

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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September 29, 2023

Robert Zadnik, City Manager
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920

Dear Robert Zadnik:

RE: Mallard Pointe Project – Letter of Technical Assistance

The California Department of Housing and Community Development (HCD) is aware that the City of Belvedere (City) is reviewing an application for a 40-unit housing development project located at 1-22 Mallard Road (Project). The application was submitted by Thomas Dorfman Partners (Applicant). The purpose of this letter is to 1. Request that the City schedule a public hearing for review of the Project, and 2. Provide technical assistance regarding implementation of State Density Bonus Law (SDBL) (Gov. Code, § 65915), Permit Streamlining Act (PSA) (Chapter 4.5, Gov. Code, §§ 65920-65964.5), the Housing Accountability Act (HAA) (Gov. Code, § 65589.5), and State Housing Element Law (Gov. Code, § 65580-65589.11).

Background

HCD understands that the Project proposes to replace 22 existing units consisting of 9 duplexes and 1 fourplex with 40 new units including 6 single-family homes, 10 duplexes, 1 accessory dwelling unit (ADU), and 23 multi-family residential units in an apartment building. The proposed apartment building includes one very low-income unit and three low-income units. The application includes requests for development standard waivers and incentives/concessions pursuant to SDBL. Additionally, the Project site has a General Plan land use designation of Medium Density Multi-Family Residential (MFR) and a zoning designation of R-2, Duplex Residential Zone.

On June 18, 2021, the Applicant submitted a preliminary application pursuant to Government Code section 65941.1. The Applicant resubmitted the preliminary application with additional information requested by the City and vested on August 6, 2021. On January 26, 2022, within the 180-day timeframe outlined in statute (Gov. Code, § 65941.1, subd. (d)), the Applicant submitted a full application. The City determined the full application to be incomplete, and the Applicant submitted a revised application that was deemed complete by the City on June 23, 2022. As required by the HAA, the City issued a written notification of inconsistency for the Project within 30 days of the application being deemed complete (Gov. Code, § 65589.5, subd. (j)(2)).

To date, HCD has had two calls with the City to discuss the Project on February 2, 2023, and June 23, 2023. Conversations with the City have not resulted in a credible explanation of the delay in scheduling a public hearing given the Project application was deemed complete over a year ago. It appears that there are still several items cited in the inconsistency letter that remain unresolved. HCD also received the City's Draft 6th Cycle Housing Element on January 31, 2023 and HCD issued a letter on May 1, 2023 identifying revisions that will be necessary to comply with State Housing Element Law.¹ The Project site (Site 04B) has been identified in the Draft 6th Cycle Housing Element as part of the City's site inventory as a potential project to meet the City's Regional Housing Needs Allocation (RHNA).²

HCD provides the following technical assistance based on its understanding of the project components that require resolution in order for a public hearing to be scheduled including:

- Permissibility of multi-family residential uses, including apartments, in the R-2 zone.
- Concession request to allow an additional multi-family residential use in the R-2 Zone.
 - a. Excessive Justification
- Permit Streamlining Act deadlines including CEQA determinations.
 - a. CEQA Memo
- Identification of the Project site in the City's Draft 6th Cycle Housing Element Sites Inventory.

Permissibility of Apartments in the City's R-2 Zone

The City's written inconsistency findings noted the Project's inconsistency with the zoning code – specifically that apartment homes are a prohibited use in the R-2 zone pursuant to BMC 19.28.030. HCD has reviewed the City's General Plan, including the Land Use Element and Housing Element, as well as the Zoning Code (Title 19 of Belvedere's Municipal Code) and has determined there appears to be an inconsistency in land use in relation to this project. The Project vested on August 6, 2021. Therefore, per Government Code section 65589.5, subdivision (o)(1), the Project is subject to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted, which includes the 5th Cycle Housing Element. It appears the 5th Cycle Housing Element and Zoning Code are inconsistent because the 5th Cycle

¹ Please see California Housing and Community Development Department, "City of Belvedere's 6th Cycle (2023-2031)" letter dated May 1, 2023 for HCD's full review of the City's Draft Housing Element.

