defines "development standard" as follows:

> "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development **pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation**. (§ 65915(o)(1), boldface added.)

Thus, a "development standard" for purposes of the SDBL is, by definition, a construction or design standard contained in a local general plan, zoning code, or similar local ordinance. In other words, whether a particular standard constitutes a "development standard" under the SDBL is determined by whether the governing local general plan or zoning ordinance defines it as such.

The Belvedere Zoning Code lists prohibited uses in the R-2 zone in an entirely separate code section from its list of development standards in this same zone. The prohibition on apartment houses/apartment courts appears in Section 19.28.030, "Prohibited uses," while Section 19.28.040, "Development standards," lists building design and site layout restrictions such as minimum lot size, width, and area per unit; front, side, and rear yard setbacks; minimum lot coverage; maximum height; usable open space; and off-street parking requirements. Absent from the enumeration of

"development standards" in Section 19.28.040 is the prohibition of apartment buildings (or indeed of any other use). Please note that the Zoning Code consistently distinguishes "prohibited uses" from "development standards" across all zoning districts. (*See, e.g.,* §§ 19.20.30 ("Prohibited uses") and 19.20.035 ("Summary of development standards") in the "R" Zone; §§ 19.16.040 ("Prohibited uses") and 19.16.050 ("Development standards") in the "O" Zone; §§ 19.24.030 and 19.24.040-060 (same) in the R-1 Zone, etc.) Thus, the City Council in adopting the Zoning Code plainly viewed use prohibitions and development standards to be entirely separate and distinct categories of land use regulation.

Furthermore, as BRIG has previously observed, on May 24, 2022 the developer submitted a table titled "Mallard Pointe Project Data Sheet – Comparison of Proposed Plan to R-2 Development Standards." The Table mirrors the list of development standards in Section 19.28.040 and states whether each of the Project's 12 lots complies with each such development standard. Notably absent from the developer's table of applicable "R-2 Development Standards" is any mention of the apartment prohibition. Thus, the developer's own conduct shows that it is well aware that the R-2's prohibition on apartments is not a "development standard." In sum, under the plain language of the SDBL, which requires waivers only of "development standards" that are specified as such in a local general plan or zoning ordinance (here the Belvedere Zoning Code), the apartment prohibition is simply not a "development standard" that can or must be waived under the SDBL.[1]

Finally, the developer's revised density bonus application makes no effort to show how requiring compliance with the R-2's apartment prohibition would have the effect of "physically precluding the construction" of a project eligible for a density bonus, *i.e.,* by including a percentage of affordable units at the densities permitted by the SDBL. (Gov't Code § 65915(e).) The developer continues to provide no facts, evidence, or documentation to support its claim that General Plan density cannot be achieved with only duplex structures as expressly allowed in the R-2 zone. To the contrary, BRIG provided a schematic drawing by Alex Seidel, FAIA (Seidel Associates), showing the placement of 48 duplex units on the Project site that meet all development standards in the R-2 zone, with no waivers or variances needed. (*See* Attachment 5 to our July 1, 2002 letter.) There accordingly is no evidence showing that the R-2 zoning's apartment prohibition would "physically preclude" construction of a residential project at the General Plan-allowed density. Thus, even if the

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[1] The rules of statutory interpretation apply equally to state legislation and local ordinances. (*County of Madera v. Superior Court* (1974) 39 Cal.App.3d 665, 668.) If language is clear and unambiguous, "there is no need for judicial construction and a court may not indulge in it." (*Friends of the Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286, 303; *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047).

apartment prohibition were to constitute a "development standard" under the SDBL (which it does not), the City would not be required to waive it for this Project.

The conclusion is inescapable and irrefutable: Even as modified by the developer's July 18 submission, the Project continues to be inconsistent with Belvedere Zoning Code Section 19.28.030. This means that for the Project to be approved, a rezoning would be required following all applicable requirements of the State Planning & Zoning Law. Moreover, the Project may not lawfully be approved under the streamlined process provided under SB 330 since it is not consistent with the City's Zoning Code.

Thank you for your consideration of these additional points.

MRW:

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September 7, 2022

VIA REGULAR MAIL AND E-MAIL

Robert Zadnik, City Manager
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450 San Rafael Ave.
Belvedere, CA 94920-2336
rzadnik@cityofbelvedere.org

Irene Borba, Director of Planning & Building
CITY OF BELVEDERE
450 San Rafael Ave.
Belvedere, CA 94920-2336
iborba@cityofbelvedere.org

Re: Mallard Pointe Housing Development

Dear Mr. Zadnik and Ms. Borba:

By way of background, the law firm of Aleshire & Wynder, LLP ("A&W" or "Firm") is a full-service public agency law firm with seven offices throughout California and almost 60 attorneys. We represent a broad array of public entities throughout California, including 23 cities (such as Richmond and Suisun City) as their City Attorney, and over 30 special districts, housing authorities, and other public agencies as their general or special counsel. The Firm has an extensive practice in all aspects of land use law, including zoning regulations, the entitlement process, growth management, general plans and specific plans, and implementation of state land use and housing laws such as SB 330, SB 35, and SB 9.

Based on our expertise and experience in land use and zoning matters, we were retained by the Belvedere Residents for Intelligent Growth (BRIG) to analyze the merits of Mallard Pointe 1951, LLC's proposed residential housing development project ("Project") located at 1 – 22 Mallard Road ("Property") in the City of Belvedere. Specifically, this letter analyzes whether Mallard Pointe 1951, LLC ("Developer") is entitled to a waiver of a development standard under the State's Density Bonus Law (Gov. Code §§ 65915-65918) ("DBL"). The DBL allows proposed housing developments that meet certain criteria a waiver of a development standard if said standard "will have the effect of physically precluding the construction of a development". (Gov. Code § 65915(e)(1).) Developer asserted in its application for the Project that it is entitled to build an apartment with 23 units on the Property as a waiver of a development standard imposed by the City, because such prohibition on apartments within the R-2 zone has the effect of otherwise precluding their Project.

1. Developer's Project, Which Includes a 23-Unit Apartment In the R-2 Zone, Is Inconsistent With the City's General Plan And Is Not a Permitted Land Use Without a Zone Change.

In reviewing the relevant planning documents of the City of Belvedere, it is clear that the Property has a land use designation of medium density multi-family residential, which allows between 5 to 20 housing units per net acre and includes the R-2 and R-3/R-3C zoning designations. (City's 2030

General Plan, Land Use Element, p. 20 and Exh. 3 [General Plan Land Use Map].) The Property is located within the R-2 zoning district. The City's 2030 General Plan, Housing Element, further clarifies that the R-2 zone is a residential zoning district allowing only single-family and two-family (duplex) housing, while the R-3/R-3C zone is a residential zoning district allowing structures containing two or more housing units. (2030 General Plan, Housing Element, pp. 45-46; Belvedere Municipal Code ("BMC") §§ 19.12.010(g), 19.12.020.) In other words, within the land use designation of medium density multi-family residential, there are two subcategories of permissible multi-family residential uses: (i) those that allow only up to two-family (duplex) structures (R-2 zone), and (ii) those that allow duplexes or apartments (R-3/R-3C zone).

The BMC further clarifies the permitted land uses within the R-2 zoning district. Sections 19.28.010 through 19.28.030 of the BMC discuss land uses that are permitted by right, land uses permitted by conditional use permit, and land uses prohibited altogether within the R-2 zone. Under Section 19.28.010 of the BMC, uses permitted by right include single-family housing units and two-family housing units, among others. Under Section 19.28.030 of the BMC, land uses that are prohibited altogether in the R-2 zone include hotels, boarding houses, apartment courts, and apartment houses, among others. Thus, structures containing more than two housing units are prohibited. Apartments, which by definition contain more than two housing units, are therefore not allowed in the R-2 zone. They are permitted, however, in the R-3/R-3C zones.

State statutes and case law are abundantly clear that a city's zoning map, and each property within a zone, must be consistent with the city's general plan land use designation and its objectives, goals, and policies. (Gov. Code § 65860(a); *see also, e.g., Building Industry Ass'n v. City of Oceanside* (1994) 27 Cal.App.4th 744, 762 ["Under section 65860, county or city zoning ordinances must be consistent with the entity's general plan, such that '[t]he various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such a plan.'"].) Developer's proposed construction of a 23-unit apartment on the Property, which is impermissible in the R-2 zone, renders the Property use inconsistent with the City's zoning map and 2030 General Plan, and consequently violative of State law.

Accordingly, Developer's Project, which includes a 23-unit apartment building, is prohibited under the General Plan and the City's zoning ordinance. Without a zone change amendment to R-3/R-3C or some other zoning district where apartment uses are permitted, Developer's Project cannot be built on the Property, and allowing Developer to do so would be a violation of the City's own zoning ordinance. (BMC §§ 19.28.010, 19.28.030, 19.92.010.)

2. Presuming Other Conditions Are Met, the State's Density Bonus Law Only Authorizes a Waiver From Development Standards, Not a Waiver From Permissible/Prohibited Land Uses Or Consistency With the General Plan.

As stated above, the DBL allows proposed housing developments that meet certain criteria a waiver of a development standard if said standard "will have the effect of physically precluding

the construction of a development". (Gov. Code § 65915(e)(1).) Under the DBL, a "development standard" is defined as:

> …a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.
>
> (Gov. Code § 65915(e)(1).)

In this case, it is unclear that Developer's Project is physically precluded from being developed based on the prohibition of apartment houses/courts within the R-2 zone. ***Even so, the City's prohibition on apartments in the R-2 zone is <u>not</u> a development standard – it is a land use restriction***. A land use designation or restriction dictates ***<u>what</u>*** type of uses can and cannot be put on a property, while a development standard dictates ***<u>how</u>*** each of those types of uses is to be developed, built, or improved. The preeminent California land use treatise, Miller & Starr, confirms these basic principles: zoning ordinances regulate both "allowed uses of specific parcels of land [aka land use designation] ***and*** . . . the requirements for the development of improvements in accordance with the specific zoning designation [aka development standards]." (7 Miller & Starr, Cal. Real Est. § 21:3 (4th ed.).)

As provided under the DBL, a "development standard" includes regulations on ***<u>how</u>*** a use is to be developed, built, or improved. Concepts such as height limitation, setback requirements, floor area ratios, and parking standards are unequivocally development standards, as they dictate how a use is to be built on a site. These regulations or development standards are applicable to all types of uses that are permitted within a certain zone. On the other hand, the prohibition on apartments does not fit under the definition of "development standard" under the DBL because it is not a "site or construction condition" and does not dictate how a use is to be developed, built, or improved.

The distinction between land use designations and development standards is made clearer by the fact that the prohibition of apartment houses/courts is listed under BMC Section 19.28.030 entitled "Prohibited Uses" and is among a list of other ***prohibited land uses*** such as hotel, rental office, boarding house, and church. No one will assert that a hotel, boarding house, or rental office is a development standard rather than a type of land use, so it is equally nonsensical for Developer to assert that an apartment is a development standard rather than a type of land use. Furthermore, BMC Section 19.28.040 entitled "Development Standards" lists the standards that apply across the board to all permitted/conditionally permitted uses, including single-family housing units, two-family housing units, community care facilities, and family day cares and dictate how those uses are to be constructed, built, or improved on a site. The development standards under BMC Section 19.28.040 include, but are not limited to, minimum lot size, setback requirements, maximum lot coverage, off-street parking requirements, and usable open space. Such development standards are

exactly the type of "development standards" that can be waived under the DBL. (Gov. Code §§ 65915(e)(1), 65915(o)(1).)

