



City of Belvedere
City Council Meeting
Monday, January 22, 2024

To: Mayor and City Council

From: Rebecca Markwick, Planning and Building Director

Reviewed by: Robert Zadnik, City Manager
Andrew Shen, City Attorney
Barbara Kautz, Special Counsel

Subject: **Item No.5.A. – Appeal of a Planning Commission decision made on November 14, 2023 denying CEQA Class 32 Categorical Exemption for the Project located at 1-22 Mallard Road.**
Appellant: Mallard Pointe 1951, LLC (represented by Riley Hurd III)

Item Description

1. That Councilmember Kemnitzer state for the record that her residence is within 500 feet of the subject property and therefore she must recuse herself from this item.
2. That the City Council (“Council”) conduct the public hearing and determine whether or not the project qualifies for the Class 32 infill exemption under the California Environmental Quality Act (“CEQA”), Cal. Public Resources Code §§ 21000 et seq.

Background

The issue on appeal is whether the proposed project at 1-22 Mallard Road (“Project”) is eligible for a Class 32 infill exemption under CEQA.

Other issues relating to the Project, including the Housing Accountability Act, State Density Bonus Law, potential conditions of approval, and design review under the Belvedere Municipal Code, are not before the Council in this appeal. The Planning Commission did consider many of these issues at its November 14, 2023, hearing. But the decision made at this Planning Commission hearing addressed only the Project’s eligibility for CEQA’s Class 32 infill exemption.

CEQA requires government agencies to examine potential environmental impacts when those agencies make a discretionary decision regarding a proposed project. Under CEQA, a government agency must review potential environmental impacts *before* any approval of the proposed project. Thus, the Planning Commission properly considered the Project’s eligibility for the Class 32 infill exemption before any of the required project approvals. After determining the Project was ineligible, the Planning Commission continued those substantive approvals, and they remain pending while this appeal proceeds.

Under CEQA, the amount of required environmental review turns on the scope of the potential environmental impacts and specific statutory provisions and regulations that may exempt projects from further environmental review.

Given the potentially broad reach of CEQA – that is, to any project subject to discretionary approval that may have an environmental impact – California law has established a number of exemptions. These exemptions are part of CEQA by design. The California Secretary of Resources has established 33 "categorical exemptions" for projects that it has determined not to have a significant effect on the environment and are thus be categorically exempt from further review.¹ CEQA requires that public agencies first determine whether a project qualifies for an exemption before proceeding with further environmental review.

If a project is not eligible for an exemption, a government agency must conduct an Initial Study to review the project's effects on the environment. The agency may determine that the project would not have any significant impacts and could then, consistent with CEQA, issue a Negative Declaration. Alternatively, an agency could determine that a project's environmental impacts would be less than significant if mitigation measures are adopted and in that instance, the agency may issue a Mitigated Negative Declaration ("MND"). If there is substantial evidence of a fair argument that the project may have significant impacts, despite the inclusion of mitigation measures, the agency must prepare an Environmental Impact Report ("EIR") that provides a fuller analysis, as well as mitigation measures to address significant environmental impacts.

With respect to its CEQA obligations, the Project sponsor, Mallard Pointe 1951, LLC, has asserted that the Project is eligible for one of those 33 categorical exemptions – the Class 32 exemption for "Infill Development Projects" (CEQA Guidelines Section 15332).² Under CEQA Guidelines Section 15332, to be eligible for the Class 32 infill exemption, a project must meet five criteria:

1. 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.
2. The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.
3. The project site has no value as habitat for endangered, rare, or threatened species.
4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
5. The site can be adequately served by all required utilities and public services.

In addition, a project does not qualify for the infill exemption if:

1. The cumulative impact of successive projects of the same type in the same place, over time is significant,
2. There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
3. The project may result in damage to scenic resources within a highway officially designated as a state scenic highway;
4. The project is located on a site which is included on any list compiled pursuant to Government Code Section 65962.5 (hazardous waste sites); or

¹ In addition to these categorical exemptions adopted by the California Natural Resources Agency, the Legislature has created another set of CEQA exemptions referred to as "statutory exemptions."

² The California Natural Resources Agency's CEQA regulations are referred to as the "CEQA Guidelines."

5. The project may cause a substantial adverse change in the significance of a historical resource.

(CEQA Guidelines Section 15300.2.)

On November 14, 2023, the [Planning Commission](#) considered the Project's applications for Design Review, Demolition Permit, Tentative Subdivision Map, and Revocable License approval. The Project is further discussed and described in the attached Planning Commission staff report (**Attachment 1**). The Planning Commission heard presentations from staff, the Project sponsor, and their attorneys and consultants. The public hearing was opened, and there were numerous residents who spoke about the Project (**Attachment 2, Draft Minutes**).

The staff recommended approval of the Project and that the Planning Commission find that the project is eligible for the Class 32 infill exemption. The staff recommendation for approval of the exemption was based primarily on an analysis of 13 reports submitted by the applicants and their consultants, an analysis of General Plan and zoning consistency prepared by staff, and a peer review and analysis of those reports as prepared by Ascent Environmental (**Attachment 3**). During its peer review, Ascent requested numerous changes and clarifications in the applicant's reports. The reports are listed on page 1 of the Ascent memo and include a biological site assessment, preliminary geotechnical investigation, stormwater control plan, drainage strategy, construction noise impacts study, and transportation study.

After the public hearing, the Planning Commissioners first discussed the Class 32 categorical exemption. They then approved a motion finding that the Project is ineligible for the Class 32 infill exemption, for the reasons stated by the Commissioners (7-0). While the Commissioners did express slightly varying positions, they generally agreed that the Project did not qualify for the Class 32 exemption because:

- the site is not substantially surrounded by urban uses;
- the analysis of potential effects on water quality did not adequately consider the failing bulkheads and potential soil erosion during construction; and
- the project presents unusual circumstances, in that it has a shoreline of nearly 900 feet next to the Belvedere Lagoon, is located in a flood zone and on Bay mud susceptible to liquefaction and settlement, with failing bulkheads, and that substantial evidence had been presented that these unusual circumstances may cause sedimentation into the Lagoon and have a significant effect on water quality and Lagoon habitat.

The Planning Commission continued the remaining items pending completion of environmental review.

Appeal of Planning Commission Decision

Pursuant to Belvedere Municipal Code section 20.04.070, any interested person or applicant may file an appeal with the City Council from any denial, approval or conditional approval of any

application by the Planning Commission. Said appeal shall be in writing and shall be filed with the City Clerk not later than the 10 calendar days after the Planning Commission's action.

On November 27, 2023, Mr. Bruce Dorfman, on behalf of 1951 Mallard Pointe 1951, LLC, filed a timely appeal from the Planning Commission's November 14, 2023,³ decision (**Attachment 4**). Thereafter, on December 19, 2023, Riley Hurd III, the Project sponsor's legal representative, provided a further explanation of appellant's arguments (**Attachment 5**).

Mr. Dorfman's notice and Mr. Hurd's further correspondence lists the same six bases for this appeal:

1. The Project is exempt from CEQA pursuant to the Infill Exemption.
2. The Planning Commission decision to deny the exemption was not supported by evidence in the record, was based on misstatements of facts and law, and was contrary to the findings of every objective, third-party, professional hired by the City to evaluate the issue.
3. The man-made Belvedere Lagoon is an "urban use" pursuant to case law and codes.
4. The adjacency of the Lagoon does not constitute an "unusual circumstance."
5. The amount of analysis conducted to verify the Project qualified for the exemption is unprecedented and confirmed there were no significant environmental impacts, including impacts to water quality.
6. The City has committed to the development of the Project in the updated Housing Element and describes the area around the Lagoon as "well-suited for additional density."

For the purposes of this report, staff focuses on issues 3-5:

- whether the Belvedere Lagoon is an "urban use";
- whether the adjacency of the Belvedere Lagoon constitutes an "unusual circumstance"; and
- impacts on water quality.

Issue 1 above states the desired outcome rather presenting a separate factual or legal issue for the Council to consider. Issue 2 expresses appellant's general disagreements with the Planning Commission's decision, and we will address those disagreements in the context of issues 3-5.

With respect to Issue 6, staff notes the Planning Commission's decision on November 14, 2023, does not preclude the Project from going forward. Rather, the Planning Commission's decision, and the City Council's decision on this appeal, only addresses the Project's eligibility for the Class 32 infill exemption. As noted by some of the Planning Commissioners themselves at the November 14 hearing, the City understands – as demonstrated by the housing element – that Mallard Pointe is an appropriate site for housing development. But that does not obviate the need to carefully consider the appropriate level of environmental review.

Legal Standards

Whether a project qualifies for a categorical exemption must be supported by substantial evidence that the project meets each of the criteria. The courts will affirm the necessary factual determinations so long as they are supported by substantial evidence. The courts do not weigh

³ Because the meeting extended into November 15, 2023, when the Commission took its action, the appeal period expired on November 27.

conflicting evidence in determining whether substantial evidence has been provided. (See, e.g., *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 960-961.) However, as the factfinder, the City may weigh conflicting evidence in reaching its conclusions and making its findings. (*Id.* at 960 (citing *Western States Petroleum Ass'n v. Superior Court* (1995) 9 Cal.4th 559, 576.))

“Substantial evidence” is defined in the CEQA Guidelines as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached...Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (CEQA Guidelines Section 15384.) If facts and other substantial evidence support the conclusions, the courts will not review conflicting evidence that may contradict those conclusions. “Substantial evidence” does not include argument, speculation, unsubstantiated opinion, or evidence that is clearly erroneous or inaccurate. It must be “reasonable in nature, credible, and of solid value.” (*Id.* (citation omitted).)

However, if a court is interpreting the scope of a categorical exemption, the court will review this as a question of law, subject to de novo review. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817.)

Given the issues in this appeal, the basis for denial of the categorical exemption must be one of the following:

1. The Project is not within the scope of the infill exemption;
2. The evidence supporting the infill exemption is not substantial, or there is substantial evidence that one or more requirements have not been met; or
3. There is substantial evidence that: (a) the Project is unusual because it has some feature that distinguishes it from others eligible for the exemption, such as size or location; and (2) there is a reasonable possibility of a significant effect due to the unusual circumstance.

Analysis

The Planning Commission’s determination that the project was not eligible for the Class 32 exemption was largely based on three dispositive issues. The Council may deny the appeal if it agrees with the Planning Commission’s decision on any of the following:

1. The Planning Commission concluded that the project was not within the scope of the Class 32 exemption because the site is not substantially surrounded by “urban uses,” in that the Belvedere Lagoon is not an “urban use.”
2. The Planning Commission concluded that substantial evidence had been presented that there may be a significant impact on water quality due to failing bulkheads and soil erosion during construction.
3. The Planning Commission also concluded that there were unusual circumstances applicable to the site, in particular the shoreline of nearly 900 feet adjacent to the Lagoon and the deteriorating bulkheads, and that extensive testimony had been presented that, because of this unusual circumstance, the project may have a significant environmental impact on water quality and habitat by causing sedimentation into the Lagoon.

These conclusions have been challenged by the appellant, as discussed below.

In considering this appeal, the Council is not required to defer to the Planning Commission's factual or legal determinations. In other words, the Council may engage in a "de novo" review of the Planning Commission's decision with respect to the infill exemption and associated criteria.