² City of Belvedere, 6th Cycle Housing Element Update (2023-2031), Public Draft, October 17, 2022, pg. D-15.

Housing Element permits multi-family uses, including apartments, in the R-2 zone while the Zoning Code prohibits the use of apartments in this zone.

Although the Land Use Element of the General Plan does not define multi-family or the uses permitted under the MFR land use designation, the proposed Project's apartment building is consistent with the definition of multi-family in the 5th Cycle Housing Element. The City's 5th Cycle Housing Element defines the R-2 zone as a "Two-Family (Duplex) Residential Zoning District" and the R-3 and R-3C zones as "Multi-Family Residential Zoning Districts."³ The 5th Cycle Housing Element also includes a section on multi-family rental housing which states, "Multi-family housing includes duplexes, apartments, condominiums, or townhomes. As of 2014, multi-family housing units constituted approximately 16 percent of Belvedere's housing stock. The Zoning Ordinance provides for multi-family developments by-right in the R-2 and R-3 Zoning Districts, and conditionally in the C-1 Zoning District as part of a mixed use building."⁴ Table 36 in the 5th Cycle Housing Element also outlines housing types by residential zoning districts. The table lists multi-family and duplexes as separate housing types that are both permitted in the R-2 zone.⁵ This language indicates that both duplexes and apartments are included in the definition of multi-family housing and permitted in the R-2 zone. However, the Project site's R-2 zoning designation prohibits the use of apartments which is inconsistent with the permitted uses in the 5th Cycle Housing Element.⁶

Please be aware the HAA provides that if the zoning standards and criteria are inconsistent with applicable, objective general plan standards, but the development project is consistent with the applicable objective general plan standards for the site, then the housing development project cannot be found inconsistent with the standards and criteria of the zoning. (Gov. Code, § 65589.5, subd. (j)(4)).

State Density Bonus Law (SDBL) Concession Request

Due to the inconsistency between the zoning code and general plan (see analysis, above), a concession is not necessary to allow for the use of apartments on the Project site. Therefore, the Applicant should not request a concession for this purpose nor should the City anticipate such a request.

³ City of Belvedere, Housing Element Update 2015-2023, pg. 46.

⁴ City of Belvedere, Housing Element Update 2015-2023, pg. 61.

⁵ "Table 36: Housing Types by Residential Zoning Districts," City of Belvedere, Housing Element Update 2015-2023, pg. 59.

⁶ Note that the Draft 6th Cycle Housing Element only lists duplexes as a permitted use in the R-2 zone. However, the Project vested as of July 18, 2021 pursuant to Government code section 65941.1 and so the 5th Cycle Housing Element is used for the purposes of determining any land use inconsistencies.

Permit Streamlining Act Deadlines

CEQA Determinations

Under Public Resources Code 21080.1 and 21080.2, “a lead agency shall be responsible for determining whether an environmental impact report, a negative declaration, or a mitigated negative declaration shall be required for any project which is subject to this division” and must make this determination within 30 days of a project application being deemed complete. These provisions are critical to meeting the Permit Streamlining Act requirement set in Government Code section 65950, subdivision (a) which require that a “a public agency that is the lead agency for a development project shall approve or disapprove the project” within the timelines listed for the applicable CEQA determination.

CEQA Investigation Memo

HCD understands that the City has not determined the appropriate CEQA treatment for the Project at this time. The Applicant has indicated that based on their assessment, the Project should qualify for a Class 32 “Infill” Categorical Exemption under CEQA Guideline Section 15332. It appears the City has requested additional environmental technical studies throughout the City’s review of the Project. HCD also understands that the City has contracted with an outside consultant, Ascent, to conduct a peer review of the technical studies and prepare a “CEQA Investigation Memo” (CEQA memo) to assist the City with determining whether the Project qualifies for a CEQA exemption or if different CEQA treatment is needed. It is HCD’s understanding that once the CEQA memo is completed, the City will schedule a public hearing with the Planning Commission to assess the appropriate CEQA treatment for the Project.