It is important to note that nothing in the DBL, including its definition of "development standard," authorizes a developer not to comply with a city's permitted/prohibited land uses under its general plan and zoning ordinance without an approved general plan or zoning code amendment. Likewise, with the exception of ADUs (Gov. Code § 65852.2), supportive housing (Gov. Code § 65651), and two-family housing units under SB 9 (Gov. Code § 65852.21), nowhere does the Government Code authorize the development of housing uses in violation of a city's permitted/prohibited land uses under its general plan and zoning ordinance. ***Simply put, Developer's proposal to build a 23-unit apartment on the Property as part of the Project is unlawful and a violation of state law without an approved zone change, and the prohibition on apartment uses in the R-2 zone cannot be waived under the DBL regardless of whether or not the Project qualifies for a density bonus.***

3. Case Law Further Supports That the Apartment Prohibition In the R-2 Zone Is A Land Use Restriction, Not A Development Standard.

Case law reviewing a waiver of development standards under the DBL affirms that "development standards" include only those regulations that regulate ***how*** a housing development is constructed, built, or improved, rather than ***what*** type of housing development is developed. For example, the "development standards" considered in *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755 included a reduced parking standard and setback requirements. (*Id.* at 772.) The developer in *Bankers Hill* did not seek a change in any land use or type of housing use that was allowed within the property's zone and general plan. The court elaborated:

> … A city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives, permitted by the Density Bonus Law. (§ 65915, subd. (e)(1).) For example, if a city ordinance imposes a building height limitation, a city must waive that limitation for a development that is eligible for a density bonus if imposing the height limit would physically preclude construction of the proposed building with the requested incentives and at the density allowed by the Density Bonus Law.

A building height limitation, parking standard, and setback requirement are examples of standards that regulate ***how*** the proposed housing development will be constructed and improved. None of them regulate the actual type of housing use.

Similarly, in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the development standards considered for waiver included "height, number of stories and setbacks, granting variances to allow an additional story and a higher building height, and to forego setbacks on two corners." (*Id.* at 1346.) Again, all of the requested waivers relate to ***how*** the proposed housing development will

be constructed and improved, and none of the standards dealt with the actual type of housing being proposed.

Other cases affirm that any change in residential intensity from single-family or two-family to multi-family housing requires a change in zoning from one zoning district to another. (*See, e.g., Mira Development Corp. v. City of San Diego* (1988) 205 Cal.App.3d 1201 [city properly denied a re-zoning application from single family to multi-family use by developer who wanted to develop an apartment project because such change in land use would outstrip the provision of needed public services and improvements to go along with more intense uses]; *Foothill Communities Coalition v. County of Orange* (2004) 222 Cal.App.4th 1302 [city properly approved a zoning amendment from single-family residential zoning to senior (multi-family) residential zoning in order to allow a senior apartment complex].) Accordingly, in order to allow a prohibited use on a property, a property owner or developer must first seek approval of a zoning amendment to change the zone of that property to one where such use is permitted or conditionally permitted. Simply allowing the development of a prohibited use through a "waiver" under the DBL is wholly unsupported by statutory or case law.

4. Classification of the Prohibition of Apartment Uses As a "Development Standard" Would Authorize Said Use On Any Property Within R-1 and R-2 Zones In the City.

Developer's classification of the prohibition on apartment uses within the two-family R-2 zoning district as a "development standard" not only ignores state and local land use laws, but would render residential land use prohibitions in certain zones completely meaningless. If Developer were permitted to proceed with its Project to construct a 23-unit apartment on the Property, which is located within the R-2 zone, then anyone could develop an apartment within the R-1 or R-2 zones of the City under the DBL law, simply by arguing that such prohibition is a development standard that can be waived upon asserting – without any evidence – that a proposed housing development project would be physically precluded from development based on that prohibition. This result is tantamount to transforming R-1 and R-2 zones into multi-family residential zones that are required to accommodate apartments. This is not what the DBL contemplated and would lead to absurd results.

Based on the foregoing, it is abundantly clear that the definition of "development standard" under the DBL does not include a land use designation or restriction, and the prohibition on apartments (like the prohibition on boarding houses, hotels, and churches) in the R-2 zone is a land use restriction. Therefore, Developer's request for a waiver of said prohibition cannot legally be granted under either the DBL or the City's local laws without a zone change to the Property.

Please let me know if you have any questions or would like to discuss the matter further. We appreciate and thank you for your attention to this matter.

Sincerely,

ALESHIRE & WYNDER, LLP

Pam K. Lee, Partner

copy: Belvedere City Council Members (via email)
Belvedere Planning Commission Members (via email)
Barbara Kautz, Goldfarb & Lipman LLP (via email)
John Hansen, Belvedere Residents for Intelligent Growth (via email)
Mark R. Wolfe, M.R. Wolfe & Associates, PC (via email)

m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

September 20, 2022

To: Irene Borba, Director of Planning and Building

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz

Re: Mallard Pointe Project – General Plan Density

This responds to the September 8, 2022 letter from Riley F. Hurd of Ragghianti Freitas LLP, the attorney for Mallard Pointe 1951 LLC, the developer of the proposed Mallard Pointe project ("Project").

On July 1 of this year, BRIG submitted a memorandum to the City that attached, among other things, a schematic site plan prepared by licensed architect and Belvedere resident Alex Seidel. (BRIG Memo to Irene Borba, July 1, 2022, Attachment 5.) The plan showed how 48 duplex units could be built on the Project site in accordance with R-2 zoning standards, thereby achieving the General Plan-specified density of 20 units per net acre without an apartment building, which as you know is a prohibited use in the R-2 zone. As stated at the time, the purpose of the plan was not to present an alternative development proposal for the site, but rather to refute the Developer's unsubstantiated assertion that achieving a density of 20 units per net acre is physically impossible unless an apartment building is constructed.

Now, rather than providing facts or documentation to support its assertion, the Developer attacks BRIG's schematic plan for allegedly failing to meet all R-2 zoning standards, which is ironic given that the Developer stridently argues that these same zoning standards should be waived for its own Project. Regardless, as explained below, the Developer's criticisms of BRIG's schematic plan are misplaced and ultimately irrelevant to the larger question of whether R-2 zoning requirements are consistent with the General Plan.

First, as should go without saying, the burden is not on BRIG, or indeed the City, to prove that R-2 zoning is consistent with the General Plan and that 48 duplex units can be built on the Project site. As BRIG explained in its July 1 memo, that is what both the General Plan and the R-2 zoning plainly envision, and that is what the City expressly found when it adopted its Housing Element in 2015. (*See* BRIG Memo, July 1, 2022, at pp. 5-6.) Instead, the burden is on the Developer, who is seeking to bypass the R-2's apartment prohibition, to prove inconsistency with the General Plan and physical impracticability of achieving the General Plan density of 20 units per net acre with duplex units.

Second, the Developer's assertion that BRIG's architect "missed BMC section 19.60.030(B)" is misleading. That code section provides that in any zone other than a single-family residence zone (including the R-2) only one main building may be constructed on any one **lot**, except that more than one may be constructed on a single **lot** if each adheres to the lot area, width, setback, and yard standards applicable to single lots. The Developer claims that the duplex buildings shown on BRIG's schematic plan do not adhere to lot size, lot width, lot frontage, setback, and parking standards of the R-2 zoning, suggesting that this somehow constitutes proof that 48 duplex units cannot feasibly be built at the site.

What the Developer fails to acknowledge is that the Project site has not been subdivided into individual lots. BRIG's schematic therefore did not assume any such subdivision. The Belvedere Zoning Code plainly distinguishes a "parcel," which is defined as as "all contiguous land held by one owner" (BMC § 19.08.381), from a "lot" which is "a single parcel of land bounded by established lot lines as shown on the latest official map thereof on file with the County Recorder[.]" (BMC § 19.08.290). As shown on the attached Assessor's Parcel Map (**Attachment 1**), the Project site is made up of three parcels in common ownership that have not been subdivided into individual lots.[1] Therefore, the provisions of BMC section 19.060.030 governing the number of buildings allowable on a single lot do not apply. The Developer's reliance on this section to argue broadly that 20 units per net acre cannot be built at the site without an apartment building is therefore clearly erroneous.

The Developer's point that BRIG's schematic includes lagoon-fronting duplex buildings that are not set back ten feet from the lagoon bulkhead as required by the Zoning Code, while technically correct, is immaterial and not dispositive. The buildings can easily conform to the setback requirement, as shown on the attached revised schematic plan. (**Attachment 2**.)

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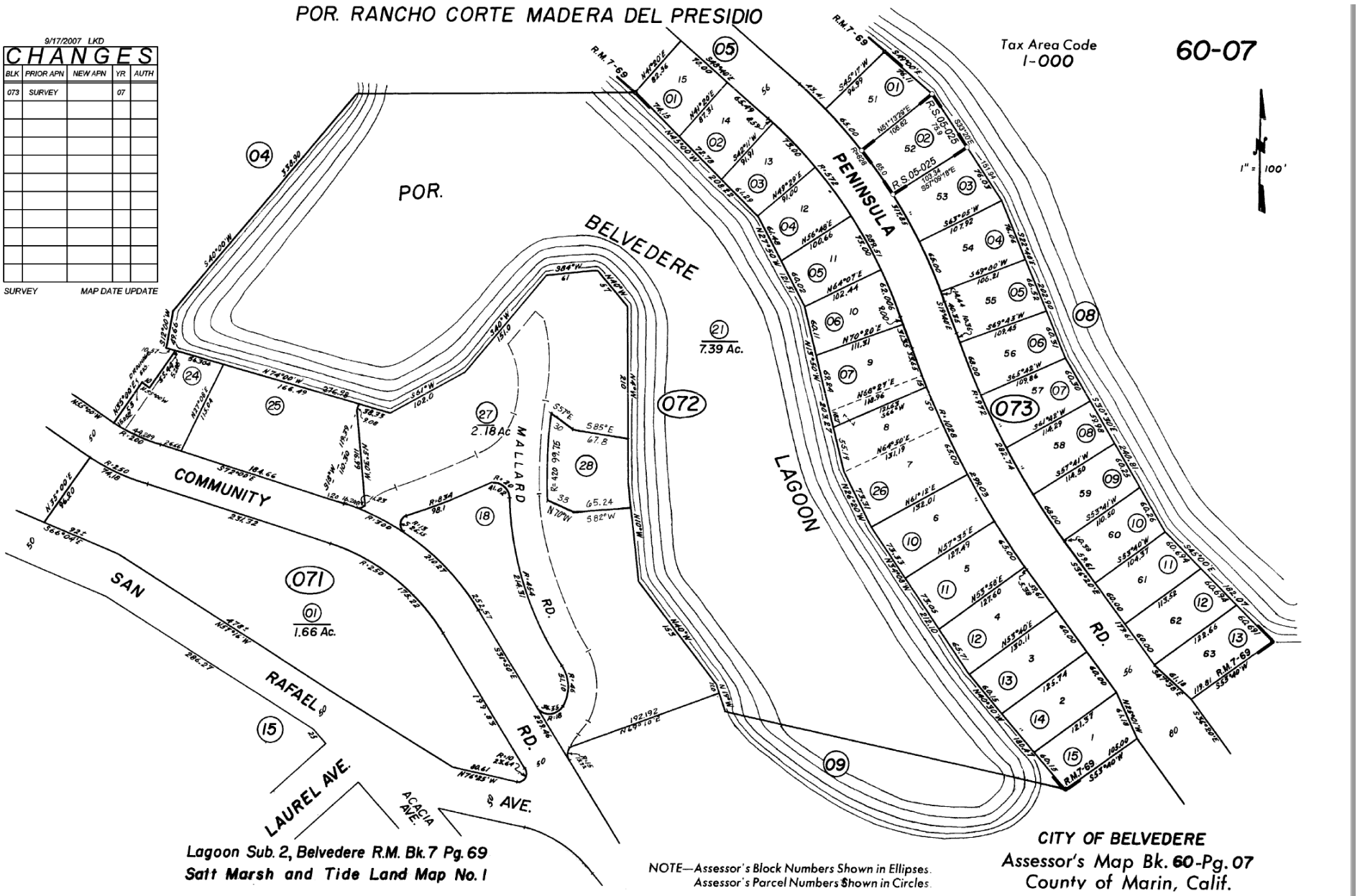
[1] By way of comparison, the parcels across the Belvedere Lagoon to the northeast have plainly been subdivided into multiple individual lots as depicted by numerous lot lines.