Discussion of Issues

1. Is the Belvedere Lagoon an "Urban Use"?

The second required criterion for the infill exemption is that the Project site consists "of no more than five acres" and that the site is "substantially surrounded by urban uses." There is no dispute the Project is less than five acres in site and that it is "substantially surrounded" by residential and public uses (such as City Hall and Belvedere Park) to the west and south of the Mallard Road. But approximately 900 feet of the project's boundary, representing approximately 57 percent of the project boundary, fronts the Belvedere Lagoon. Because the project must be "substantially surrounded" by urban uses to qualify for the categorical exemption, the issue is whether the Belvedere Lagoon – which constitutes over half the boundary of the site – is an "urban use."

a. Standard of review.

Whether the Belvedere Lagoon is an "urban use" is a question of "scope," since the Project must be "substantially surrounded" by urban uses to qualify for the infill exemption in the first instance. There are no substantial disagreements about the facts. Thus, if a court were to review City's determination on this issue, it would be subject to "de novo" review.

b. Arguments in favor of finding that the Belvedere Lagoon is an urban use.

The appellant presents case law and evidence, largely based on the City's General Plan, that the Belvedere Lagoon is an urban use because it (1) is located in the middle of the City and thus surrounded by populated areas, and (2) is a man-made feature used for private recreation.

The appeal argues, citing *Banker's Hill, Hillcrest Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249 and *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, that any use "surrounded by populated areas" is an urban use. And since the Belvedere Lagoon is surrounded by residences and other developed areas, that compels the conclusion that the Lagoon is an urban use.

The appeal additionally argues, citing *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, that the Belvedere Lagoon is an urban use because it is not a "natural environment." (Note that this *Bankers Hill* case does not address CEQA or the infill exemption's requirement regarding "urban uses." It instead analyzed whether a proposed project was consistent with a city's general plan policy.)

- "The City is urbanized, and does not contain large expanses of open space that could be utilized by specific status plant and wildlife species. . . . Belvedere Lagoon is considered low-quality habitat for biological resources." (General Plan, Page 93.)
- "Recreation areas in Belvedere include . . . Belvedere Lagoon." (General Plan, Page 109.)

- “In addition to the public park facilities and the public schools, Belvedere is home to three other recreation facilities: the San Francisco Yacht Club, the Belvedere Lagoon, and the Corinthian Yacht Club. These are private facilities and require membership for access and use.” (General Plan, Page 112.)
- “Native soils were excavated from the [Belvedere] lagoon areas, and placed as fills to form elevated streets and building pads.” (General Plan, Page 157.)

Quite obviously, these selected statements from the City’s General Plan were not intended to be conclusions about whether the Belvedere Lagoon is an “urban use,” especially for the purposes of CEQA. But these are relevant data points addressing the Belvedere Lagoon’s suitability as wildlife habitat, its recreational uses, and how it was first constructed.

The memorandum prepared by Ascent Environmental presented arguments in favor of and against classifying the Belvedere Lagoon as an “urban use.” In favor of this classification, the memorandum stated:

The Lagoon is maintained and operated as a human-made recreational water feature, including periodic dredging and application of algicides. Its entire bank is developed with structures, roads, and other infrastructure. Despite its historic origins as a piece of the Bay, the Lagoon has functioned for over 70 years as a human-made urban recreational water feature.

c. Arguments against finding that the Belvedere Lagoon is an urban use.

That same memorandum from Ascent Environmental presented arguments against classifying the Belvedere Lagoon as an urban use:

On the other hand, the definition of “qualified urban uses” in CEQA includes only “any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.” (Public Resources Code Section 21072.) The Belvedere Lagoon is not a public facility, includes none of the listed uses, and so is not a “qualified urban use.” ‘Substantially surrounded’ is defined in the CEQA Guidelines to mean that 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. (Guidelines Section 21159.25(a)(2).) The Belvedere Lagoon occupies more than 25 percent of the perimeter of the site. The Lagoon is also considered to be a lake under the jurisdiction of the US Army Corps of Engineers, Regional Water Quality Control Board, and other state agencies.

In advance of the Planning Commission’s hearing, Belvedere Residents for Intelligent Growth (“BRIG”) submitted correspondence in support of this position. In its November 13, 2023, letter, BRIG’s representative, Mark Wolfe, concurred with the statement above and added:

Although engineered by humans over decades for flood protection and water quality preservation, the Lagoon originated as an arm of San Francisco Bay . . . and to this day remains a “water of the United States” subject to the regulatory jurisdiction of the U.S. Army Corps of Engineers and Regional Water Quality Control Board pursuant, respectively, to the federal Clean Water Act and the State Porter-Cologne Water Quality Control Act.

As support for these statements, Mr. Wolfe’s letter also included a historical photo of the Lagoon area showing its origin as a connection to the Bay (see Attachment 6). At the November 14, 2023, Planning Commission hearing, Mr. Wolfe reiterated these points. At the hearing, Wendy Manley, appearing on behalf of the Belvedere Lagoon Property Owners Association (“BLPOA”) stated that the organization agreed with BRIG regarding this issue.

Several Planning Commissioners explicitly addressed the issue of “urban use.” Commissioner Kevin Burke succinctly summarized these views in concluding that Belvedere Lagoon is a lake connected to the Bay, contains an ecosystem, and is unlike the open space considered in the *Banker’s Hill* case.

d. Further staff analysis.

The issue of what constitutes an “urban use” in this context has not been clearly determined by either the CEQA Guidelines or a court. Given this uncertainty, staff recommended to the Planning Commission that the Lagoon be considered an “urban use” because it is a human-made urban recreational water feature, but recognized that the issue is unresolved.

There is little disagreement about the facts regarding the location of the Lagoon and its creation and current uses, only whether it meets the definition of an “urban use.” The Ascent memo contains an extensive discussion of this issue without reaching a conclusion. There is no definition in the Class 32 exemption of “urban uses,” nor what is meant by “substantially surrounded,” nor any reference to other definitions in the CEQA Guidelines.

In the only case to consider the definition of “urban uses,” the Court of Appeal considered an urban use to be “characteristic of a city or a densely populated area.” The Court characterized Balboa Park in the City of San Diego to be a “quintessential urban park, heavily landscaped, surrounded by a densely populated area, and containing urban amenities such as museums, theaters, and restaurants,” and concluded it constituted an urban use. (*Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 272.)⁴ Here, while the Lagoon is surrounded by developed properties, was man-made, and is used for recreation by homeowners, it is not landscaped, does not contain urban amenities, is considered a “lake” and wetland regulated by the Regional Water Quality Control Board, and may require permits from the Army Corps of Engineers and Department of Fish and Wildlife.

Given the absence of binding legal authority, the Council may deny or approve the appeal on this issue based on the arguments above, or other arguments it wishes to advance at the appeal hearing. As we noted, any court reviewing this decision will likely exercise “de novo” review over this question and the City’s determination would not receive any deference in a legal challenge.

2. Potential Impacts on Water Quality

The water quality issues addressed in the prior hearing concerned potential water quality impacts that would occur during construction of the Project and after the Project’s completion.

a. Standard of Review.

To qualify for the infill exemption, the project applicant must provide substantial evidence that the Project would not have a substantial impact on water quality. The City, however, may weigh substantial conflicting evidence in determining whether the Project will have impacts on water quality.

b. Substantial evidence that there would be no significant impacts on water quality.

In this appeal, the Project sponsor states that:

⁴ The appeal discusses another Banker’s Hill case regarding the definition of “natural environment,” but, as noted previously, this is different from the definition of an “urban use” and did not include an analysis of the infill exemption.

- During construction, both regulatory agencies and the City would establish erosion control measures that would limit any silt that would flow into the lagoon.
- After the project is completed, it would reduce the amount of impervious surface on the site and improve the quality of any stormwater flowing into the Belvedere Lagoon.

This position is consistent with the conclusions set forth in the Ascent Environmental memorandum (pp. 12-13):

Water Quality. As discussed in Section 1.4.4, “Hydrology and Water Quality,” the project would reduce the amount of impervious surface on the site and would install bioretention basins to reduce the amount of runoff into the Belvedere Lagoon during storms. All runoff must also be treated through filtered bioswales. Because runoff from the site in the existing condition is entirely untreated and uncontrolled, this would improve the quality of stormwater flowing into the Lagoon. In addition, standard erosion control measures are required to avoid water quality impacts during construction.

Any maintenance, replacement, removal, or construction of docks or repair of the bulkheads in the Lagoon will require authorization from the Regional Water Quality Control Board (RWQCB) and may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. The General Requirements for Construction and Maintenance of Overwater Structures (Order No. R2-2018-0009) adopted by the RWQCB contain standard requirements that must be met to ensure that no water quality impacts are caused by dock construction.

The further discussion of these issues can be found on pages 19-20 of the memorandum. This section notes additionally that the project is required to comply with numerous requirements during construction to insure that erosion into the Lagoon does not occur, including California Construction General Permit Order 2022-0057-DWQ, which requires preparation of a Stormwater Pollution Prevention Plan utilizing Best Management Practices (BMPs). In the proposed conditions of approval presented to the Planning Commission, City Public Works staff attached additional standard conditions related to soil erosion.

In support of these conclusions, reports prepared by experts were provided as appendices to Ascent Environmental’s memorandum:

- Appendix G (geotechnical report dealing with erosion and other soils issues, submitted by Miller Pacific Engineering Group)
- Appendix J (stormwater control plan, submitted by BKF Engineers)
- Appendix K (preliminary drainage study, submitted by BKF Engineers)

The stormwater control plan and preliminary drainage study address potential water quality impacts after the project is completed. The geotechnical report includes recommendations to prevent erosion similar to those referenced in the Ascent memo.

In response to concerns about potentially vulnerable bulkheads, Miller Pacific completed a visual inspection of the existing bulkhead conditions (**Appendix B** to the geotechnical report). In that evaluation, Miller Pacific stated that no new fill will be placed on the site during development and no new loading will be imposed on the existing bulkheads. As a consequence, Miller Pacific opined that “it does not appear that a global repair is warranted or needed for the existing timber bulkheads” and “recommend[ed] repair of the exposed bulkheads on an as-needed basis.” Mr. Hurd’s letter states that any bulkhead replacement would be subject to

RWQCB permits and requirements set by the Army Corps of Engineers or California Department of Fish & Game. This argument is consistent with the conclusions set forth in the Ascent Environmental memorandum.

c. Evidence that there may be significant impacts on water quality.

In a letter dated July 17, 2023 the BLPOA focused on the potential water quality issues that may arise during construction and afterwards (**see Attachment 7**).

In particular, the BLPOA's letter focused on the impact of sediment during construction due to potentially failing bulkheads:

Slumping evident along the shoreline of the site and the aged condition of the bulkhead indicate fill material, below water as well as above, will be prone to sloughing off or collapsing into the Lagoon during site Construction Activities. Visual inspection of the bulkhead along the roughly 920 linear feet of Project shoreline shows that the entire area is already showing signs of slumping and bulkhead failure, which will be unable to withstand the high impact and stress load from the Construction Activities.

Further, even if the Project addresses the bulkheads themselves, the BLPOA letter stated:

Bulkhead work undertaken as a final phase of site construction, as proposed, causes great concern because of the likelihood of damage to or even failure of the existing bulkhead during construction. If the bulkhead is not replaced first, heavy equipment use during demolition, grading and pile-driving may damage or cause the collapse of weak or unstable portions of the existing bulkhead, potentially resulting in a substantial release of sediment to the Lagoon, reducing its capacity and degrading water quality...