While HCD understands the City is still exploring the appropriate CEQA treatment for the Project, please note that these provisions are intended to generally facilitate the timely processing of housing development applications. HCD is concerned that the extensive peer review of the technical studies and delay in the completion of the CEQA memo may be creating a constraint to the processing of the Project application, making it increasingly difficult to achieve the development of the site as identified in the City’s Draft 6th Cycle Housing Element.

Separately, please note that HCD issued its review of the City’s Draft 6th Cycle Housing Element in a letter dated May 1, 2023. The letter discusses the need for more detail on the City’s permitting and processing procedures “including timing, typical approval findings, and typical number of hearings.”⁷

6th Cycle Housing Element Sites Inventory Feasibility

⁷ California Housing and Community Development Department, “City of Belvedere’s 6th Cycle (2023-2031)” letter dated May 1, 2023, pg. 8.

HCD received the City's Draft 6th Cycle Housing Element on January 31, 2023 and issued a letter on May 1, 2023 identifying revisions that will be necessary to comply with State Housing Element Law. The City's Draft Housing Element dated October 17, 2022, shows the Project site listed under section "D.3 Sites Inventory" which identifies sites that are available and suitable for residential development from 2023-2031 in order to accommodate Belvedere's RHNA. The entry in the Draft 6th Cycle Housing Element's Site Inventory identifies the Project site as "Site 4B" and describes it as being able to accommodate the General Plan density of 5-20 dwelling units per acre, which would allow for 52 units on the site. It also notes 40 units total as the minimum number of housing units on site and references the Project application as under review.⁸ At 40 units, the proposed Project's density is less than the maximum allowable residential density of the site. The presence of this Project in the City's 6th Cycle Draft Housing Element, and its consistency with the applicable General Plan Land Use Designation density ranges, suggests that the City is prepared to permit the Project at the density proposed.

HCD's Draft 6th Cycle Housing Element Review letter states that the City's HAA consistency review determined that the Project is inconsistent with the zoning code because the R-2 zone prohibits apartments. However, HCD's comments note "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." Additionally, the letter notes that in relation to the City's progress in meeting the RHNA "The element should also discuss the progress of the application currently [under] review on Site 04B on Mallard Road (P. D-14)."⁹

Conclusion

HCD requests a response from the City regarding the points addressed in this letter within 30 days of the date of this letter. As the City is aware, the State of California remains in a housing crisis and the provision of much-needed housing, especially affordable housing, continues to be a priority of the highest order. The approval of this project would help meet this challenge and meaningfully advance the City in its goal to achieve its 6th cycle RHNA targets. HCD strongly urges the City to schedule a public hearing for review of the Project.

⁸ City of Belvedere, 6th Cycle Housing Element Update (2023-2031), Public Draft, October 17, 2022, pgs. D-15; D-33.

⁹ California Housing and Community Development Department, "City of Belvedere's 6th Cycle (2023-2031)" letter dated May 1, 2023, pg. 3; 8.

HCD reminds the City that HCD has enforcement authority over the HAA, SDBL, State Housing Element Law, among other state housing laws. Accordingly, HCD may review local government actions and inactions to determine consistency with these laws. If HCD finds that a local government's actions do not comply with state law, HCD may notify the California Office of the Attorney General that the local government is in violation of state law. (Gov. Code, § 65585, subd. (j).) HCD recognizes the challenge of interpreting ever-changing housing and land use laws and appreciates the opportunity to provide technical assistance. If you have questions or need information, please contact Deepeeka Dhaliwal of our staff at Deepeeka.Dhaliwal@hcd.ca.gov.

Sincerely,

A handwritten signature in black ink that reads "Shannan West". The signature is written in a cursive, flowing style.

Shannan West
Housing Accountability Unit Chief

cc: Rebecca Markwick, Director of Planning & Building, City of Belvedere
Tricia Stevens, Contract Planner