In sum, BRIG's schematic plan was presented solely as prima facie evidence to refute the Developer's bald claim that the General Plan-specified density of 20 units per net acre cannot be achieved with duplex units consistent with the R-2 zoning. It is not BRIG's burden to prove the General Plan and R-2 zoning are consistent with one another. To the contrary, that is to be presumed, particularly given the City's previous findings and conclusions that the R-2 zoning is in fact fully consistent with the General Plan. (*See* July 1, 2022 BRIG memo, pp. 5-6.) It is plainly the Developer's burden to prove, with facts and evidence and not mere assertions, that the R-2 zoning is inconsistent with the General Plan; and that 48 duplex units cannot feasibly be built at the site. The Developer continues to fail to meet that burden, and its criticisms of BRIG's plan amount to little more than an effort to distract City staff from that fact.

Thank you for your consideration of these additional points.

MRW:

ATTACHMENT 1



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

ATTACHMENT 2

R2 ZONING

REQUIRED		PROVIDED
FRONT YARD SETBACK	10'	15'
SIDE YARD SETBACK	10'	10'
REAR YARD SETBACK	10'	10'
HEIGHT	25' *	25'
USABLE OPEN SPACE	300 SF	1267 SF
COVERAGE	50%	27%
OFF STREET PARKING	2 SP/DU	2 SP/DU

*MAXIMUM 25' HEIGHT FOR 10' SIDEYARD SETBACK

PROJECT TABULATION

TYPE	#
1 BR, 1 1/2 BA	8
2 BR, 2 1/2 BA	40
TOTAL UNITS	48
PARKING SPACES	96

COMMUNITY ROAD, BELVEDERE

0' 10' 20' 40'

SITE STUDY
2/28/2022

m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

November 10, 2022

To: Irene Borba, Director of Planning and Building

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the City Council
Members of the Planning Commission
Robert Zadnik, City Manager
Barbara Kautz

Re: Mallard Pointe Project – Request for Relief from Apartment House Prohbition as a "Concession" under State Density Bonus Law

This responds to the October 7, 2022 letter from Ragghianti Freitas LLP, attorneys for Mallard Pointe 1951 LLC, the developer of the proposed Mallard Pointe project ("Project"). The letter asserts that the Project is entitled to relief from the prohibition on apartment houses in the R-2 zone as an "incentive or concession" under the State Density Bonus Law ("DBL"), even if that prohibition is a land use restriction and not a "development standard" otherwise waivable under the DBL. The letter cites correspondence from HCD to the City of San Jose to support this assertion, attaches a memo from a construction company declaring that duplex units would be more costly to build at the site than an apartment building, and claims that this in turn requires the City to forego enforcement of the apartment house prohibition in the R-2 zone. As explained below, this claim is without merit.

Preliminarily, the developer's claim should be viewed in context with the overarching purpose of the DBL. As one court recently affirmed: "the Density Bonus Law reward[s] a developer who agrees to build a certain percentage of low-income housing with the opportunity to build more residences than would otherwise be permitted by the applicable local regulations." (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 769.) It does so by granting a developer (1) a "density bonus;" (2) "incentives and concessions;" (3) "waivers or reductions" of "development standards;" and (4) prescribed "parking ratios," when it agrees to construct a certain percentage of the units in a housing development for low- or very-

low-income households. (Gov't Code § 65915(b)(1); *Bankers Hill, supra,* at p. 769.) The DBL defines "incentive or concession"[1] as a "reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards ... that results in identifiable and actual cost reductions." (*Id.* at subd. (k)(1).) As the court in *Bankers Hill* explained: "incentives and concessions are intended **to assist in lowering the cost to build a project that includes affordable housing by allowing the developer to avoid development standards**." (*Id.* at p. 770, boldface added.) Thus, the purpose of incentives, concessions, waivers, and reductions is to enable a developer to build more affordable housing units on a site than would be legally or financially feasible without them.

Although the DBL defines the terms "incentives and concessions" as also including "other regulatory incentives or concessions proposed by the developer" (*id.,* subd. (k)(3)), there are no published appellate opinions interpreting or clarifying what "other regulatory incentives or concessions" might include. Regardless, it is clear both from the provision's plain language, and courts' interpretations of the DBL's other provisions governing "incentives and concessions," that **any** such concession must "result in identifiable and actual cost reductions **to provide for affordable housing costs**. . ." as defined. (*Id.,* boldface added.) In other words, relief from a regulatory requirement that a developer proposes must only be granted it if actually reduces the cost of providing affordable housing.

Here, the Mallard Pointe Project includes six large, expensive single-family homes (one with an ADU), ten market-rate duplex units, and a 23-unit apartment building containing 19 market rate units and just four affordable units. Meanwhile, the Project proposes significantly fewer units (40) than the 48 duplex units that could be accommodated at the site at the General Plan density of 20 units/net acre, as BRIG has previously explained. The developer has provided no information or evidence showing that relief from the R-2's apartment house prohibition is necessary to lower the cost of providing four affordable units out of 40 units total.

Neither has the developer or its contractor, Midstate Construction, provided any hard facts or analysis to support the assertion that duplex units would cost 23 percent more per net square foot to build at the site than an apartment building. Midstate's memo simply proffers unsupported assertions that duplex homes in general are more expensive than apartment buildings, with no analysis specific to the Mallard Pointe site. In actuality, it is highly likely given the particular geotechnical characteristics of the site that duplex construction is actually less expensive than the apartment building being proposed. As BRIG's geotechnical consultant Lawrence

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[1] "Incentives" and "concessions" are synonymous under the DBL. (*Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, 555.)

Karp, PhD explained in a letter addressing the Project's CEQA compliance submitted to the City on April 27, 2022, the building site is both unusual and problematic in that it consists of marshland that was dredged, filled, and flooded in the 1950s, and is highly prone to settlement. Dr. Karp explained that duplex structures are "settlement forgiving," meaning they have length-to-width aspect ratios that are close to equal, such that settlement occurs uniformly across the structure. By contrast, as Dr. Karp noted, the Project's proposed apartment building would be approximately five times as long as it is wide, with no structural or design features that would accommodate large differential settlements.

As a result, the Project's long, narrow apartment building will likely experience differential settlement and subsidence unless major subgrade foundation systems are implemented. Such systems are likely to include sinking multiple support pilings into the substrate, and engineering larger or sturdier bulkheads capable of withstanding the additional, concentrated weight of this structure, as the Belvedere Lagoon Property Owners Association (BLPOA) has explained to the City in the past. Additional systems will also be required to prevent flooding in the proposed apartment building's below-grade garage, to safely pump any stormwater offsite, and to install a post-tensioned concrete slab over the garage area to support the structure above. These engineering and design features, which would not be necessary with a duplex-only project with at-grade, wood-framed garages, will almost certainly render **this** apartment house significantly more costly to build **at this site**. Thus, even if the apartment prohibition were waivable in the first instance as a "concession" under the DBL – which it is not -- the City would not be required to waive it here, as concessions may properly be denied if they do not "result in identifiable and actual cost reductions. . . to provide for affordable housing." (Gov't Code § 65915(d).)

Furthermore, the letter from HCD's Assistant Deputy Director of Local Government Relations to the City of San Jose does not serve as legal authority for the developer's claim that it is entitled to relief from the apartment house prohibition.[2] That letter addressed, in relevant part, a developer's request for relief from a General Plan policy requiring that "[d]evelopment that demolishes and does not adaptively reuse existing commercial buildings should substantially replace the

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[2] As a matter of law, an opinion of an HCD Assistant Deputy Director, while arguably informative, is by no means binding on any court, and therefore is of limited utility in addressing whether the R-2's apartment prohibition may be waived as a "concession" in the current situation. (*See Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11 ("[b]ecause an interpretation is an agency's legal opinion, however "expert," rather than the exercise of a delegated legislative power to make law, it commands a commensurably lesser degree of judicial deference"). Or, as the court explained in *State Building & Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289, 304: "[w]here the meaning and legal effect of a statute is the issue, an agency's interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth."

existing commercial square footage." The HCD staffer opined that the under the DBL, concessions are not limited to development standards, and that "regulatory requirements" proposed by an applicant that result in identifiable actual cost reduction are eligible incentives or concessions under the DBL.

Moreover, the affordable housing project addressed in HCD's letter shares virtually nothing in common with Mallard Pointe. Functionally, it was a 100-percent affordable project (268 affordable units, three manager units, 271 units total), with no market-rate units to offset development costs. (HCD Letter, p. 1.) Requiring an affordable housing developer to replace any demolished commercial square footage as part of its project would have added substantial costs that would have almost certainly rendered the development of a 100-percent affordable project financially infeasible. That is obviously not the situation at Mallard Pointe, where 90-percent of the units will be market-rate, with six being multimillion-dollar, Lagoon-fronting single-family homes. Furthermore, the San Jose General Plan policy in question was not a categorical land use prohibition like the R-2's apartment building prohibition. It simply provided that a development project that demolishes commercial uses "should" replace the lost commercial square footage. By contrast, R-2 zoning flatly states that "apartment houses" and "apartment courts" are prohibited uses.

Again, the purpose of the DBL is to "reward a developer who agrees to build a certain percentage of low-income housing with the opportunity **to build more residences than would otherwise be permitted by the applicable local regulations**." (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 769, boldface added.) That is plainly not the case at Mallard Pointe, where the developer is actually proposing to build <u>fewer</u> units than would otherwise be permitted by applicable local regulations. Granting the developer relief from the R-2's apartment prohibition will not result in identifiable cost reductions that will provide more affordable housing, or more units in general, than are otherwise permissible under the General Plan and Zoning Code. The City is therefore under no obligation to grant "relief" from the prohibition as a concession under the DBL.

Thank you for your consideration of these points.