Settlement and slumping of the existing bulkhead indicate not only that its structural integrity is compromised (probably along its full length), but that it does not provide an effective barrier between the fill and the Lagoon. As a result, given that the bulkhead is the original construction dating from the 1950s, without any lateral support across its 920-foot length, and at a high risk of failure causing substantial damage, it should be replaced in its entirety.

The letter also expressed concern that additional fill could release additional sediment and stormwater quality after construction could be compromised. The letter did not include any engineering data regarding these and other issues.

d. Further staff analysis.

The Miller Pacific report states that additional fill will not be placed on the site and provides substantial evidence that the area occupied by impervious surfaces will be reduced and stormwater quality improved after construction is complete.

The primary appeal argument is related to the condition of the existing bulkheads, the potential need for full replacement, and potential environmental impacts regarding bulkhead replacement and potential failure during construction.

The City typically addresses bulkhead replacement at the time of building permit submittal. A component of a building permit application consists of a final geotechnical report prepared by an

engineer which recommends whether or not the bulkhead is required to be replaced. The final geotechnical report is routed to the City Engineer, who will peer review the determination made by the applicant's engineer. If the bulkheads are required to be replaced, the City will not issue a building permit until the plans have been approved by the Regional Water Quality Control Board (RWQCB) and, if required, the Army Corps of Engineers.

The Council may weigh the conflicting evidence regarding the potential impacts of the bulkheads' condition on water quality and determine whether substantial evidence has been submitted to support the conclusion that, given their condition, the Project will have no significant effects on water quality. If the Council concludes that the evidence is not substantial in support of this conclusion, then it may determine that the project is not eligible for the Class 32 infill exemption.

3. Unusual Circumstances

A categorical exemption like the Class 32 exemption cannot be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. During the Planning Commission hearing, the discussion of potential unusual circumstances focused on several factors that, in combination, may result in a significant environmental impact: the size of the Project (especially the size of the proposed apartment building), its location next to the Belvedere Lagoon with a shoreline of nearly 900 feet, the deteriorating bulkheads along the shoreline, the Project site's location on Bay fill and mud, and the site's location in a FEMA flood zone.

a. Standard of Review.

Under *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104-1107, the categorical exemption will not apply if:

1. There is substantial evidence that: (a) the Project is unusual because it has some feature that distinguishes it from others eligible for the exemption, such as size or location; and (2) there is a reasonable possibility of a significant effect due to the unusual circumstance. The environmental impacts may be considered only if some project circumstance is unusual; or
2. There is substantial evidence that the project *will* have a significant environmental impact.

b. Arguments that there are no unusual circumstances.

Both the appellant and the Ascent Environmental memorandum conclude that there are no unusual circumstances, because similar construction adjacent to the Lagoon involving sites with similar soils conditions, on sites similarly susceptible to flooding, is common in Belvedere and Tiburon.

Mr. Hurd's letter notes that Belvedere (and similar jurisdictions, such as Tiburon) routinely develop property on similar Bay fill and mud for residential use. At the hearing, Miller Pacific, reiterated that development on similar sites is common in Belvedere. The Ascent Environmental memorandum similarly observes:

- Most of the residences located on the Belvedere Lagoon are also located within a Special Flood Hazard Area as shown on FEMA’s Flood Maps. The site’s location within a FEMA-designated Special Flood Hazard Area is not unusual in Belvedere. In addition, location in a flood hazard area is considered an impact of the environment on the project, which is not an environmental impact under CEQA. (*Calif. Bldg. Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369.)
- “. . . the entire Belvedere Lagoon neighborhood, areas adjacent to San Rafael Avenue, and downtown Tiburon are all constructed on artificial fill, deposited on dredged, filled, and flooded marshland. Most residences in the Belvedere Lagoon have docks. The existing apartments in the City are all constructed on artificial fill. Construction on dredged, filled, and flooded marshland is not unusual in Belvedere. . . . [T]he effect of the fill and Bay mud on the apartment house is an impact of the environment on the project and is not an environmental impact under CEQA.

c. Arguments that there are unusual circumstances.

The Planning Commission heard substantial testimony regarding the unusual length of the property adjacent to the Lagoon and the deteriorating conditions of the bulkheads, and determined that these were unusual conditions affecting the property. The Commission also determined that this testimony, as discussed in the previous section, presented a fair argument that these unusual conditions may result in sedimentation into the Lagoon and a significant impact on water quality. Consequently, the Commission concluded that this presented another reason why the project did not qualify for the Class 32 infill exemption.

The BLPOA’s July 17, 2023 letter states that there are unusual circumstances for the following reasons:

The Project is unusual within the context of the Lagoon. First, other Lagoon projects are undertaken for individual homes, not multiple homes. There has not been a major residential project of this size since the original development in the 1950s. Second, most of the lots on the Lagoon typically border the Lagoon on only one of four sides.

BRIG’s November 13, 2023 correspondence also argues for a finding of unusual circumstances, but based on the opinion offered by Dr. Lawrence Karp regarding potential settlement due to Bay Mud and relatively large size of the proposed apartment building:

. . . 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.

Given these circumstances, BRIG argues that:

. . . 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.

Dr. Karp also offered testimony at the November 14, 2023 hearing, stating that the proposed helical piles would not sufficiently address any settlement – especially of the apartment building.

d. Further staff analysis.

As discussed in the Ascent memo, the area of the site proposed for the apartment house is underlain by shallow Bay mud with minimal settlement expected. In any case, issues regarding the effect of the soils on building settlement and the Project's location in the flood hazard zone are effects of the environment on the Project and not considered environmental impacts under CEQA. While these issues may not be germane to CEQA, City staff will more fully examine any potential settlement issues at the building permit stage when it would have the opportunity to review construction plans and consult with engineers, as needed.

The Planning Commission found that the length of the Lagoon shoreline and the condition of the bulkheads were unusual conditions that could have a significant impact on water quality, as discussed in the previous section. The Council may determine whether these conditions are "unusual" or typical of construction adjacent to the Belvedere Lagoon. If the Council determines that the conditions are not unusual, then the project will be eligible for the Class 32 exemption. If it concludes that these conditions are unusual, and substantial evidence has been presented of a fair argument that these unusual conditions may create water quality impacts, then it may determine that the project is not eligible for the Class 32 infill exemption.

Conclusion

The City Council should review the appeal and determine whether the project qualifies for the Class 32 infill exemption. In particular, the Council may wish to review:

1. Whether the project is "substantially surrounded by urban uses" and thus within the scope of the exemption.
2. Whether the project would impact water quality.
3. Whether there are unusual circumstances applicable to the project that may result in a significant impact on the environment.

Should the Council approve the appeal, Attachment 8 includes a resolution containing findings to support a Class 32 exemption.

Should the Council deny the appeal, Attachment 9 includes a resolution determining that the Project is not eligible for the Class 32 exemption. It will be completed based on the reasons for the Council's determination.

Attachments

1. Planning Commission Staff Report
2. Draft Planning Commission Minutes
3. Memo Prepared by Ascent Environmental
4. Appeal
5. Letter dated December 19, 2023 in support of appeal
6. Letter from Mark Wolfe on behalf of BRIG dated November 13, 2023
7. Letter from Wendy Manley on behalf of BLPOA dated July 17, 2023
8. Resolution Approving Appeal

9. Resolution Denying Appeal
10. [Link to all correspondence received](#)



**City of Belvedere
Planning Commission
Staff Report**

REPORT DATE: 11/01/2023 **AGENDA ITEM: 1**
MEETING DATE: 11/14/2023
TO: City of Belvedere Planning Commission
FROM: Tricia Stevens, MIG Contract Planner
REVIEWED BY: Rebecca Markwick, Planning and Building Director
Gabrielle Janssens, Goldfarb & Lipman LLP, Special Counsel
Barbara Kautz, Goldfarb & Lipman LLP, Special Counsel
Andrew Shen, City Attorney
SUBJECT: Design Review, Demolition, Tentative Subdivision Map, and Revocable License, for 40 units at 1-22 Mallard Road.

RECOMMENDATION

The applicant requests approval of the proposed Mallard Pointe project that includes applications for Design Review, Demolition Permit, Tentative Subdivision Map, and Revocable License approval, for 40 units located at 1-22 Mallard Road. The project proposes six single-family homes with one accessory dwelling unit, five duplexes (10 units), and 23 units in an apartment building. Four of the units would be affordable to lower income households. The request includes one concession and multiple waivers under State Density Bonus Law.

The Planning Commission is the decision-making hearing authority on the Design Review and Demolition Permit components of the project. The City Council is the decision-making hearing authority on the Tentative Subdivision Map and Revocable License. Thus, the Planning Commission will be making a recommendation to the City Council on the Tentative Subdivision Map and Revocable License.

On October 30, 2023, the applicant submitted a conceptual alternative set of plans (Alternative "A") for the City's consideration that modify the 23 units located in an

apartment building by instead providing six separate buildings consisting of a triplex and fourplexes. Staff has provided a preliminary description of the revised plans starting on page 31. If the Planning Commission prefers Alternative A, City staff recommends that the project be continued so that complete plans may be submitted and the staff can complete an analysis of this modification to the proposed project.

Staff recommends that the Planning Commission conduct the required public hearing and take one of the following actions:

ACTION 1:

MOTION 1 Adopt the Resolution granting Design Review Approval for six single family homes, five duplexes, and 23 units in an apartment building and finds that the project is Categorically Exempt from CEQA based on a Class 32 Exemption for the property located at 1-22 Mallard Road. **(Attachment 1)**

MOTION 2 Adopt the Resolution granting a Demolition Permit for the project located at **1-22 Mallard Road.** **(Attachment 2)**

MOTION 3 Adopt the Resolution recommending City Council approval of the Tentative Subdivision Map, subject to findings and conditions, for the property located at **1-22 Mallard Road.** **(Attachment 3)**

MOTION 4 Recommend to the City Council approval of a Revocable License for private improvements located in the public street right-of-way at **1-22 Mallard Road.**

OR:

ACTION 2:

ALTERNATIVE MOTION Continue the item and direct staff to analyze Alternative A once the applicant has submitted a complete application for Alternative A and return to the Planning Commission with a full analysis of Alternative A, along with necessary supporting documents.

Mallard Pointe and State Laws

The City's discretion in reviewing Mallard Pointe is substantially limited due to the adoption of over 100 state laws since 2017. Because the proposed project is a housing development project consisting of at least two residential units, the protections in the Housing Accountability Act (Government Code Section 65589.5) apply. The Housing Accountability Act strictly limits the instances in which a city may deny or reduce the density of a housing development project. The project additionally provides four deed

restricted units at levels affordable to lower income households, making it eligible for a State Density Bonus (Government Code Section 65915 et seq.). State Density Bonus Law provides that a project that provides a specified percentage of affordable units is eligible for increased density, concessions and waivers of a city's planning standards, and reduced parking requirements.

A further analysis of the Housing Accountability Act and State Density Bonus Law and their application to the project is provided below in the report.