MRW:

m | r | wolfe
& associates, p.c.
attorneys-at-law

May 16, 2023

MEMORANDUM

To: Robert Zadnik, Belvedere City Manager

cc: Bradley Evanson, Community Development Advisor
Andrew Shen, City Attorney
City Council Members
Planning Commissioners

From: Mark Wolfe, M. R. Wolfe & Associates, PC

Re: HCD Comments on Housing Element/Mallard Pointe

By letter dated May 1, 2023 the Department of Housing and Community Development (HCD) notified the City of Belvedere that the Housing Element it had adopted and submitted in January required various revisions in order to be found in compliance with the State Housing Element Law. The purpose of this memorandum, sent on behalf of BRIG, is to address certain problematic statements in HCD's letter concerning the proposed Mallard Pointe project (Project) and to point out the likely sources of HCD's evident misreading of Belvedere's General Plan and Zoning Code.

HCD's letter states on page 8:

> "HCD also understands that in a letter on inconsistency related to the application on Mallard Point, the City found that the R-2 zone prohibits the use of apartment homes. **Not only is this inconsistent with the General Plan, but also is inconsistent with the density and capacity estimates cited on page D-14**. The element should clarify what types of housing is allowed in the R-2 zone and **include a program to correct any inconsistency with the land use and housing element of the General Plan**." [Boldface added.]

You will note that HCD offers no citations or analysis of any kind to support this rather startling declaration that the City's Zoning Code is inconsistent with its General Plan, and that the City is misinterpreting its own longstanding land use regulations. This begs the question of how did the HCD staffers authoring the letter arrive at these necessarily legal conclusions?

The answer becomes evident upon review of the email correspondence sent between HCD staff and the Mallard Pointe developer's representatives[1] while the Housing Element was under review. A disproportionate number of the emails sent to HCD during this period were from two individuals: Joanna Julian of Thompson Dorfman Partners, the developer of Mallard Pointe; and Riley Hurd, Thompson Dorfman's land use attorney. In these emails, most of which bear the subject line "Re: Mallard Pointe," Ms. Julian and Mr. Hurd supplied HCD with Mallard Pointe application materials, correspondence with the City relating to the application, and the developer's own legal analysis of the City's planning and zoning laws and the Project's status under CEQA. In one email sent January 8, 2023 (copy attached), Mr. Hurd forwards several items to an HCD staffer, including his own "January 20, 2022 memo explaining the housing laws to the City," which was accompanied by the highlighted notation: "**if you read anything, please read this one**." The referenced memo proffered the arguments that R-2 zoning's prohibition of apartment buildings conflicts with the City's General Plan, and that achieving the General Plan density of 20 units per net acre cannot be achieved without an apartment building. It is reasonable to conclude that the HCD staffer in fact did read Mr. Hurd's memo, and that this was the source for the corresponding assertion in HCD's May 1, 2023 letter.

It thus would appear that HCD is merely repeating a legal theory proffered by the Mallard Pointe developer's attorney in an email. Again, HCD provides no analysis or explanation to support this assertion in its letter. Indeed, none exists. As BRIG has documented at length and on repeated occasions, the General Plan density of 20 units/net acre can be readily achieved with duplex units, and without a prohibited

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[1] This correspondence is posted on the City's website at: https://www.cityofbelvedere.org/DocumentCenter/View/8819/592023-Comments-Redacted

apartment house, consistent with R-2 zoning.[2] This has been the case since the R-2 zone was first established in 1989. The Belvedere City Council, and ultimately the courts, determine whether the R-2 zone's apartment prohibition is inconsistent with the General Plan - not a developer or HCD.

It is unfortunate that a staffer at HCD would so uncritically accept and repeat a developer's self-interested interpretation of Belvedere's General Plan and Zoning Code. However, the City need not uncritically accept each and every finding or directive made by HCD staff in its letter. The law is clear that upon receiving HCD's determination that its Housing Element does not substantially comply with the State Housing Element Law, the City "shall take one of the following actions:

> (1) Change the draft element or draft amendment to substantially comply with this article.
>
> (2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with this article despite the findings of the department." (Gov't Code § 65585(f).)

The City accordingly may properly decline to modify its Housing Element "to include a program to correct any inconsistency [of the R-2's apartment building prohibition] with the land use and housing element of the General Plan" so long as it explains to HCD, as BRIG has done repeatedly, that the apartment prohibition is fully consistent with the General Plan's allowable density of 20 units per net acre.

MRW:

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[2] See BRIG Memo re: Mallard Pointe General Plan & Zoning Consistency Review, July 1, 2022, available at: https://www.cityofbelvedere.org/DocumentCenter/View/8194/BRIG-Ltr-to-City-re-Mallard-Pointe_7-1-22-1; BRIG Memo re: Mallard Pointe Project – General Plan Density, September 20, 2022, available at: https://www.cityofbelvedere.org/DocumentCenter/View/8427/BRIG-Memo-re-Mallard-Pointe-Density_9-20-22-1

m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

June 16, 2023

To: Belvedere City Council

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the Planning Commission
Robert Zadnik, City Manager
Bradley Evanson, Community Development Advisor
Andrew Shen, City Attorney

Re: Mallard Pointe Project – Updated Preliminary Geotechnical Investigation

We have reviewed the October 19, 2022 "Updated Preliminary Geotechnical Investigation" prepared by Miller Pacific Engineering Group for the proposed Mallard Pointe Project ("Project"), and offer the following points in response.

As you may recall, the Project developer first submitted a "Preliminary Geotechnical Investigation" ("Initial Report") to the City on January 19, 2022, in support of its claim that the Project qualified for the Class 32 categorical exemption from CEQA for in-fill development. BRIG refuted this claim in an April 27, 2022 letter to the City Council, explaining that the Project did not meet the criteria for the in-fill development exemption, and that even if it nominally did, it would still require environmental review pursuant to CEQA's blanket exception to any categorical exemption "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Guidelines, § 15300.2(c).) BRIG's letter showed that the Project is not consistent with the applicable General Plan and zoning designations; is not substantially surrounded by urban uses; and would likely result in significant effects relating to traffic, noise, air quality, or water quality. Notably, BRIG forwarded a memo from Lawrence Karp, PhD, an expert in geotechnical engineering, structural engineering, and architecture, who reviewed Miller Pacific's Initial Report. Dr. Karp explained that this initial Investigation did not address the unusual circumstances potentially giving rise to

significant impacts as a result of building the Project's structures on marshland that was dredged, filled, and flooded in the 1950s, and that is highly prone to settlement. A copy of BRIG's April, 2022 letter and Dr. Karp's memo are attached here for ease of reference.

Miller Pacific's Updated Preliminary Geotechnical Investigation ("Updated Report") does not address the points that BRIG and Dr. Karp raised with respect to the Initial Report. It does not include a subsurface exploration program to assess foundation features for the apartment building, nor does it reflect physical field tests or Index borings to support its conclusions. It does not provide actual foundation design and construction recommendations for the Project's structures. Instead, the Updated Report makes some relatively superficial changes to the original, likely in response to comments received from Ascent, the City's CEQA consulting firm. These changes include a new, brief discussion of the semi-subterranean parking garage (pp. 16-17), additional details relating to the existing lagoon bulkheads (p. 20), and replacement of the phrase "less than significant with mitigation" with "less than significant with engineered design" in several instances, following ASCENT's suggestion. The technical appendices are unchanged, and there is no indication of any new sub-surface investigations.

These omissions are significant, as Dr. Karp has explained. The Project's apartment building would be approximately five times as long as it is wide, with no structural or design features that would accommodate large differential settlement. Dr. Karp's recent experience with projects including long, narrow structures built on fill in Foster City and Redwood Shores confirms that the Project's long, narrow apartment building will likely experience differential settlement and subsidence unless major subgrade foundation systems are implemented. Installing such systems, which may include pile-driving, is environmentally intrusive, and will very likely cause significant adverse impacts on neighboring structures and the Lagoon.

In short, the Updated Report does not address the concerns that BRIG and Dr. Karp raised with respect to its predecessor, and nothing in it alters the conclusion that the Project should undergo reasonable environmental review under CEQA rather than evading scrutiny based on an unsupportable finding of exemption.

Thank you for considering these additional concerns.

MRW:sa
Attachment

ATTACHMENT

m | r | wolfe
& associates, p.c.
attorneys-at-law

April 27, 2022

Via E-Mail

Hon. Sally Wilkinson, Mayor
Members of the City Council
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920

Re: CEQA Compliance for Proposed Mallard Pointe Project

Dear Mayor Wilkinson and Councilmembers:

On behalf of Belvedere Residents for Responsible Growth (BRIG), please accept and consider the following points addressing the appropriate mode of compliance with the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq., with respect to the proposed Mallard Pointe development project (Project). As described in application materials, the Project would demolish 22 existing residential duplex units on a 2.8-acre site immediately adjacent to the Belvedere Lagoon, and replace them with 42 new residential units comprising five duplexes (10 units); six single-family homes; three accessory dwelling units; and 23 apartment units in a single apartment building.

A March 15, 2022 memorandum from Riley F. Hurd III (Hurd Memo) asserts that the Project satisfies the criteria for the Class 32 categorical exemption from CEQA for in-fill development projects and is therefore exempt from CEQA review. We respectfully disagree. After consulting applicable legal authorities, including those cited in the Hurd Memo, it is quite apparent that the Project does **not** qualify for the Class 32 categorical exemption, nor indeed any other statutory or categorical exemption from CEQA. The City therefore should prepare an initial study pursuant to section 15063 of the CEQA Guidelines to determine whether the Project may have potentially significant environmental impacts, and if such impacts are found, the City must prepare an environmental impact report (EIR) before taking any action to approve the Project.

Preliminarily, we would emphasize that our State Supreme Court has repeatedly affirmed that "[t]he foremost principle under CEQA is that the Legislature

intended the act "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Laurel Heights Improvement Association v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 390; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.) CEQA's broader framework accordingly "reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317.) Based on these foundational principles of CEQA, if the City is presented with conflicting factual and legal assessments as to whether environmental review is required for the Mallard Pointe Project, it should resolve any doubts in favor of finding the Project not exempt from such review.

With these principles in mind, set forth below is the basis for our conclusion that the Project does not qualify for the Class 32 categorical exemption, nor indeed any exemption from CEQA.

I. The Project does not qualify for CEQA's categorical exemption for in-fill development projects.

The California Resources Agency's CEQA Guidelines (14 Cal.Code.Regs. § 15000 et seq.) define the Class 32 categorical exemption from CEQA as follows:

> 15332. IN-FILL DEVELOPMENT PROJECTS
>
> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
>
> (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.
>
> (e) The site can be adequately served by all required utilities and public services.

CEQA Guidelines, § 15332, emphasis added.

In order to qualify for the Class 32 categorical exemption cited above, a project must satisfy each of the five conditions listed in section 15332 of the CEQA Guidelines. As discussed below, the Project here demonstrably fails to satisfy at least two of these conditions, and possibly a third as well.

A. The Project is not consistent with the applicable zoning designation and regulations as the Applicant has acknowledged.

The Belvedere General Plan 2030 designates the Project site "Medium Density MFR: 5.0 to 20 units/net acre." The Belvedere Zoning Code places the site within the "R-2 (Duplex) Two-Family Residential" zoning district. Chapter 19.28 of the Zoning Code specifies the permitted land uses, regulations, and development standards that apply in the R-2 Zoning District. Specifically, section 19.28.030, titled "Prohibited uses," expressly prohibits "apartment courts" and "apartment houses" in the R-2 District. Thus, the Project's apartment building component is not consistent with the applicable R-2 zoning designation and its prohibition on apartment uses, as the Applicant has acknowledged. (*See* Density Bonus Application (Jan. 26, 2022), p. 2 (seeking waivers from "[t]he prohibition on apartment courts and/or apartment houses in the R-2 zone"); *see also* Hurd Memo, p. 3.)

Citing *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the Hurd Memo asserts that the R-2 zoning prohibition on apartment structures does not apply to the Project because the R-2 zoning restrictions in general are inconsistent with the General Plan's Medium Density MFR designation, and that "the R-2 density formula could never achieve the density allowed under the General Plan, and is therefore inapplicable under state law." (Hurd Memo, p. 3.) Note that the Applicant has presented the City with no evidence whatsoever to support this bald assertion that the General Plan's 20-unit per net acre density specification cannot be achieved without building a prohibited apartment building. To the contrary, and as BRIG has previously explained in earlier correspondence with the City,[1] there is no inconsistency between the General Plan's MFR classification and the R-2 zoning designation, and the latter's prohibition of apartment buildings plainly applies. The Project accordingly does not meet the first condition for the Class 32 in-fill development exemption, and is therefore not exempt from environmental review.

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[1] *See* July 21, 2022 memorandum, available on the City's website at: https://www.cityofbelvedere.org/DocumentCenter/View/7637/Final_Ltr-to-City-Council_10-18-21

B. The Project site is not substantially surrounded by urban uses.

Even if the R-2's prohibition against apartment structures did not apply, the Project still would not qualify for the Class 32 exemption because it is not on "a site of no more than five acres substantially surrounded by urban uses." Guidelines, § 15332(b). Although less than five acres, the 2.8-acre site is in no manner whatsoever "substantially surrounded" by urban uses. To the contrary, approximately 56 percent of the site is bounded by the Belvedere Lagoon. While the Class 32 exemption does not define "substantially surrounded," the CEQA statute itself defines the term for purposes of residential or mixed-use housing projects as follows:

> "substantially surrounded" means at least 75 percent of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses. The remainder of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that have been designated for qualified urban uses in a zoning, community plan, or general plan for which an environmental impact report was certified.

See Pub. Resources Code § 21159.25(a)(2).

Here, according to the Applicant's site boundary survey, the Project's perimeter totals 1,638.53 linear feet, of which 921.43 (56.2 percent) is water and 717.10 feet (43.8 percent) is land arguably developed with urban uses.[2] Thus, under the foregoing statutory definition, not to mention basic reason, the Project plainly is not "substantially surrounded" by urban uses. To the contrary, the General Plan's Sustainability and Resources Conservation Element specifically affirms that the Lagoon provides habitat for a variety of migratory bird species, as well as wetland habitat. (General Plan 2030 pp. 90-104.) Accordingly, the General Plan specifies Policy SUST-11.1 : "Manage the Lagoon using the most effective, environmentally friendly methods available, considering that the waters of the Lagoon empty into Richardson Bay." (*Id.*, p. 104.) Given the stated importance of protection and conservation of biological resources in the Lagoon, any proposed development with this much frontage on the Lagoon should not as a matter of policy be deemed fully exempt from environmental review.

The Hurd Memo, however, cites *Bankers Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, to argue that the Lagoon is in fact an "urban use" by operation of law. With due respect, the Memo

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[2] *See* site boundary survey (10/13/20), available on the City's website at: https://www.cityofbelvedere.org/DocumentCenter/View/7835/MALLARD-POINTE_Site-Boundary-Survey

mischaracterizes *Bankers Hill* and is otherwise incorrect on this point. In that case, the Court of Appeal agreed with the City of San Diego that that city's famed Balboa Park was an "urban use" for purposes of the Class 32 in-fill exemption. The court explained its reasoning as follows:

> we focus on the fact that Balboa Park is a quintessential urban park, heavily landscaped, surrounded by a densely populated area, and containing urban amenities such as museums, theaters and restaurants. Accordingly, it is "characteristic of a city or a densely populated area," and we conclude that it constitutes an urban use.

Id. at p. 271.

The *Bankers Hill* court's rationale simply does not extend to the Belvedere Lagoon, which is a body of water, not an urban park. Needless to say, the Lagoon is not "heavily landscaped" as Balboa Park is, nor does the Lagoon contain any "urban amenities." It is also not itself "surrounded by a densely populated area." As should be plain, *Bankers Hill* is simply inapt. The Project is not "substantially surrounded by urban uses" and therefore is not categorically exempt from CEQA under the Class 23 in-fill development exemption.

C. The Project is likely to result in significant effects relating to traffic, noise, air quality, or water quality.

BRIG is aware that the Applicant has already submitted, and will continue to submit, technical studies of its own purporting to show that neither construction nor operation of the Project will result in significant impacts on traffic, noise, air quality, and/or water quality. BRIG intends to review the Applicant's studies in consultation with its own technical consultants, and will report its findings to the City Council at the appropriate time.

Suffice it to say for the present time that it is plainly foreseeable that demolition of the existing 22 residential units, and construction of the 42 replacement units, may cause significant noise and air quality impacts affecting neighboring residential uses, and water quality impacts affecting the Lagoon. These impacts are likely to be compounded by the geotechnical/structural engineering that will be necessary to stabilize the proposed buildings, particularly the apartment building, on unstable fill soils in a seismically active environment. This latter point is discussed in further detail below.

II. Even if the Class 32 categorical exemption applied on its own terms, the Project is not exempt from CEQA due to a reasonable possibility of significant impacts due to "unusual circumstances" relating to its site characteristics.

The CEQA Guidelines provide a "blanket exception" to the applicability of any categorical exemption, including the Class 32 exemption, "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Guidelines, § 15300.2(c); *Bankers Hill, supra,* 139 Cal.App.4th at p. 260.) Here, there is a reasonable possibility that demolition of the existing duplex structures, and the subsequent construction of new structures including an apartment building, will have significant adverse impacts relating to geology and soils, given the prevalence of unstable fill soils underlying the site. We note there also appears to be a seismic fault running directly across the property. (*See* California Geological Survey (2014), *Geology of Ring Mountain and Tiburon Peninsula, Marin County, California*, and enlargement, attached to this letter as **Attachment 1**.)

The Applicant has submitted a "Preliminary Geotechnical Report" dated January 18, 2022, prepared by Miller Pacific Engineering Group ("Miller Report"), which concludes that site conditions are generally suitable for the proposed new buildings, so long as recommended design and engineering specifications are adhered to. (*See* Miller Report, pp. 12-18.) Skeptical of the Report's analysis and conclusions, BRIG consulted Lawrence Karp, PhD, an expert in geotechnical engineering, structural engineering, and architecture, to review it. Dr. Karp holds a PhD in civil engineering from U.C. Berkeley, is a licensed architect, and has served as a court-appointed expert assigned to engineering design and construction disputes throughout California for over 40 years. Dr. Karp specializes in soil-structure interaction and resistance to lateral forces with applications to foundations for buildings and other structures including all types of ground support systems, deep foundations and retained excavations, bulkheads, tiebacks, anchors, underpinning and shoring. Dr. Karp's letter addressing some of the geotechnical engineering concerns relating to the Project is attached as **Attachment 2**, together with a statement of his credentials.

As Dr. Karp explains, the Miller Report does not address the unusual circumstances potentially giving rise to significant impacts as a result of building the Project's structures on marshland that was dredged, filled, and flooded in the 1950s, and that is highly prone to settlement. Miller did not undertake a subsurface exploration program to assess foundation features for the apartment building, nor did it perform physical field tests or Index borings to support its conclusions. Notably, the Miller Report does not provide actual foundation design and construction recommendations for the Project's structures.

These omissions are significant. The existing duplex structures, which were built in the 1950s, are "settlement forgiving," meaning they have length-to-width aspect ratios that are close to equal, such that settlement occurs uniformly across the structure. By contrast, as Dr. Karp notes, the Project's apartment building would be approximately five times as long as it is wide, with no structural or design features that would accommodate large differential settlements. Dr. Karp's recent experience with projects including long, narrow structures built on fill in Foster City and Redwood Shores confirms that the Project's long, narrow apartment building will likely experience differential settlement and subsidence unless major subgrade foundation systems are implemented. Installing such systems, which may include pile-driving, is environmentally intrusive, and will very likely cause significant adverse impacts on neighboring structures and the Lagoon.

Dr. Karp's opinion affirms that there is a reasonable possibility that the Project will cause significant impacts due to unusual circumstances relating to geology and soils, and that the Project therefore is not exempt from CEQA. As our Supreme Court has explained: "when there is a reasonable possibility of a significant environmental effect from a project belonging to a class that generally does not have such effects, the project necessarily presents "unusual circumstances," and section 15300.2(c) applies." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1127.[3]

For these reasons, regardless of whether the Class 32 exemption might nominally apply to the Project under its own terms, the Project is still not exempt from environmental review by operation of the "blanket exception" to CEQA exemptions pursuant to section 15300.2 of the Guidelines.

III. The City's determination that the Project is not exempt from CEQA would almost certainly be upheld in court were the Applicant to challenge it.

In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, the State Supreme Court explained that courts are to afford great deference to public agencies such as the City in their determinations whether a given project is subject to the "unusual circumstances" blanket exception to CEQA's various categorical exemptions. The Court reasoned:

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[3] The Supreme Court further underscored that "an agency invoking a categorical exemption may not simply ignore the unusual circumstances exception; it must 'consider the issue of significant effects ... in determining whether the project is exempt from CEQA where there is some information or evidence in the record that the project might have a significant environmental effect.'" (*Id.* at p. 1103, *citing Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732.)

> Whether a particular project presents circumstances that are unusual for projects in an exempt class is an essentially factual inquiry, "founded on the application of the fact-finding tribunal's experience with the mainsprings of human conduct." [Citation.] Accordingly, as to this question, the agency serves as "the finder of fact" (citation), and a reviewing court should apply the traditional substantial evidence standard that [CEQA] incorporates.
> [¶]
> Under that relatively deferential standard of review, the reviewing court's " 'role' " in considering the evidence differs from the agency's. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.) " 'Agencies must weigh the evidence and determine "which way the scales tip," while courts conducting [traditional] substantial evidence ... review generally do not.' " (*Ibid.*) **Instead, reviewing courts, after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to support it**.

Berkeley Hillside Preservation at p. 1114, boldface added.

The next prong of the analysis, *i.e.*, whether unusual circumstances will give rise to a reasonable possibility of significant environmental impacts, is subject to a less stringent "fair argument" standard. Under this standard, if there is <u>any</u> substantial evidence that the Project <u>may</u> have significant impacts, then the blanket exception applies and the Project cannot be found categorically exempt from CEQA. *Berkeley Hillside Preservation* at p. 1115-1116.

Here, after weighing the evidence, the City Council will ultimately determine whether the scales tip in favor of exempting the Project from environmental review and therefore considering it in an informational vacuum, or in favor of requiring an initial study to evaluate whether it may have potentially significant impacts on one or more areas of the environment. Given the high degree of deference that courts are required to afford to local agency determinations of "unusual circumstances," the City Council's ultimate conclusion is highly unlikely to be overturned should the Applicant choose to challenge it in court.