PROPERTY SUMMARY

Project Address:	1-22 Mallard Road
APN:	060-072-27, 060-072-28 and 060-072-18
Project Applicant:	Bruce Dorfman, Thompson Dorfman
Property Owners:	Mallard Pointe 1951, LLC
GP Designation:	Medium Density Residential Multi Family Residential: 5-10 units/net acre
Zoning:	R-2 Zoning District
Existing Use:	Duplexes and one Fourplex

Site Characteristics: The subject property is a 2.8 acre site located on three parcels in the R-2 zoning district. The property is currently developed with 22 dwelling units consisting of nine duplex buildings and one fourplex building. The site is adjacent to the Belvedere Lagoon to the north, existing residential uses to the east and west, and Belvedere Park and City Hall to the south (across Community Road).



PROJECT COMPONENTS:

Site Plan. The project consists of demolition of the existing structures on the existing three lots and construction of forty (40) new residential units. The 40 new residential units consist of: five (5) lagoon-fronting duplexes (10 units); six (6) lagoon-fronting single-family homes (one of which would have an Accessory dwelling Unit (ADU)); and 23 apartment units in a single apartment building. The proposed ADU would be a one-bedroom unit to be located above the attached garage of the single-family home on Lot 5 on the site plan. The ADU is not part of the planning commission review, as state law allows the City to make a decision on the single-family home before the ADU is reviewed. If the home is approved, State law requires that ADUs be approved ministerially, without discretionary review or a hearing. The lagoon-fronting single-family homes and duplexes would be a mix of one- and two-story homes containing two, three, or four bedrooms.

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.



Parking. 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.

Building Design. The lagoon single family and duplex homes include a mix of traditional and contemporary designs as seen among other lagoon homes. 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. The apartment building materials include shingle and textured siding with a shingled roof. 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 project's ground-disturbing activity would occur within the first 3 to 6 feet of fill soil below the ground surface. In areas underlain by less than 30 feet of Bay mud, including the apartment building, the project would employ shallow foundation systems that include finished-floor elevations using a concrete mat slab or post-tensioned slab-on-grade foundation system to support elevated interior floors above a crawl space. The project's design would balance the load of the new buildings to avoid new loading on the site. The new residential units near the Lagoon may include deeper foundation systems where Bay Mud underlies the site by more than 30 feet. In these instances, some of the single-family residences and duplexes may incorporate helical piles, which would typically need to extend about 10 to 30 feet below the Bay Mud layer.

The project's design will incorporate LEED standards and sustainability features, including drought-tolerant landscaping, permeable pavers, energy-efficient appliances, increased

insulation, low-flow fixtures, solar panels, and electric vehicle (EV) charging stations. The project's design would also 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 garage, is designed to meet FEMA standards.

Circulation. As the current width of Mallard Road does not comply with the Tiburon Fire Protection District (TFPD) requirements, it would be reconfigured and moved to accommodate the proposed site plan, as well as widened to conform with City and TFPD standards and provide emergency vehicle access. Mallard Road would remain private. Pedestrian enhancements include widening of the adjacent Community Road sidewalk to five feet, closing gaps in the sidewalk directly east and west of the site, adding crosswalks with ADA-compliant ramps across Mallard Road at the project entryways, and installing a high-visibility crosswalk across Community Road at the northeast corner of the intersection with the western Mallard Road intersection to access Belvedere Park. The project also realigns the approach angles of Mallard Road at the two Community Road intersections, improving sight lines and encouraging safer vehicle turning movements. On portions of Mallard Road, stamped concrete would aid in traffic calming.

Landscaping. The project includes landscaping consisting of drought tolerant plantings, permeable pavers, and new trees. The off-site existing coast live oak and one of the existing on-site coast live oaks will be preserved in place. Of the two small existing coast live oak trees, one will be transplanted on Lot 1, and the other will be removed to be replaced by southern live oak trees. Of the nine existing olive trees scattered throughout the site, seven will be transplanted to Lot 12. The other existing 36 trees on-site are ornamental and will be removed. New trees will consist of cypress trees and southern live oaks along the Community Road frontage and a combination of evergreen elm, shrubby yew podocarpus, and red flowering crape myrtle trees would line Mallard Road. All proposed new trees will be 24- and 36-inch box trees.

Affordable Housing, Density Bonus, Concessions and Waivers. The project proposes construction of forty units. Four (4) of the apartment units, comprising ten percent of the total units, would be made available and rented to lower income households. One of the units would be available for very-low income households, and the other three units would be available for low income households. The Department of Housing and Community Development (HCD) establishes maximum qualifying incomes, currently \$119,300 for a two-person low income household and \$74,600 for a two-person very low income household. The Design Review Resolution includes a condition of approval that would require a deed restriction to be recorded against the property to guarantee these affordability requirements. These units also provide required replacement housing for units now occupied by, or assumed to be occupied by, lower income households, as described below.

Because the project includes affordable units, it is entitled to additional density above what is allowed under the Zoning Code pursuant to the State's Density Bonus Law. By providing ten percent of the units in the project to lower income households, the project is entitled to a density bonus of twenty percent above what is permitted under the zoning

designation. The project does not seek to develop the additional density bonus units and intends to develop at the density permitted under the R-2 zone.

Instead, the applicant is relying on the State Density Bonus Law to apply for waivers of development standards, one concession, and reduced parking standards. The project includes the following requests (details of each request are provided under Project Analysis):

- One Concession: To allow apartment buildings in the R-2 zone.
- Waivers:
 - Apartments: to allow deviations to height, lot frontage, lot area per unit, side yard setback, outdoor open space, and lot coverage.
 - Single family and duplex units: to allow a deviation from lot frontage for Lot 5.
 - Entire project, including the single-family dwellings, duplexes, and apartment building, to allow deviations from the Sign Ordinance and Construction Time Limits.
- Reduced Parking: To allow tandem and uncovered parking spaces for Lots 1,2,8 and 9 (duplexes), based on the allowed parking standards in the State Density Bonus Law.

Docks. The single-family homes and duplexes fronting the Lagoon are proposed to have docks. There are nine existing docks on the northwesterly side of the project that are proposed to be rebuilt in the same location, and they are located on the Belvedere Lagoon Property Owners Association (BLPOA) property. On the easterly side of the property, 11 existing docks would be demolished and replaced with 11 new docks in different locations, occupying an additional 500 sq. ft. The new docks all are shown to be located on the Mallard Pointe property.

Subdivision Map. The proposed subdivision map includes 12 lots ranging in size from 6,830 square feet to 32,766 square feet. Lot 12 contains the proposed apartment building. Lots 1,2,8,9, and 11 contain duplex units, and Lots 3-7 and 10 contain single-family homes. The project includes a request for a condominium map in order to allow the duplex units to be sold individually. Covenants, Conditions, and Restrictions will be recorded to establish a Homeowner's Association to manage and maintain the project, including the levying of assessments for maintenance of the private drive and private utilities.

Demolition Plan. The project would demolish all existing dwelling units. Demolition debris will be hauled to the Marin Resource Recovery Facility in San Rafael. A total of 2,000 cubic yards of demolition material will be removed. The haul route will be Community Road to San Rafael Avenue, to Beach Road, to Tiburon Blvd., to Highway 101.

Replacement Housing and Relocation Plan. The project has provided a Replacement Housing and Relocation Plan dated February 14, 2023, attached as **Attachment 8**, to address the loss of existing units that have been occupied by lower income households.

Revocable License. The project includes a request for a Revocable License to construct landscaping and pedestrian improvements in the public right-of-way on Community Road.

Story Pole Plan. Story Poles were constructed on October 18, 2023. The Community Development Director approved a modified story pole plan to address the unique circumstances of the site, resident safety, and tenant safety. The existing site is occupied by tenants in ten of the eleven duplexes. The story poles for the project, specifically the apartment building, if fully erected, would impact the safety of the tenants as the poles would be erected in the middle of Mallard Road, and would create access issues for the tenants and residents of Belvedere. Each pole requires 6-12 guide wires which have to be secured to the ground. If fully erected, the temporary wires and poles would create a tripping hazard for all residents, and in some places tenants could not access their unit. Given these constraints Staff required that the applicant provide photo simulations and 3-D renderings so that the residents could conceptually understand the project.

BACKGROUND

History of site. The existing duplexes and fourplex were constructed in two phases: 1951-1953 and 1954-1956. No other activity on the project has been recorded since then.

Application process. The chart below summarizes the events since the application was originally filed.

Event	Date
Preliminary Application Filed	June 18, 2021
Incomplete Letter Sent by City on Preliminary Application	July 18, 2021
Complete Preliminary Application submitted by Applicant	August 6, 2021
Formal Application Filed (1 st Submittal)	January 26, 2022
Incomplete Letter Sent by City on 1 st Submittal	February 24, 2022
2 nd Submittal Filed by Applicants	May 24, 2022
Project Deemed Complete by City	June 23, 2022
Letter Sent by City Regarding Consistency with Objective Standards	July 20, 2022
Revised Plans Submitted in Response to Consistency Letter	July 18, 2022
2 nd Letter Sent by City Regarding Consistency with Objective Standards	August 15, 2022
CEQA Peer Review of Technical Studies and Submittal of Revised Technical Studies by the Applicant	September 2022 - January, 2023
Applicant Submitted Revised Density Bonus Application to Include	October 7, 2022

Concession Request for Apartments in R-2 Zone	
Applicant Submitted Revised Subdivision Application to Include a Condominium Map	January 13, 2023
Revised Transportation Studies Submitted by Applicants	March 17, 2023; May 1, 2023
Revised Project Description Submitted	May 1, 2023
Revised Story Pole Plan received	May 24, 2023
Revised Vehicle Miles Traveled (VMT) Memo Submitted	June 12, 2023
Request Sent to Applicants on Outstanding Items Needed to Schedule Public Hearing,	June 14, 2023
Applicant Request to Delay CEQA Review	July 26, 2023
Letter Sent to applicant on Application Status	August 17, 2023
Response Letter from Applicant Asking City to Complete CEQA Memo	August 28, 2023
Draft Final Ascent Memo Received	September 15, 2023
City Comments on Final Ascent Memo	October 6, 2023
Alternative Design Submitted	October 30, 2023

Preliminary Application

The rules applicable to the project are those that were in effect on August 6, 2021, when the developer filed a preliminary (SB 330) application containing all required information. The preliminary application will remain in effect indefinitely unless specific circumstances apply, such as if either the square footage or the number of units in the project increases by 20 percent or more. The City may impose mitigation measures on a project if either an EIR or Mitigated Negative Declaration is required and identifies needed mitigation measures. The City has not identified any mitigation measures needed to address any environmental impacts, and the project qualifies for a Categorical Exemption under CEQA as further detailed below and in the CEQA Investigation Memo included as **Attachment 5**.

The practical effect of the preliminary application to the Mallard Pointe project is that neither the Objective Design and Development Standards (ODDS) design standards adopted on July 11, 2022, nor the City's Housing Element, adopted on January 31, 2023, apply to the project. Submittal of a preliminary application does not otherwise limit the City's review of the project.

PROJECT ANALYSIS

General Plan Compliance. The project complies with the City of Belvedere General Plan adopted on June 9, 2010. The primary policy that provides guidance to this project is the allowance for 5-20 dwelling units per acre in the Medium Density Multi-Family Residential Designation. The project’s density is 13.9 units per acre and so complies with this policy.

Under the Housing Accountability Act, a housing development project like Mallard Pointe is “deemed consistent” with applicable plans and ordinances if the City did not describe any inconsistencies within 30 days of determining that the project is complete. (Gov’t Code Section 65589.5(j)(2).) The Act also provides that receipt of waivers and concessions under State Density Bonus Law is not a valid basis on which to find a proposed project inconsistent with a City policy. (Section 65589.5(j)(3).)

On July 20 and August 16, 2022, the City provided the applicant with a detailed list of inconsistencies with adopted City policies and standards, including inconsistencies with the General Plan and Zoning Ordinance. The project is “deemed consistent” with all General Plan and zoning provisions not listed in these letters.

Zoning Compliance. With approval of the concession and waivers, the project is considered to be consistent with the applicable requirements of the R-2 zone. The following chart lists relevant Zoning Ordinance requirements:

Zoning Code Standard	R-2 Zoning Requirement	Project	Compliance
Density	5 - 20 units per acre	13.9 units per acre	Yes
Lot Area	6,000 sf	6,000 sf	Yes
Lot frontage	60 ft	All lots except Lot 5 exceed 60 ft.	Yes and Waiver for Lot 5
Lot Width	60 ft average	60 ft average	Yes
Lot Area/Unit	3 or more bedrooms: 4,000 SF 2 or fewer bedrooms: 3,000 SF	All lots comply except for Lot 12	Yes and Waiver for Lot 12
Lot Coverage	Structures: 40% 50% Next to Water: 50% Total coverage: 60%	Lots 1-11: < 50% Lot 12: 63% Lots 1-11:<60% Lot 12: 63%	Yes and Waiver for Lot 12
Front Yard Setback	Building less than 15 ft within first 40 ft from front property line: 5 ft Building less than 25 ft within first 40 ft: 10	All setbacks meet these requirements	Yes

Side Yard Setback	Buildings 15 ft or less in height: 5 ft Buildings 16-25 ft in height: 10 ft Buildings over 25 ft: 15	All single-family homes and duplex units meet side yard setback requirements; Apartments do not comply	Yes and Waiver for Lot 12
Rear Yard Setback	Abutting another lot: 20 ft Abutting a street: 15 ft Abutting water, alley, private way: 10 ft	All lots meet these requirements	Yes
Building Height	25 ft from Base Flood Elevation +1 ft and no structure may exceed 29 ft from Existing Grade	All single-family homes and duplexes comply Apartments are 35' 6" in height, with the portion for the elevator shaft at 42'..	Yes and Waiver for Lot 12
Outdoor Open Space	Public: 300 SF/unit Private: 450 SF/unit	All single-family homes and duplexes comply; Apartments do not comply	Yes and Waiver for Lot 12
Signage	Four (4) SF per lot	24 SF on Lot 12	Yes and Waiver for Lot 12
Construction Time Limits	24 months with extensions, for entire project	The applicant requests a time limit of 2 years for each of the duplex and single family lots and 3 years for the apartment building.	Waiver For single family homes, duplexes, and apartment
Parking	Single-Family: 2 spaces; one covered Duplex: 4 covered spaces Apartments: 1.25 covered spaces for 1-2 bedrooms 2 covered spaces for 3+ bedrooms Tandem not permitted	The total number of spaces are provided but Lots 1,2,8, and 9 (duplexes) include tandem or uncovered spaces.	Yes, with State Density Bonus Law Parking Standards, which permit tandem and uncovered spaces.
Uses	Prohibition against apartments	Includes apartments	Concession

Housing Accountability Act. The Housing Accountability Act establishes limitations on a city's ability to deny or reduce the density of housing development projects that are consistent with **objective** local development standards. An objective standard is defined as one that involves no personal or subjective judgment by a public official and is uniformly verifiable by reference to an external benchmark knowable by both an applicant and a public official. (Gov't Code Section 65589.5(h)(8).) Typical examples of objective standards are zoning requirements for height, setbacks, and parking, and objective design standards such as ODDS.

As described above, the project meets all applicable objective development standards, as modified by State Density Bonus concessions and waivers. Therefore, the City would only be able to deny or require that the project be developed at a lower density if it makes written findings supported by a preponderance of the evidence that (1) the proposed project would have a specific, adverse impact upon the public health or safety, based on objective, identified written standards, policies, or conditions as they existed on the date the application was deemed complete; and (2) there is no feasible method to satisfactorily mitigate or avoid the adverse impact other than the disapproval of the housing development project or approval on a condition that it be developed at a lower density.

Unless a preponderance of the evidence shows that Mallard Pointe violates any City health and safety standards, the City cannot make this finding, and so cannot deny or reduce the density of the project. No violations of health and safety standards have been identified for the Mallard Pointe project.

Density Bonus Law/Concessions, Waivers, and Parking Reduction. The State Density Bonus Law and recent court cases establish that the Planning Commission has a limited ability to deny the requested concession and waivers. In addition, State Density Bonus Law sets standards for parking which supersede local parking requirements without the need for a concession or waiver. Following is an analysis of the concession, waivers, and parking reduction.

Concession: The project includes one concession to deviate from the Zoning Code standard (Section 19.28.030) that prohibits apartment buildings in the R-2 zone.

"Concessions" (also called "incentives") are modifications of zoning or design standards that result in "identifiable and actual cost reductions" to provide for the affordable housing included in the project. Developers are entitled to up to four concessions depending on the percentage of affordable units and the affordability category (very low, low, etc.) being provided. This project would provide ten percent of the units to lower income households and is therefore eligible for one concession.

The City may require a developer to provide "reasonable documentation" to demonstrate that the concession meets the definition included in density bonus law. But under State law, the City must grant the concession, unless it has substantial evidence that the requested concession either does not result in cost reductions; violates state or federal

law; or causes a “specific, adverse impact” on public health or safety or on a property included in the California Register of Historical Resources, and there is no feasible method to satisfactorily mitigate or avoid the impact.

The applicant provided documentation from Midstate Construction regarding the identifiable and actual cost reductions to providing apartment buildings rather than duplexes. This memorandum (Attachment 4) documents that typical apartments are 23% less expensive to build than typical duplexes on a cost per square foot basis.

In *Schreiber v. City of Los Angeles* (2021) 69 Cal.App.5th 549, the Court of Appeal held that the applicant does not need to prove that the concession will reduce costs; the burden is on the City to provide evidence demonstrating that the concession will not reduce costs. In order to deny the requested concession, the City would need to obtain substantial evidence to counter the claim of reduced costs or make one of the other findings for denial of the concession in State Density Bonus Law. There is nothing in the project’s record showing that the requested concession would not provide cost reductions and the other findings (violation of state or federal law, specific adverse impact on health or safety, impacts to historic building) also cannot be made to deny the concession.

Thus, based on the evidence provided, the City cannot recommend denial of the project’s concession regarding the apartment building.

Waivers: The project includes eight waivers from development standards:

1. Outdoor Open Space for Apartments: 2,868 square feet provided where 10,350 square feet is required by Section 19.52.150.A
2. Lot Area Per Unit for Lot 12 (Apartments): 3,000 square feet per unit would require the lot size to 69,000 square feet where Lot 12 is 32,766 square feet.
3. Height for Apartments: 34 feet 6 inches, with the elevator shaft extending to 42 feet proposed where 29 feet from grade and 26 feet from BFE plus 1 is required by Section 19.28.040.
4. Side Setback for Apartments: The apartments are proposed over 25 feet in height, with a 10-foot setback. The required side yard setback is 15 feet.
5. Lot Frontage for Lot 5: 27 feet is proposed where 60 feet is required by Section 19.28.040.
6. Lot Coverage for Apartments: 63 percent is proposed where a maximum of 40 percent (excluding uncovered decks) and 60 percent (including uncovered decks) is required by Section 19.28.040. Since there are no uncovered decks at the ground level, the project is required a maximum of 40 percent so a waiver is needed from this standard.
7. Signage: The submitted signage plan shows a 24 square foot sign where Section 19.72.030 allows a maximum of four-square feet per lot.
8. Construction Time Limits: Waiver of Construction Time Limits for all single-family, duplex units and the apartment building where 18 months is allowed by Section 20.04.035. The applicant has proposed a two-year time limit for each single family and duplex lot and three years for the apartment building.

Under the State’s Density Bonus Law, the City must waive any “development standard” applicable to a project eligible for a density bonus that will have the effect of “physically precluding” construction of the project at the permitted density or with the allowed concessions. A “development standard” is a “site or construction condition” and includes, but is not limited to, height limits, setbacks, and open space requirements. Developers may apply for an unlimited number of waivers of these development standards.

A recent case held that the City must grant waivers for the project “as designed,” unless it has evidence that a waiver violates state or federal law or causes a “specific, adverse impact” on public health or safety or on a property included in the California Register of Historical Resources, and there is no feasible way to satisfactorily mitigate or avoid the impact. (See *Bankers Hill 150 et al v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

State law thus requires the City to grant the project’s waivers unless they violate state or federal law or have a “specific adverse impact,” as defined. No violation of state or federal law or any specific adverse impact to public health or safety or to a property that is included in the California Register of Historical Resources has been identified for the requested waivers.

Parking Reduction: If a project qualifies for a density bonus, the City cannot require more than one parking space for studios and one-bedroom units or 1.5 spaces for two-bedroom units or more. The parking may also be tandem or uncovered. The project meets the required number of spaces for all building types per the Zoning Code; however, Lots 1,2,8, and 9 (duplexes) include tandem and uncovered spaces, which is permissible under State Density Bonus Law.

Replacement Housing and Relocation Obligations. Because the project would demolish existing housing and is requesting waivers and a concession under density bonus law, the project is subject to certain obligations under the Housing Crisis Act of 2019 (Government Code Section 66300(d)) and density bonus law (Government Code Section 65915(c)). In particular:

1. **Number of Units.** The project must construct as many units as are being demolished. Here, there are 22 existing units, and the project is constructing a total of 40 units.
2. **Replacement Housing Obligations.** The project must “replace” any units occupied by very low- or low-income households by the same number of units with the same number of bedrooms as those of the households being displaced. If these units are rentals, they must remain affordable at the same or lower income level for at least 55 years.

In determining the required number of affordable replacement units, the applicants provided the following information:

- 13 tenant households indicated that their income exceeded the lower income level.
- Two tenant households were determined to be low income, and one tenant household was determined to be very low income.
- Three units were vacant. The applicant provided information indicating that the income of the last tenants in occupancy exceeded lower income.
- Three tenant households did not provide income information. The City sent these tenants a letter explaining the significant relocation benefits available to lower income households and offered to have the Marin Housing Authority verify their income. None of the tenants responded.

State law provides that when tenants' incomes are unknown, there is a rebuttable presumption that the distribution of incomes in these units matches that in rental units in the City as a whole based on the United States Department of Housing and Urban Development (HUD) Comprehensive Housing Affordability Strategy (CHAS) data. In Belvedere, the CHAS data shows that thirty-seven percent of tenants are lower income (very low income and low income combined).

However, it seems unlikely that thirty-seven percent of units in the existing development are occupied by lower income households, based on: (i) rents of \$5,000 - \$6,000/month; (ii) the lack of response of the tenants even after receiving information about relocation benefits; and (iii) the results of the tenant survey, with 16 households responding and 3 households being eligible lower income households, approximately nineteen percent. Applying this percentage to the three units where incomes are unknown equals 0.57 unit, which must be rounded up to one unit, requiring a total of 4 replacement units, 3 for low-income households and one for a very low-income household. The project must provide these lower income units. These units also provide the minimum number of lower income units that qualify the project for a density bonus.