IV. Conclusion

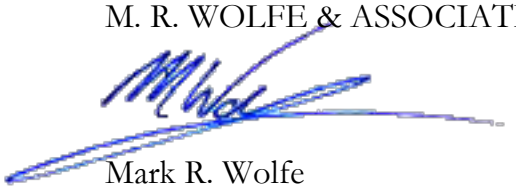
In sum, BRIG submits that the Project plainly fails to meet all the required conditions for the Class 32 categorical exemption for in-fill development, and that even if it did, it would still not be exempt from CEQA due to the demonstrated reasonable possibility of significant impacts resulting from unusual circumstances

relating to construction on unstable fill soils at this particular location. The City should therefore prepare an initial study consistent with the requirements of CEQA to determine whether the Project may have one or more significant environmental effects. If such effects are found, then a full environmental impact report (EIR) will be required before the City may lawfully act to approve the Project.

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



Mark R. Wolfe
On behalf of BRIG

MRW:sa

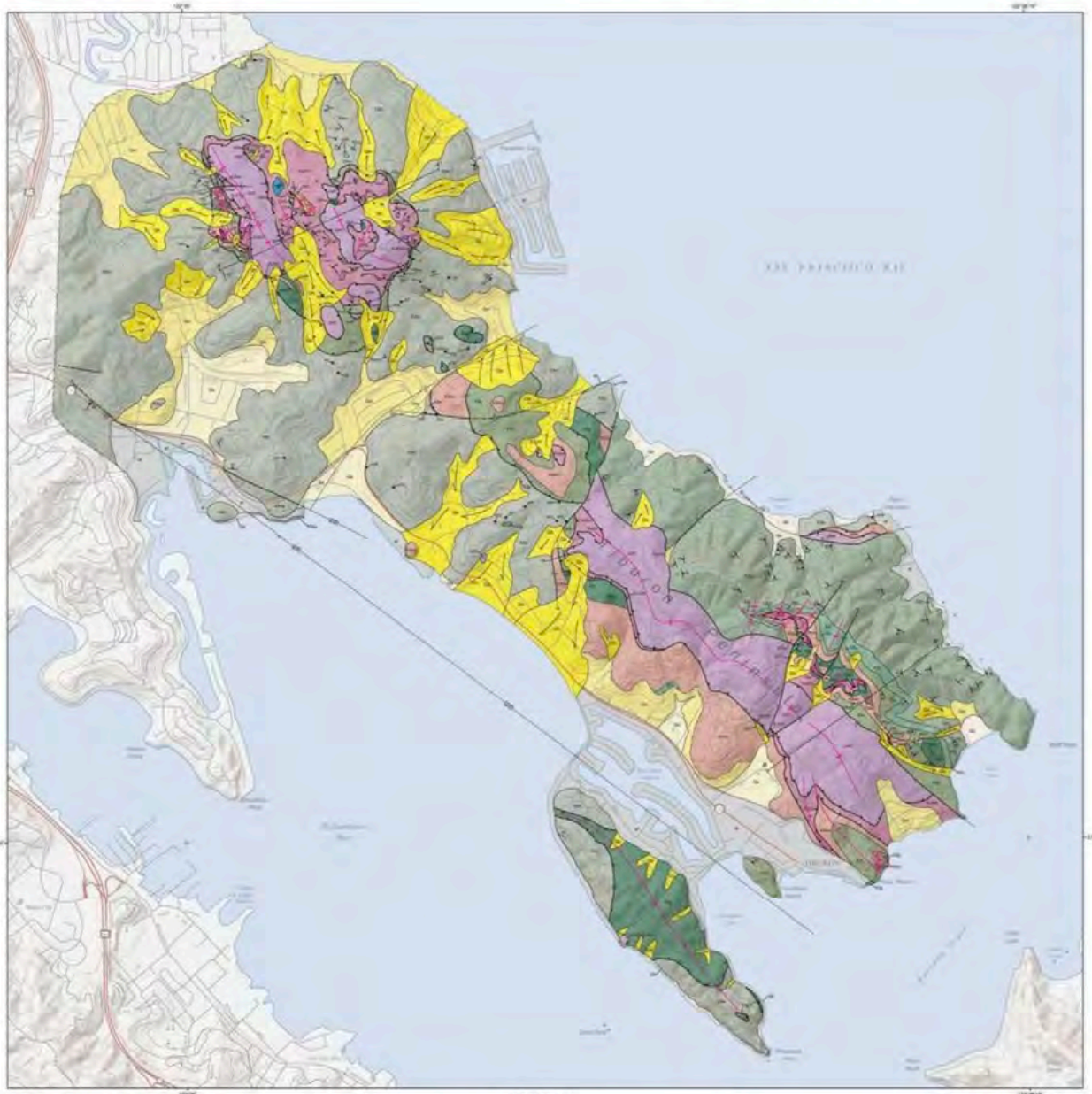
cc: Craig Middleton, City Manager
Patricia Carapiet, Planning Commission Chairperson
Irene Borba, Director of Planning and Building

ATTACHMENT 1

CALIFORNIA GEOLOGICAL SURVEY
JOHN G. PARRISH, Ph.D., STATE GEOLOGIST

STATE OF CALIFORNIA - EDMUND G. BROWN JR., GOVERNOR
THE NATURAL RESOURCES AGENCY - JOHN LAIRD, SECRETARY FOR NATURAL RESOURCES
DEPARTMENT OF CONSERVATION - MARK NECHODOM, DIRECTOR

GEOLOGY OF RING MOUNTAIN AND TIBURON PENINSULA, MARIN COUNTY, CALIFORNIA
MAP SHEET 62
PLATE 1



Projection: Universal Transverse Mercator, Zone 10N.
North American Datum 1927 (meters).

Topographic contours, shaded relief image, and hydrography derived from LiDAR data (USGS-ARRA Golden Gate LiDAR Project, 2012). Culture and transportation data modified from USGS 7.5-minute image maps for Point Bonita, San Francisco, San Quentin, and San Rafael, California (2012).

SCALE 1:12 000

Contour interval= 20 feet

APPROXIMATE MEAN DECLINATION, 2014

DESCRIPTION OF MAP UNITS

SURFICIAL DEPOSITS (Quaternary)

Beach sand - Composed mostly of well to moderately sorted, medium-to coarse-grained sand.

Artificial fill - Includes rock fragments, sand, silt, clay, and man-made debris; highly variable composition, degree of compaction, etc., from location to location.

Landslide deposits - Largely bedrock debris composed of unconsolidated and unsorted mixtures of soil, rock fragments, sand, silt and clay that have moved downslope en masse or in incements by staggered flow.

Slope debris and ravine fill - Composed of angular rock fragments in an unconsolidated sand, silt and clay matrix derived by weathering and accumulated on or at the base of slopes by natural processes.

Alluvium - Mainly composed of unconsolidated gravel, sand, silt, and clay along stream channels and on low terraces related to present drains.

FRANCISCAN COMPLEX (Cretaceous)

Mesablonnette at Point Bonita

Metablairmite - Limited outcrops of weathered, fine- to medium-grained massive metablairmite and vesicular fine-bedded shale of the pumice-pumpellyite facies assemblage quartz + albite + white mica + chlorite + pumpellyite ± stilpnomelane(?). Unit is locally brecciated (**KBm$_{br}$**).

Tiburon Ridge Terrane

Metagraywacke - Fine- to medium-grained graywacke and minor shale. This unit is very similar to the structurally higher KIs, unit but is commonly fine-grained, and although it exhibits a semi-planar foliation locally, it is generally less strongly foliated. When present, cleavage is defined by anastomosing chlorite + white mica ± stilpnomelane within the matrix. The phyllosilicates enclose porphyroclasts of relict quartz grains elongated by deformation and fabric-parallel overgrowths, together with fine-grained rectolasts of the blueschist facies assemblage lawsonite ± albite ± aragonite ± jadeitic-pyroxene ± glaucophane. This unit is found only in the south Tiburon Peninsula area.

Metaconglomerate - Unit commonly contains well-rounded, cobble-sized clasts of chert with lesser clasts of course-grained plutonic and/or porphyritic rock, all entrained within a fine- to medium-grained sacchitone matrix. The sandstone matrix exhibits a planar foliation and contains rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

Metagraywacke - Fine- to medium-grained graywacke and minor shale exhibiting a semi-planar foliation and common foliation-normal quartz veins. Cleavage is defined by anastomosing chlorite, white mica ± stilpnomelane. The phyllosilicates enclose porphyroclasts of relict quartz elongated by deformation and fabric-parallel overgrowths together with rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

Metachert - Unit composed of pale green to white chert with or without interbedded shale and commonly exhibiting tightly folded beds and a micro-brecciated texture. Most outcrops composed of re-crystallized, interlocking quartz grains ± stilpnomelane ± lawsonite. Also, local outcrops of dark gray, nodular bearing chert (**KMmc**).

Metabasalt - Most commonly appears massive and fine-grained, gray-green in color, sheltered in appearance, and exhibiting a weathered orange to yellow iron oxidation surface; locally porphyritic in texture. Commonly contains rectolasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

RING MOUNTAIN MÉLANGE (Jurassic to Cretaceous)

Serpentinite-matrix melange - Tectonite composed of lizardite with minor antigorite and chrysotile, exhibiting a pervasive shear-fracture fabric characterized by anastomosing shear-fracture surfaces enclosing small, pale green to black, disk-shaped serpentinite phacoids. Includes:

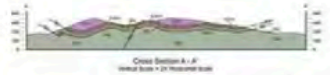
- hgb - High-grade blocks include medium- to coarse-grained schight, amphibolite, and glaucophane schist blocks. Overprints of glaucophane schist on eclogite and amphibolite types are common and overprints of actinolite ± talc ± chlorite schist occurring as rinds on all block types are common.
- mgb$_s$ - Greenschist facies antigorite-(bearing?) elongated moderate to dark green serpentinite blocks and clasts (up to 50 cm ± diameter) either ± pervasively sheared and foliated, but relatively coherent, dark green to bright turquoise, antigorite-serpentinite matrix.
- mgb$_a$ - Greenschist facies metavolcanic rocks consisting of aphanitic to aphanitic-porphyritic chlorite-bearing blocks.
- mgb$_c$ - Greenschist-like facies, talc schist and talc-actinolite schist similar to the overprint rinds on hgb. In many cases, these may be rinds associated with hgbs, but they occur within the KJsm without an obvious hgb association at the present level of erosion.

COAST RANGE OPHIOLITE (Jurassic)

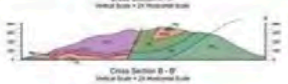
Ultramafic rocks - Composed of partially serpentinized peridotite (lanzburgite) containing relict grains of olivine + orthopyroxene ± clinopyroxene ± spinel in a matrix of lizardite giving the unit a blocky appearance in outcrop.