All of the existing units in Mallard Pointe have two bedrooms, and those occupied by lower income households are 869-985 square feet in size. These units must be replaced in kind because the existing tenants are entitled to a right of first refusal for comparable units. The three units where tenant incomes are unknown have an average bedroom size of two bedrooms and so must be replaced with a two-bedroom unit. A deed restriction must also be placed on the property requiring that the units be made available to low or very low-income households, as applicable, at affordable rent, for a 55-year period.

The applicant is proposing to construct the replacement units as part of the apartment building, as follows:

- *1 Very Low-Income unit* – Existing 2-bedroom unit size 869 SF; replacement 2-bedroom unit size 1,023 SF (unit 108)
- *1 Low Income unit* – Existing 2-bedroom unit size 869 sf; replacement 2-bedroom unit size 1,023 sf (unit 208)

- *1 Low Income unit* – Existing 2-bedroom unit size 985 sf; replacement 2-bedroom unit size 1,149 sf (unit 106)
- *1 Low Income unit* – 1-bedroom unit that is 646 sf (unit 203) Because this unit is replacing a two bedroom unit, it must have two bedrooms and the conditions of approval reflect this requirement.

While the applicant has not specified the phasing of project construction, the City should require that the replacement units to be constructed as part of the first phase of the project to ensure that the project meets its replacement housing obligation, constructs the affordable units that qualify the project for the concession and waivers, and makes the replacement units available for the existing tenants in a reasonable time. If the units are included in a mixed-income building with market-rate units, state law requires that they be accessed by the common entrance, have access to all site amenities, and not be located on one floor of the building or a portion of one floor. The proposed affordable units would be distributed on the first and second floors of the apartment building. Condition No. 15 sets forth these requirements.

3. **Tenant Relocation Benefits.** The Housing Crisis Act provides that all existing tenants must be allowed to remain in their units until at least six months prior to the start of construction activities. In addition, if the project proponents decide not to proceed with the project and do not demolish the buildings, the existing tenants are entitled to return to the units at their current rent if the property is returned to the rental market.

The three lower income households are entitled to additional benefits. They are entitled to relocation benefits prescribed by state law for public agency relocation and also entitled to a right of first refusal to return to a comparable unit after the project is complete.

State relocation benefits are prescribed in Government Code sections 7260 et seq. and also in the California Code of Regulations Title 25, Sections 6000 – 6198. The applicants provided a Replacement Housing and Relocation Plan but refused to include a statement that the relocation plan would be consistent with the statute and regulations, stating that many of the provisions applicable to public agencies were not applicable to the project. While these provisions are admittedly designed for public agency relocation, the applicants desired to apply their own interpretations to determine the applicable provisions. Staff, therefore, recommends that the City retain a relocation consultant at the applicant's expense to assist the tenants and to determine their relocation benefits. It is important that the tenants be informed of their potential benefits before they move on their own. Condition Nos. 16 and 17 contain these requirements.

Design Review. Chapter 20.04 of the Belvedere Municipal Code outlines the design standards and findings for approval of a Design Review Permit. In *California Renters Legal Advoc. & Educ. Fund v. City of San Mateo* (2021) 68 Cal.App.5th 820, 846, the court concluded that the Housing Accountability Act does not prevent local agencies from

establishing and enforcing objective design review standards and that the Housing Accountability Act does not prevent a local agency from imposing conditions of approval based on non-objective standards as long as those conditions do not reduce the density of the project. The City's architectural consultant, Mark Sandoval, reviewed the project in February 2022, and found the project to generally meet the design review standards.

On February 2, 2021, a joint meeting with the Planning Commission and City Council was held prior to the applicant submitting the SB330 application. It was an opportunity for Belvedere residents who had comments and concerns to learn about the project. In response to the City's architectural consultant's comments and community review, the applicant made the following modifications to the design prior to the formal submittal of the application.

- The height of the Lot 5 single family home was reduced to a primarily single-story configuration to reduce the bulk on the point.
- The single-family homes and duplex windows facing the lagoon were reduced approximately 20% to lessen the glare and light overflow.
- To reduce the mass of the lagoon homes, second floors were reduced so that less than 25 percent of the floor area is on the second level.
- Single-story residential units are incorporated in the apartment building, and primary bedrooms are located on the first living floor of the duplexes and single-family homes adjacent to the lagoon in order to provide living options for seniors to age in place.
- To further respond to the community's desire for homes that allow aging in place, all the units (single-family, duplexes and apartments) are ADA adaptable and have been designed to accommodate lifts to access the first living level.
- The apartment building façade was redesigned to incorporate an approximately 25-foot break in the massing facing Community Road.
- The lobby of the apartment building was pushed back an additional 5 feet from Mallard Road.
- Parking for the proposed project was increased to include over 2.5 parking spaces per unit to avoid overflow parking on Community Road.
- The apartment unit count was reduced from 25 units to the 23 units currently proposed.

Design Review Findings

The Design Review findings, specified in Belvedere Municipal Code Title 20, state that all new structures and additions should be designed to avoid excessively large dwellings that are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to and fit in, with others in the neighborhood and should not attract attention to themselves. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony. Landscaping should also soften and screen structures and maintain privacy.

The project meets the City's design standards in that the project has been designed to avoid monotony and does not appear to be excessive in scale, bulk, or mass. The proposed materials and colors found on the Project's material board photographs and in the proposed drawings are earth toned and are appropriate with the proposed architectural styles selected for the buildings. All materials appear to be durable, and the paint colors selected for the project are mostly soft and fall into the more muted natural earth tones. The fencing proposed blends in with architecture style and design of each proposed waterfront residential building and preserves privacy between adjacent dwellings without significantly blocking views. The proposed landscape plans appear to incorporate a combination of trees, flowering shrubs, perennials, and ground-covering plants, which provides screening for each of the new single-family homes, duplex units, and the proposed apartment building, as viewed from the roadway.

Photo simulations of the project can be found in **Appendix B** of the Ascent CEQA memorandum (**Attachment 7**) and on Sheet MF-12 of the Apartment Plan set (**Attachment 5**).

Following is a complete review of how the project complies with each design standard:

Preservation of existing site conditions. To preserve the landscape in its natural state, the removal of trees, vegetation, rock, and soil should be kept to a minimum. Projects should be designed to minimize cut and fill areas, and grade changes should be minimized and kept in harmony with the general appearance of the neighboring landscape.

The project proposes to remove the majority of the landscaping, except for ten trees. Seven of the existing olive trees will be removed and transplanted to the lot containing the apartment building. The existing coast live oak tree along Community Road will remain. The project proposes minimal cut and fill, and grade changes are kept to a minimum. The existing three lots are relatively flat, and grade changes are minimal which keeps the project in harmony with the appearance of the neighboring landscape.

The construction of the proposed project and associated outdoor spaces harmonize with the neighborhood, and there is minimal cut and fill required for the construction. Therefore, creation of the single-family homes, duplexes and apartment, and associated improvements are in substantial conformance with this finding.

Relationship between structures and the site. There should be a balanced and harmonious relationship among the structures on the site, between the structures and the site itself, and between the structures and those on adjoining properties. All new buildings or additions constructed on sloping land should be designed to relate to the natural land-forms and step with the slope in order to minimize the building mass and bulk and to integrate the structure with the site.

The project proposal maintains a balanced and harmonious relationship between the structures and its site and adjoining properties because the proposed new single-family

homes, duplexes and single apartment building have been designed to relate to and fit with the structures on the adjoining properties. The project is proposed on a flat lot, and the surrounding neighborhood is also flat. The structures are balanced in size, material and location on the lots. Mallard Road is a private Road that provides a natural separation for the apartment building and the single-family home, helping to balance the development over the 2.8 acre site. Additionally, the Lagoon is on the largest side of the lot, which also provides a natural separation from the adjoining properties.

Minimizing bulk and mass.

A. All new structures and additions should be designed to avoid monumental or excessively large dwellings that are out of character with their setting or with other dwellings in the neighborhood. All buildings should be designed to relate to and fit in with others in the neighborhood and not designed to draw attention to themselves.

The R-2 Zoning does not have floor area ratio (FAR) requirements; the proposed size of the single-family homes and duplexes are large in terms of floor area, with fifty to sixty percent FAR. The single-family homes and duplexes are designed with quality materials that will help the structures blend into the neighborhood; however, they could draw attention to themselves, given the size of the structures. Viewed from Mallard and Community Road, the majority of the single-family homes and duplex structures will not be visible, as the proposed apartment will block them. Viewed from the Lagoon, the single-family homes and duplexes are designed in character with the neighborhood. The single-family homes and duplexes are designed to conform to the requirements of the Zoning Ordinance and are proposed to be constructed with quality materials and fit in with other buildings in the neighborhood.

The apartment building, despite being a big structure with many units, is designed to avoid appearing monumental or excessively large. The structure is proposed to have wood-constructed louvered screens and horizontal V-groove siding, which add to the visual interest and help to break up the mass and bulk of the structure. The first and second stories of the apartment building are stepped back, with decking and decorative fencing, which are design features that help the structure fit into the neighborhood. The facades are well-articulated through the use of earth-tone colors, a mix of building materials, varied roof lines, and balconies.

The proposed materials and rooflines for all the proposed structures are in character with the setting, and the proposed structures appear in character with the mixed architectural style of the dwellings in the neighborhood. The design does not include features that would be obtrusive or draw attention.

B. To avoid monotony or an impression of bulk, large expanses of any one material on a single plane should be avoided, and large single plane retaining walls should be avoided. Vertical and horizontal elements should be used to add architectural variety, to break up building planes, and to avoid monotony.

The proposed project is designed so that it does not include large expanses of any one material. The single-family homes and duplexes are well articulated, with the second stories stepping back and a variety of colors and materials which help break up building planes and avoid monotony.

Although the apartment building has a large façade along Community Road, it is broken up with different materials as mentioned above. The first and second stories are stepped back, and the mix of building materials add visual interest and avoid monotony.

The project proposes an extensive landscape plan which helps screen the project and adds to the architectural variety. There are no retaining walls proposed with this project.

Materials and colors used. Building designs should incorporate materials and colors that minimize the structures visual impacts, that blends with the existing landforms and vegetative cover, that relate to and fit in with structures in the neighborhood, and that do not attract attention to the structures themselves. Soft and muted colors in the earthtone and woodtone ranges are preferred and generally should predominate. Trim and window colors should be compatible with and complementary to the other building colors.

The proposed materials for the single-family and duplexes include a mix of vertical board, smooth panel, and shingle siding, with weathered teak decks, concrete walls, and shingled roofs. These colors and materials relate and fit in with structures in the neighborhood, blend with the landscape, and include soft and muted colors in the earth tone range. The use of concrete on the exterior walls does not dominate the façade and is used in moderation.

The traditional architectural style of the apartment building is complementary to City Hall and is heavily influenced by buildings in Belvedere designed by Albert Farr. The apartment building materials include shingle and textured siding with a shingled roof. All exterior colors are muted earth tone and provide variations in color, similar to other structures in the area.

The colors and materials for the project are soft and muted and will complement the surrounding neighborhood without drawing attention to the proposed project.

Fences and screening.