MAP SYMBOLS

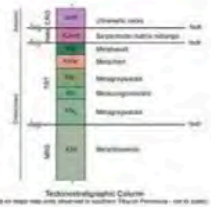
- Contact between map units - Solid where accurately located; dashed where approximately located; dotted where concealed
- Fault - Solid where accurately located; dashed where approximately located; dotted where concealed; queried where uncertain; U = upthrown side, D = downthrown side; arrows along fault indicate relative or apparent direction of lateral movement
- Thrust fault - Solid where accurately located; dashed where approximately located; dotted where concealed; queried where uncertain; teeth on upper plate
- Antiform - Solid where accurately located; dashed where approximately located; arrowhead indicates direction of plunge
- Synform - Solid where accurately located; arrowhead indicates direction of plunge
- Strike and dip of bedding
- Strike and dip of foliation
- Sample location - showing Map No. (see Table 1 in report)
- Boundary of geologic mapping



Cross Section A - A'
Vertical Scale = 2X Horizontal Scale



Cross Section B - B'
Vertical Scale = 2X Horizontal Scale



Tectonostratigraphic Column
(based on major map units observed in southern Tiburon Peninsula - not to scale)

GEOLOGY OF RING MOUNTAIN AND TIBURON PENINSULA, MARIN COUNTY, CALIFORNIA

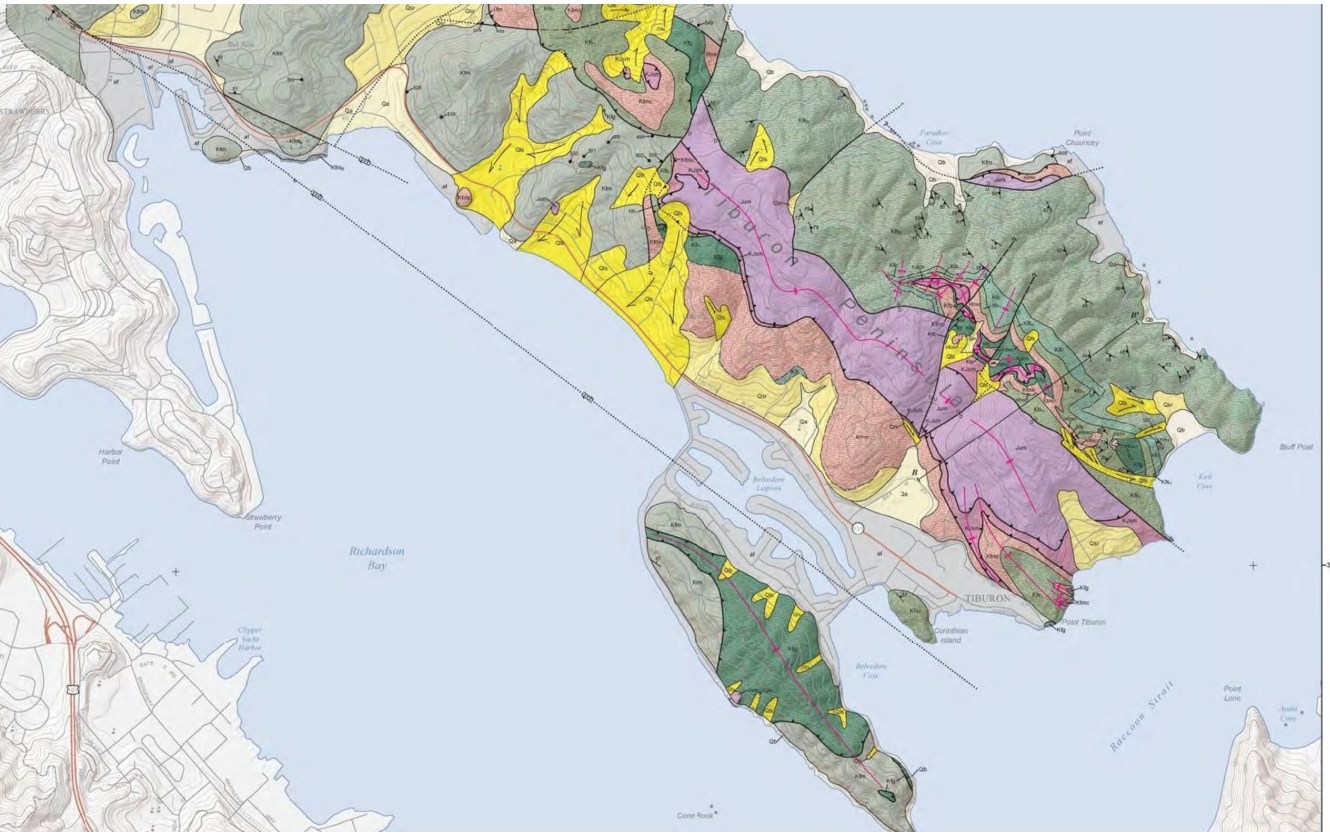
By

DAVID A. BERO

2014

Digital Preparation by
Carlos I. Gutierrez and Matt D. O'Neal

U.S.G.S. Topographic (7.5') Quadrangle Maps used as base maps in this study. Red box indicates map extent



contains neoblasts of the blueschist facies assemblage lawsonite ± albite ± jadeitic-pyroxene ± glaucophane.

RING MOUNTAIN MÉLANGE (Jurassic tc Creteaceous)

KJsm

Serpentinite-matrix mélange - Tectonite composed of lizardite with minor antigorite and chrysotile, exhibiting a pervasive shear-fracture fabric characterized by anastomosing shear-fracture surfaces enclosing small, pale green to black, disk-shaped serpentinite phacoids. Includes:

hgb - High grade blocks incude medium- to coarse-grained eclogite, amphibolite, and glaucophane schist blocks. Overprints of glaucophane schist on eclogite and amphibolite types are common and overprints of actinolite ± talc ± chlorite schist occurring as rinds on all block types are common.

$elgb_s$ - Greenschist facies antigorite-bearing(?), elongated moderate to dark green serpentinite blocks and clasts (up to 50 cm in diameter) within a pervasively sheared and foliated, but relatively coherent, dark green to bright turquoise, antigorite-serpentinite matrix.

$elgb_v$ - Greenschist facies metavolcanic rocks consisting of aphanitic to aphanitic-perphyritic chlorite-bearing blocks.

$elgb_r$ - Greenschist-like facies, talc schist and talc-actinolite schist similar to the overprint rinds on hgb. In many cases, these may be rinds associated with hgbs, but they occur within the KJsm without an obvious hgb association at the present level of erosion.

COAST RANGE OPHIOLITE (Jurassic)

Jum

Ultramafic rocks - Composed of partially serpentinized peridotite (harzburgite) containng relict grains of olivine + orthopyroxene ± clinopyroxene ± spinel in a matrix of lizardite giving the unit a blocky appearance in outcrop.

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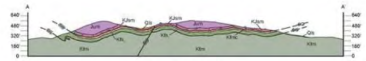
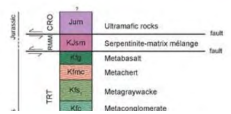


Cross Section A - A'
Vertical Scale = 2X Horizontal Scale

Cross Section B - B'
Vertical Scale = 2X Horizontal Scale



ATTACHMENT 2

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
UNDERPINNING, TIEBACKS
DEEP RETAINED EXCAVATIONS
SHORING & BULKHEADS
CEQA, EARTHWORK & SLOPES
CAISSONS, COFFERDAMS
COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

April 16, 2022

Mark R. Wolfe, Esq.
580 California Street, Suite 1200
San Francisco, CA 94104 USPS & <mrw@mrwolfeassociates.com>

Subject: Proposed Mallard Pointe Development, Belvedere
Significant Environmental Impacts Not Identified by Developer
Environmental Impact Report Required

Dear Mr. Wolfe:

Geotechnical and structural engineering are specialty fields within civil engineering; "geotechnical" is a collective term for "soil mechanics and foundation" engineering adopted by California in 1986, which expertise is entirely missing from the specious 1/18/22 report by Miller Pacific prefaced with the disclaimers "document is for the sole use of the client and consultants on this project" and "No other use is authorized."; however, the report was submitted to the City by the developer of the subject project in an attempt to gain advantage by circumventing important safeguards provided by the California Environmental Quality Act.

Projects for multi-family residential use on reclaimed land in the locally sensitive and seismically active marine environment of San Francisco Bay have been proven to be environmentally problematical; examples are Redwood Shores and recent experiences in Foster City where long narrow buildings have experienced distress due to ground movements causing differential settlements and subsidence. For the subject project it will be worse; damage to nearby structures and the Lagoon including shallow shoreline bulkheads, first during demolition then second during implementation of the necessary subgrade foundation system for the proposed multi-family building that will not damage nearby buildings and the Lagoon during construction as there will be activities having significant effects upon the environment due to unusual circumstances.

The 1/18/22 Miller Pacific report does nothing to show why demolition of residences and construction of the apartment house will not have significant effects upon the environment and does nothing (termed "Preliminary") to explain the unusual circumstances of the project's environment. Dredged, filled, and flooded marshland between Belvedere Island and Tiburon was opened in 1955 without any environment oversight and modern engineering; settlement-forgiving homes were built before and after having length-width aspect ratios near equal so differential settlements would be almost uniform. Not so with the proposed building being five times as long as it will be wide with no architectural features to accommodate large differential settlements.

Instead of a genuine subsurface exploration program for foundations for the apartments (e.g. driven piles), the report contains only public maps and CPT (cone penetration tests) logs without Index borings (physical field tests, sampling, and laboratory tests) to correlate electronic CPT results gathered distant from the apartments operated within a van. No foundation design and construction recommendations exist and the architectural drawings also do nothing to show foundation support below the ground surface for the apartment house, which would be unusual and much different than were built for existing houses which essentially float on fill. A full environmental impact report is necessary.

Lawrence B. Karp

LICENSED ARCHITECT LAWRENCE B. KARP No. 10130 STATE OF CALIFORNIA

REGISTERED PROFESSIONAL ENGINEER LAWRENCE B. KARP No. 452 GEOTECHNICAL STATE OF CALIFORNIA

100 TRES MESAS, ORINDA CA 94563 (415) 860-0791 ★ fax: (925) 253-0101 e-mail: lbk@berkeley.edu

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

FOUNDATIONS, WALLS, PILES
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COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

February 20, 2022

Mark R. Wolfe
Attorney at Law
580 California Street, Ste 1200
San Francisco, CA 94104 USPS & <mrw@mrwolfeassociates.com>

Subject: Proposed Mallard Pointe Development, Belvedere

Dear Mr. Wolfe:

The following is a summary résumé of qualifications and expertise, and general consulting conditions, that was used recently in an expert disclosure statement:

> "Lawrence B. Karp holds an earned doctorate in civil engineering and other degrees from the University of California, Berkeley (with honors), and he is licensed as a civil and geotechnical engineer and architect in California, as an architect and a professional engineer, civil and/or structural engineer in other states, and as a marine engineer/naval architect in Washington.
>
> Dr. Karp was awarded a post-doctoral Earthquake Engineering certificate by the University of California, Berkeley (with distinction). He has been issued national certifications in structural engineering and architecture. Dr. Karp taught advanced foundation design and construction at Berkeley for 11 years and at Stanford for 3 years, and he has been a court appointed expert assigned to engineering design and construction disputes at various times and in California counties over the last 40 years. In 1989 he was appointed Special Inspector of buildings in San Francisco following the Loma Prieta Earthquake. He has membership in various professional societies, and he has authored numerous engineering and technical reports as well as conference and journal papers.
>
> With over 50 years experience in design and construction, Dr. Karp specializes in soil-structure interaction and resistance to lateral forces with applications to foundations for buildings and other structures including all types of ground support systems, deep foundations and retained excavations, bulkheads, tiebacks, anchors, underpinning and shoring, CEQA and environmental analyses, controlled grading and slope stabilization including repair of ground failures and landslides, investigation of causation and remediation of subsidence and foundation failures, seismic upgrades of foundations for buildings and other structures, reinforced and prestressed and marine concrete technology, determination of defects in construction and building materials, stability evaluation of excavations, bracing, slopes, earthwork, groundwater hydrology, demolition and construction logistics, and coastal engineering."

The undersigned has a professional claim and complaint free history, and maintains, subject to continuing availability, a $1M policy of professional liability insurance.

Yours truly,

Lawrence B. Karp

REGISTERED PROFESSIONAL ENGINEER
LAWRENCE B. KARP
No. 452
GEOTECHNICAL
STATE OF CALIFORNIA

100 TRES MESAS, ORINDA CA 94563 (415) 860-0791 fax: (925) 253-0101 e-mail: lbk@berkeley.edu

m | r | wolfe
& associates, p.c.
attorneys-at-law

MEMORANDUM

August 2, 2023

To: Belvedere City Council

From: M. R. Wolfe & Associates, P.C.
on behalf of Belvedere Residents for Intelligent Growth (BRIG)

cc: Members of the Planning Commission
Robert Zadnik, City Manager
Rebecca Marwick, Director of Planning & Building
Andrew Shen, City Attorney

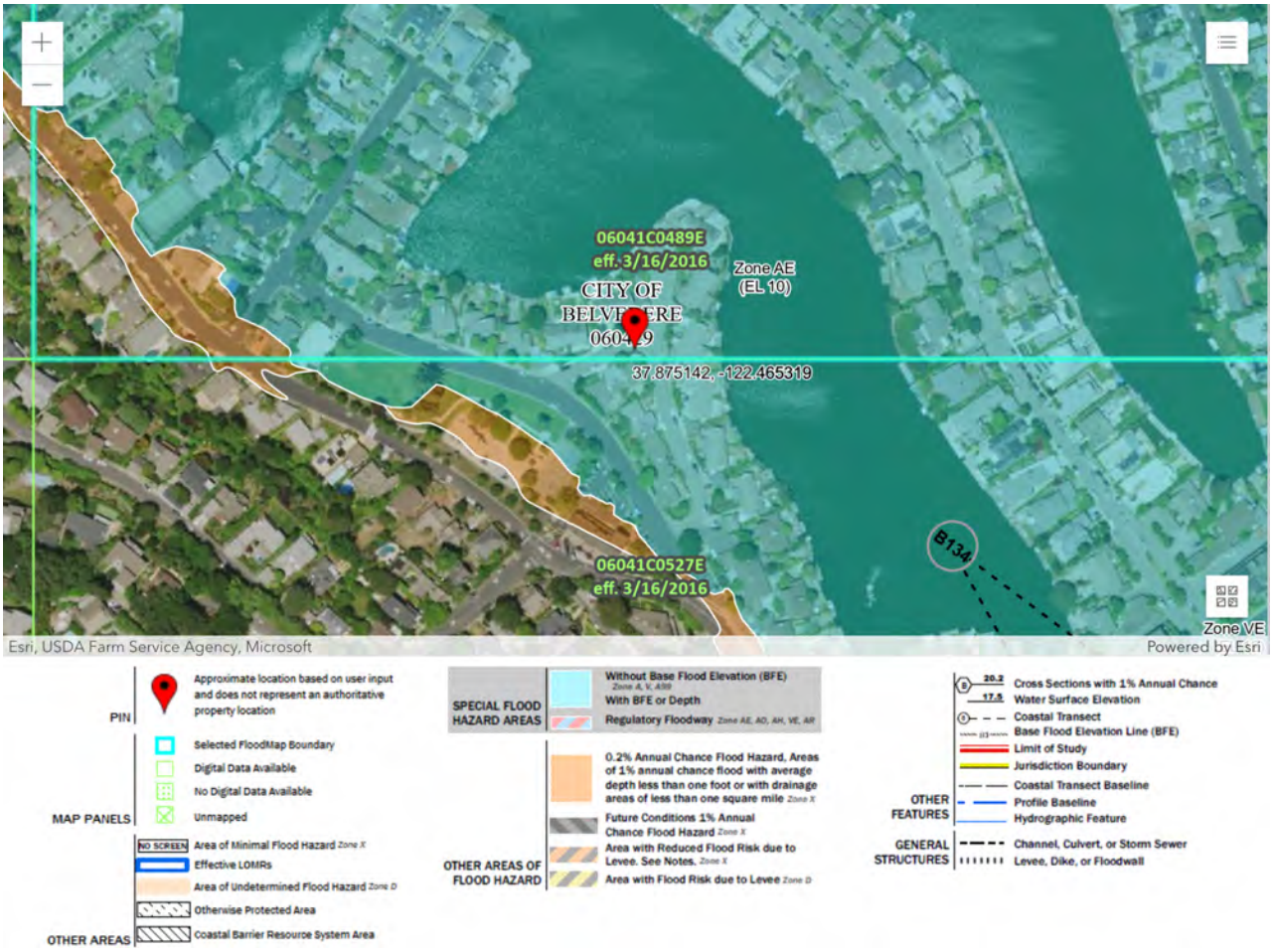
Re: Mallard Pointe Project – Updated Preliminary Geotechnical Investigation and Floodplain Management Requirements

In a memorandum to you dated June 16, 2023, BRIG addressed the Mallard Pointe Project applicant's October, 2022 "Updated Geotechnical Investigation" ("Updated Report"), explaining that it had not addressed concerns BRIG and its geotechnical engineering expert, Lawrence Karp, PhD, had raised in April, 2022 with respect to the original Report, and underscoring that the Project does not qualify for any exemption from environmental review under CEQA. Dr. Karp has since had the opportunity to review the Updated Report and has drafted the attached letter responding to it.

In his letter, Dr. Karp confirms that, like its predecessor, the Updated Report does not address the site's unusual circumstances, which arise from its composition of bay mud and dredged/fill material, or acknowledge that construction of the apartment building will require driven or cased piles driven deep into bedrock, or other environmentally impactful engineered measures that will be necessary to prevent uneven settling of the long, narrow structure, and to comply with floodplain management requirements.

Indeed, further evidence of unusual circumstances giving rise to significant impacts relating to noise, geology and soils, and hydrology, and further corroborating Dr. Karp's opinion, arises from the fact that the site is within a FEMA-designated Special Flood Hazard Area ("SFHA"). According to FEMA's National Flood

Insurance Rate Map ("FIRM"), which the City of Belvedere has incorporated by reference for flood hazard delineation within its boundaries,[1] the site sits squarely within a SFHA Zone AE, with a Base Flood Elevation of 10 feet. (*See* diagram excerpted from the FIRM, below.) This means the Project site is subject to the 100-year flood occurrence at an elevation of 10 feet above sea level.



Because it is situated within an AE Zone, the site is subject to FEMA regulations and guidelines governing new construction of multi-family residential structures in such zones. (*See* FEMA, National Flood Insurance Program, Mitigation

---

[1] *See* Belvedere Municipal Code ("BMC"), Ch. 16.20.010, Flood Plain Management, and sec. 16.20.110 ("The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) dated March 16, 2016, and accompanying Flood Insurance Rate Maps (FIRMs) dated March 16, 2016, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this Chapter.")

Measures for Multi-Family Buildings (FEMA P-2037, Oct. 2019);[2] Home Builder's Guide to Coastal Construction (FEMA P-499, Dec. 2010).)[3] For two- to four-story structures such as the apartment building proposed at Mallard Pointe, the regulations prohibit below-grade parking garages, while also highly recommending use of "deeply embedded" pile or column foundations instead of solid wall, slab, or other forms of shallow foundation.

We note that BMC section 16.20.200 requires the Mallard Pointe developer to apply for and obtain a floodplain development permit before any construction can begin within the SFHA. An application for such a permit must provide detailed information showing structural elevations in relation to the base flood, describing floodproofing measures, and documenting construction methods and practices capable of achieving floodplain construction standards. (BMC § 16.20.300.) BRIG is not aware that any floodplain development permit application, or the required supporting information, has been submitted for Mallard Pointe. Meanwhile, nothing in the Updated Report or any of the developer's other technical submittals documents how the long, narrow apartment building can be safely constructed in a SFHA, on soils comprising fill and bay mud, without deeply embedded piles and/or other environmentally damaging measures.

BRIG submits that under these unusual circumstances it would be irresponsible for the City to allow the Project to evade environmental review by finding it categorically exempt from CEQA.

Thank you for your consideration of these additional comments.

MRW:
Attachment

[2] https://content.govdelivery.com/attachments/USDHSFEMA/2020/06/24/file_attachments/1481529/16-J-0218_Multi-FamilyGuidance_06222020.pdf

[3] https://www.fema.gov/sites/default/files/2020-08/fema499_2010_edition.pdf

ATTACHMENT

LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

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COASTAL & MARINE STRUCTURES

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

July 31, 2023

Mark R. Wolfe, Esq.
580 California Street, Suite 1200
San Francisco, CA 94104 USPS & <mrw@mrwolfeassociates.com>

Subject: Proposed Mallard Pointe Development, Belvedere
Significant Environmental Impacts Not Identified - EIR Required

Dear Mr. Wolfe:

As I wrote on 4/16/22, geotechnical engineering is a specialty field within civil engineering; "geotechnical" is a collective term for "soil mechanics and foundation" engineering adopted by California in 1986 which expertise was entirely missing from the 1/18/22 report by Miller Pacific and is still missing from their newest revision (10/19/22) which is still prefaced with the protective disclaimers "document is for the sole use of the client and consultants on this project" and "No other use is authorized". Both first and second "Preliminary" reports are specious and were submitted to the City by the developer of the subject project in attempts to gain advantage by circumventing important safeguards provided by the California Environmental Quality Act.

The revised Miller Pacific report still does nothing to show why demolition of residences and construction of the apartment house will not have very significant adverse effects upon the environment and does nothing to explain the unusual circumstances of the project's environment that construction of will cause environmental damage. Dredged, filled, and flooded marshland between Belvedere Island and the Tiburon peninsula opened in 1955 without any environment oversight or modern engineering. The revised report has minor changes in text along with a significant but poorly conceived addition that the site for the apartments would be excavated for parking partly below grade so the weight of the excavated soil will be replaced by the building thereby eliminating the need to foundation piles. And this theory (known as "compensation") was blindly advanced without consideration that excavation and building do not occur simultaneously, and not insignificantly that there is no analytical exploration of soil and water conditions at the building's location. There is no understanding of shoring that requires pile driving, excavation relieves stress on subgrade so there will be rebound and basal heave, construction requires dewatering which will increase effective stress on subgrade, spoil disposal requires extensive trucking which alone is an environmental problem, and there will be future adverse effects on the neighboring properties and with the future apartments as noted below.

Projects for multi-family residential use on reclaimed land in the locally sensitive and seismically active marine environment of San Francisco Bay have been proven to be environmentally problematical; typical examples are developments where long narrow buildings have experienced distress due to ground movements causing unacceptable differential settlements and deflections resulting in unrepairable damages. The planned apartment building is roughly 270 feet long with the southern 200 foot length 60 feet wide and the northern 70 foot length 90 feet wide. If the structure is rigid the configuration is unbalanced resulting in center of mass eccentricity; if not rigid the differential settlements on the north end will exceed the south end. The only solution is driven or cased piles to bedrock which will also be very damaging to the environment.

Lawrence B. Karp

LICENSED ARCHITECT LAWRENCE B. KARP No. 10130 STATE OF CALIFORNIA
REGISTERED PROFESSIONAL ENGINEER LAWRENCE B. KARP No. 25389 CIVIL STATE OF CALIFORNIA
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