A. Fences and physical screening should be located so as to be compatible with the design of the site and structures as a whole, should conceal and screen garbage areas, mechanical equipment, and structural elements from public view, should preserve privacy between adjoining dwellings, where practical, and should not significantly block views.

Fences are proposed along the property line between the single family homes and duplexes, consisting of six-foot-high horizontal natural wood slat fencing. These fences are compatible with the architecture and design of each proposed waterfront residential building and will preserve privacy between adjacent dwellings without significantly

blocking views. There are no fences in the front yard or proposed around the apartment building.

Privacy. Building placement, and window size and placement should be selected to give consideration to the privacy of adjacent buildings.

The single-family homes and duplexes are designed to maximize privacy with adjacent buildings. The proposed structures on Lots 1 and 11, which are adjacent to existing homes, provide stepped back second stories to increase privacy. The apartment building is not located immediately adjacent to nearby residences, separated by Mallard Road on the east and single family homes/duplexes units on the west

Building placement, window size, and window placement have been selected to consider the privacy of adjacent buildings. Given the topography of the lot, the proposed landscaping, and the location of the proposed residence, the windows are placed on the structures with minimum impact to the adjacent neighbors.

Drives, parking and circulation. Walkways, driveways, curb cuts and off-street parking should be planned and designed so as to minimize interference with smooth traffic flow, to encourage separation of pedestrian from vehicular traffic, and to be as safe and convenient as is practical. They should not be out of relationship with the design of the proposed buildings and structures on the site, and should not intrude on the privacy of, or conflict with the appearance or use of neighboring properties.

The proposed access to the project site will be from Mallard Road. Mallard Road will be reconfigured, providing a more traditional, perpendicular intersection, which is more common and safer than the existing conditions, such as semi-blind turns while exiting Mallard Road onto Community Road. The project enhances pedestrian circulation by installing high-visibility crosswalks and ADA-compliant curb ramps at all intersections along Community Road and at the northeast corner of the intersection with the western Mallard Road intersection; filling the sidewalk gap on the east side of the Mallard Road (east) intersection; and increasing street lighting.

The reconfiguration of Mallard Road for vehicles and pedestrians is in harmony with the design of the new structures and existing residences in the neighborhood and does not intrude on the privacy of or conflict with the appearance or use of neighboring properties.

Exterior lighting, skylights, and reflectivity. Exterior lighting should not create glare, hazard, or annoyance to neighboring property owners or to passersby. Lighting should be shielded and directed downward, with location of lights coordinated with the approved landscape plan. Skylights should not have white or light-opaque exterior lenses.

The proposed exterior LED lighting fixtures on the buildings, signs, and landscaping are shielded and downlit and will not create any excessive glare, hazard, or annoyance to

any of the immediate neighbors or any passerby. The proposed lights are downlit and have covered bulbs. No skylights are proposed. There are no large areas of glass oriented toward nearby structures.

Consideration of nonconformities. The proposed work shall be viewed in relationship to any nonconformities, as defined in Title 19, and where it is determined to be feasible and reasonable, consideration should be given to conditioning the approval upon the mitigation or elimination of such nonconformities.

The project, as proposed, will not have any new nonconformities.

Landscape plans -- Purpose.

A. Landscape plans should be compatible with the character of the site and surrounding developed properties. Native or natural appearing vegetation, with generally rounded, natural forms, should be placed to appear as loose, informal clusters. B. Landscape plans shall include appropriate planting to soften or screen the appearance of structures as seen from off-site locations and shall include appropriate screening for architectural elements, such as building foundations, deck supports, and retaining walls, that cannot be mitigated through architectural design. C. Landscape plans should provide privacy between properties. Choice of landscape materials should take into consideration the future impact which new planting may have in significantly obstructing views from nearby dwellings.

The proposed landscape plans incorporate a combination of trees, flowering shrubs, perennials, and ground-covering plants, which fully complement each of the new single-family homes and duplex units and the proposed apartment building, as viewed from the roadway. From the water's edge and viewed from the homes located to the east across the Lagoon, 24-inch box magnolia and western redbud will be planted. Further, substantial landscaping is provided at the apartment building street level along Community Road with cypress trees and heavy shrubbery.

The landscaping is in substantial conformance with this finding as it includes natural and native vegetation, is compatible with the character of the site and the surrounding properties and is designed to provide screening of architectural elements.

Landscape Plans – Materials. **A. Plant materials native to northern California and Marin County, and those that are drought-tolerant are encouraged. Evergreen species are encouraged for use in screen planting situations. Because of high water usage, turf areas should be minimized and narrow turn areas, such as in parking strips, should be avoided. B. Landscape plans should include a mix of fast and slow growing plant materials. Fast growing trees that have a short life span should be used only when planted with others which reach maturity at a later age. C. Landscape plans should include water conserving irrigation systems. Plant materials should be selected so that once established, much of the major site landscaping would survive solely on rainfall.**

The majority of the plants are drought-tolerant and native to northern California. There is a combination of evergreen and deciduous trees, including both fast- and slow-growing species of shrubs, trees, and ground-covering plants. There is minimal use of turf, and groundcover consists of native grasses and shrubs.

Tentative Subdivision Map. Section 18.20.140 of the Belvedere Municipal Code outlines the findings for approval of a Tentative Subdivision Map, as follows:

A. The City shall not approve a tentative map or vesting tentative map unless it finds, in fact, that the following conditions and standards are met by the proposed map:

1. That the map is in conformance with the zoning ordinance of the City as adopted at the time the application was determined to be complete;

The map is consistent with the zoning ordinance, as outlined above, with approval of the requested concession and waivers.

2. That the design and improvement of the proposed subdivision is consistent with the City's general plan;

The project complies with the City of Belvedere General Plan adopted on June 9, 2010. The primary policy that provides guidance to this project is the allowance for 5-20 dwelling units per acre in the Medium Density Multi-Family Residential Designation. The project's density is 13.9 units per acre and so complies with this policy.

3. That the site is physically suitable for the type of development proposed;

The site is physically suitable for the type of development proposed in that the site is flat, and no significant constraints have been identified. Minimal grading will occur, and foundations will be installed in accordance with standard engineering practices.

4. That the site is physically suitable for the density of development proposed;

The proposed density is consistent with the General Plan allowed density of 5-20 dwelling units per acre in the Medium Density Multi-Family Residential Designation. The proposed density is 13.9 dwelling units per acre.

5. That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish and wildlife or their habitat;

There is no evidence that the project would cause substantial environmental damage or injure fish and wildlife or their habitat based on the analysis in the CEQA investigation memo prepared by Ascent Environmental.

6. That the design of the subdivision and the proposed improvements are not likely to cause serious public health problems;

There is no evidence that the project would cause serious public health problems based on the analysis in the CEQA investigation memo prepared by Ascent Environmental. No hazardous materials have been identified on the site.

7. That the design of the subdivision or the type of improvements will not conflict with existing easements acquired by the public for access through or use of the property within the proposed subdivision. The Planning Commission/City Council may approve a map with such easements, if it finds that adequate alternative easements for access or for use are to be provided, and that these will be substantially equivalent to those previously acquired by the public.

The project would not conflict with existing easements. All existing easements will be realigned to conform to the tentative subdivision map.

B. The City may approve a tentative map or vesting tentative map if an environmental impact report was prepared with respect to the project and a finding was made pursuant to subdivision (c) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

The project is categorically exempt from CEQA under 14 CCR 15332.

Revocable License. The purpose of the request for the Revocable License is to permit landscaping and pedestrian improvements in the City's right-of-way. In accordance with Section 11.7 the City's Administrative Procedures Manual, a Revocable License for private use of excess street right-of-way may be granted in the discretion of the City Council. Factors the City Council considers when determining whether to grant a Revocable License for the private use of excess street right-of-way include, but are not limited to, the following listed below. Staff suggests the factors are satisfied, as explained in the italicized language, and that a Revocable License is appropriate. Staff suggests that the Revocable License is for the public benefit.

a. Where necessary to provide pedestrian or vehicular access from private property to the adjacent public street;

The project would provide pedestrian access from private property to the adjacent street. Pedestrian enhancements include widening of the adjacent Community

Road sidewalk to five feet, closing gaps in the sidewalk directly east and west of the site, adding crosswalks with ADA-compliant ramps across Mallard Road at the Project entryways, and adding a high-visibility crosswalk across Community Road at the northeast corner of the intersection with the western Mallard Road intersection to access Belvedere Park and improve the connection from Mallard Pointe and the neighboring properties to Community Park.

- b. Where use of the public right-of-way will permit landscaping and/or related improvements to be installed that the City Council determines will enhance the aesthetic qualities of the streetscape. Any such landscaping and/or related improvements should not significantly impede public views or views from neighboring properties, or infringe on the privacy of neighboring properties;**

Landscaping improvements in the right of way consist of one foot of landscaping in back of the sidewalk along the Community Road frontage. This narrow strip consists of groundcover and does not contain any trees. The landscaping and pedestrian improvements would not impede public views or views from neighboring properties.

- c. Where use of the public right-of-way will permit the creation of an off-street parking area, and will thereby relieve parking or traffic congestion on the adjacent City street;**

No parking is proposed within the right-of-way.

- d. Where the public right-of-way will be used to construct retaining walls, drainage structures or other facilities that the City considers necessary to protect or maintain the public infrastructure;**

There are no retaining walls proposed in the right of way.

- e. Where appropriate to validate already existing private improvements in the public right-of- way for the purpose of shifting the City’s potential liability for injuries and damages to the private property owners using the right of-way for private purposes;**

The proposed improvements enhance existing improvements in the right-of-way as the existing condition consists of a narrow sidewalk and laid brick behind the sidewalk, and the project will provide a continuous five-foot public sidewalk. The improvements in the right-of-way would be public improvements and maintained by the City, with the exception of the one-foot of landscaping behind the sidewalk.

- f. Where necessary to protect or enhance public safety;**

The proposed pedestrian improvements would enhance public safety for the reasons outlined under subsection "a".

Additionally, the Administrative Policy further states that "Where fencing is proposed on City property, except for where said fencing would be located on a very steep slope and would serve as a safety measure for vehicles and pedestrians said fencing should normally be avoided as this effectively turns public property into private property and potentially creates the unwanted image of a "tunnel effect" along our city streets. Fences and other similar barriers, including landscaping, that enclose public property for private use should be avoided."

Not applicable as no fencing is proposed within the public right-of-way.

Demolition Permit. The findings for approval of a Demolition Permit can be found below, along with reasons why these findings can be made.

A. That the demolition, as conditioned by the Planning Commission, will not have an adverse impact upon the public health, safety and/or welfare of the City;

There is no evidence that the demolition would have an adverse impact on the public health, safety, and/or welfare of the City based on the technical studies outlined and reviewed in the CEQA investigation memo.

B. That the demolition will not remove from the City a building of recognized historical or architectural significance, until potential preservation options can be reviewed;

The project would not cause a substantial adverse change in the significance of a historical resource. The existing buildings at 1-22 Mallard Road are not listed on the California Register of Historical Resources (CRHR), the City of Belvedere's historic register, or the National Register of Historic Places. A Historic Resource Evaluation was conducted, and the report concluded that the buildings, constructed in two phases from 1951-1953 and 1954-1956, do not meet any CRHR or City of Belvedere criteria. The buildings are not directly associated with events or persons that have made a significant contribution to broad patterns of local or regional history; do not individually or collectively embody distinctive characteristics of a type, period, region or method of construction or represent the work of a master architect; and do not appear to have any potential to yield information of any historical importance.

C. That the demolition plan presented by the applicant, as approved, provides for adequate site protection during and following the demolition;

Adequate site protection during and following demolition will be provided and will be ensured by approval of a Construction Management Plan to be approved by the City Engineer. The Storm Water Control Plan provides for erosion control.

Demolition debris will be hauled to the Marin Resource Recovery Facility in San Rafael. A total of 2,000 cubic yards of demolition material will be removed. The haul route will be Community Road to San Rafael Avenue, to Beach Road, to Tiburon Blvd, to Highway 101.

D. That the time frame for accomplishing the demolition is reasonable.

Demolition will occur prior to construction of the proposed project and will take approximately six weeks, which is reasonable for this size of property.

E. That the demolition will not remove a housing unit until options for maintaining housing on the property have been thoroughly considered;

The project includes a Replacement Housing and Relocation Plan, which must be implemented prior to the vacancy of affected affordable units. The project proposes to demolish 22 housing units and replace them with a total of 40 units, an increase of 18 housing units.

F. The proposed demolition is consistent with the goals of the City of Belvedere Housing Element. (Ord. 2011-4 § 30, 2011; Ord. 86-8 § 2, 1986.)

The proposed demolition is consistent with the Housing Element in that existing lower income units will be replaced with equivalent sized units on-site,

Environmental Determination. The applicants have asserted that the proposed project is eligible for the Class 32 categorical exemption (CEQA Guidelines Section 15332) for infill development projects. The City retained Ascent Environmental to conduct a peer review of the applicant's evidence and to determine if the project was eligible for the exemption; Ascent's memo and supporting studies are included as **Attachment 7** to this staff report.

To be eligible for the infill exemption, a project must meet five criteria:

- 1. 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.*
- 2. The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.*
- 3. The project site has no value as habitat for endangered, rare, or threatened species.*
- 4. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.*
- 5. The site can be adequately served by all required utilities and public services.*

In addition, the infill exemption cannot be used where (i) the cumulative impact of successive projects of the same type in the same place, over time is significant, (ii) there is a reasonable possibility that the activity will have a significant effect on the environment

due to unusual circumstances; (iii) it may result in damage to scenic resources within a highway officially designated as a state scenic highway; (iv) a project is located on a site which is included on any list compiled pursuant to Government Code Section 65962.5 (hazardous waste sites); or (v) it may cause a substantial adverse change in the significance of a historical resource. (CEQA Guidelines Section 15300.2.)

The City's determination of whether a project qualifies for a categorical exemption must be supported by substantial evidence that the project meets each of the criteria. The courts will affirm the City's factual determinations so long as they are supported by substantial evidence. The courts do not weigh conflicting evidence in reviewing the City's evidence. (See, e.g., *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 960-961.)

"Substantial evidence" is defined in the CEQA Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached...Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines Section 15384.) If facts and other substantial evidence support the City's conclusions, the courts will not review conflicting evidence that may contradict the City's conclusions. However, if a court is interpreting the scope of a categorical exemption, the court will review this as a question of law, subject to de novo review. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817.)

Based on memo prepared by Ascent Environmental, staff recommends that the Planning Commission determine the project qualifies for a Class 32 Exemption. The evidence to support this determination is summarized below.

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.

As described above in the sections on General Plan and Zoning Compliance and in **Attachment A** to the Ascent Memo, the project is consistent with the applicable General Plan designation and all applicable Zoning Ordinance regulations.

B. The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project site is within the Belvedere city limits on a site of only 2.6 acres. The site is adjacent to other residential uses and public streets for about 43 percent of its perimeter and bounded by the Belvedere Lagoon for the remaining 57 percent.

The Ascent memo discusses the meaning of "urban uses" in some depth; the Guidelines for the Class 32 exemption do not define "urban uses" not what is meant by "substantially surrounded." After consideration, the staff recommends that the Lagoon be considered an "urban use" because it is a human-made urban recreational

water feature. In addition, the site currently contains residences, which are defined as an urban use.

C. The project site has no value as habitat for endangered, rare, or threatened species.

No natural vegetation communities or native plant habitats are present in the project area, and the project site, including the portion extending into the Lagoon, does not provide suitable habitat conditions for any special status species known to occur in the region. Additional analysis is provided in Section 1.4.2 of the Ascent Memo and in Attachment D to the Memo.

D. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Traffic: Projects generating Vehicle Miles Traveled (VMT) 15 percent below that in the County or the City are considered to have an insignificant traffic impact. The City is currently utilizing the City VMT threshold in evaluating the environmental impacts of the housing element. Because the project would generate vehicle miles traveled (VMT) more than 15 percent below the existing average City VMT per capita, the project would not have a significant VMT impact. The project will also improve pedestrian access, does not create any hazardous conditions, and will not impede emergency access. Additional analysis is provided in Section 1.4.7 of the Ascent Memo and in Attachment M to the Memo.

Noise: The project would not result in any significant effects relating to noise. Compliance with the City's permissible hours of construction and compliance with the recommendations in the engineering report to use helical piles would ensure that temporary increases in noise levels would not result in disruptive noise and associated adverse effects to nearby receptors. Operational traffic noise also would not result in a perceptible increase in noise. Additional analysis is provided in Section 1.4.5 of the Ascent Memo and in Attachment L to the Memo.

Air Quality: No activities during construction or operation would substantially affect air quality. Additional analysis is provided in Sections 1.4.1 and 1.4.3 of the Ascent Memo and in Attachment C to the Memo.

Water Quality: The project would reduce the amount of impervious surface on the site and would install bioretention basins to reduce the amount of runoff into the Lagoon during storms. All runoff would also be treated through filtered bioswales. In addition, standard erosion control measures during construction would avoid water quality impacts.

Any maintenance, replacement, removal, or construction of docks or repair of the bulkheads in the Lagoon will require authorization from the Regional Water Quality Control Board (RWQCB) and may require permits or authorization from the Army

Corps of Engineers or California Department of Fish & Game. The General Requirements for Construction and Maintenance of Overwater Structures (Order No. R2-2018-0009) adopted by the RWQCB contain standard requirements that must be met to ensure that no water quality impacts are caused by dock construction. The City has no evidence that replacement and construction of docks in the Lagoon create water quality impacts.

Additional analysis is provided in Section 1.4.4 of the Ascent Memo and in Attachments J and K to the Memo.

E. The site can be adequately served by all required utilities and public services.

The project site currently receives utility services from Marin Municipal Water District, Sanitary District No. 5 of Marin County, and Pacific Gas & Electric, and public services from the City of Belvedere, Tiburon Fire Protection District, and Reed and Tamalpais School Districts. It is anticipated that the existing water and wastewater systems, as well as the natural gas and electricity lines providing service to the project site, will have the capacity to service the project. Similarly, police, fire, parks, and other public services have adequate capacity to serve the project. Additional analysis is provided in Sections 1.4.6 and 1.4.8 of the Ascent Memo and in Attachment N of the Memo.

F. Exceptions to the Use of Categorial Exemptions

- a. **Location.** Categorical exemption Classes 3, 4, 5, 6, and 11 are qualified by consideration of where a project is to be located. This exception does not apply to a Class 32 exemption.
- b. **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

No projects of the same type, in the same place, are currently proposed in the City of Belvedere or in downtown Tiburon. Therefore, no cumulative impacts would occur, and the project would not represent a cumulatively considerable contribution to cumulative impacts related to air quality, greenhouse gas emissions, biological resources, historic resources, hazardous materials, hydrology and water quality, noise, public services, transportation, and utilities and service systems.

c. Unusual Circumstances/Significant Impacts

A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Under *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104-1107, the categorical exemption will not apply if:

1. The project presents unusual circumstances; and there is a fair argument that, because of the unusual circumstances, the project may have a significant environmental impact. The environmental impacts may be considered only if some project circumstance is unusual; or
2. There is substantial evidence that the project *will* have a significant environmental impact.

The Ascent Memo concludes that no unusual circumstances exist that are applicable to the project, and no substantial evidence exists that the project *will* have a significant effect on the environment. The entire Lagoon and downtown Belvedere and Tiburon are located in a flood hazard zone on filled marshland underlain by Bay mud, so this is not an unusual condition; and, for the purposes of the proposed construction, piles of various types have often been used for other homes near the Lagoon. The effect of Bay mud on the apartment house is considered an effect of the environment on the project and is not an environmental impact under CEQA. (*Calif. Bldg. Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369.) Additional analysis is provided in Section 1.5 of the Ascent Memo and in Attachment G to the Memo.

d. Scenic Highways.

A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.

The project site is not located within or adjacent to a highway designated as a state scenic highway. Highway 101 is the closest state scenic highway to the project site, and the site is not visible from Highway 101. The project would, therefore, have no effect on a scenic resource within a state scenic highway.

e. Hazardous Waste Site.

A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The project is not located on a site that is included on any list compiled pursuant to Section 65962.5 of the Government Code. Additional information is provided in Attachment I to the Ascent Memo.

f. Historical Resources.

A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The project would not cause a substantial adverse change in the significance of a historical resource. The existing buildings are not listed on the California

Register of Historical Resources or the City of Belvedere's historic register, and the buildings do not meet the requirements for either of these historic registers. The buildings are not directly associated with events or persons that made a significant contribution to broad patterns of local or regional history, do not individually or collectively embody distinctive characteristics of a type, period, region or method of construction or represent the work of a master architect, and do not appear to have any potential to yield information of any historical importance. The buildings located at 1-22 Mallard Road are not historic resources under CEQA and the project would not result in impacts to a historical resource. Additional analysis is provided in Attachment E to the Ascent Memo.

ALTERNATIVE PLANS DATED OCTOBER 30, 2023

The applicant submitted an alternative set of plans that replace the apartment building on Lot 12 with six buildings configured as triplexes and fourplexes, retaining the 23 units initially proposed in the apartment building. This alternative has the effect of breaking up the massing of the apartment building and would provide five fourplex buildings and one triplex building. The five fourplex buildings would include four stories, with covered parking on Level One. Level Two would have two units, and Levels Three and Four would each have one unit. The total height would be 45 feet compared to 34 feet 6 inches for the height of the apartment building, 42' to the top of the roof access elevator room.

The triplex building would be a townhouse style building with three two-bedroom units. The triplex building would be three stories in height with a total height of 38 feet. Covered parking would be located on Level One, and living areas and bedrooms on Levels Two and Three.

Alternative A provides the benefit of reducing massing along Community Road but increases the height by up to 10 feet. Characteristics of the alternative plan include:

- Massing is reduced by incorporating fourplexes and triplexes and eliminating the apartment building and creating 6 individual buildings instead of one.
- Gross square footage is reduced by ~10,000 square feet.
- More open space and more landscaping are provided on Lot 12 by decreasing the lot coverage. An increase of 3,270 square feet of open space.
- All fourplexes are accessible and have elevator access (5 elevators v. 1 in the apartment scheme).
- The plan is based on City-approved Objective Design Standards (ODDS).
- Fourplexes are 45 feet in height, and triplexes are 35 feet in height, compared to 34 feet 6 inches for the apartment building.
- On-site parking is reduced by 12 spaces to an overall parking ratio of 2.25/unit for the entire project.
- No roof deck or amenity areas are provided for residents.

Alternative A would include a similar concession as the apartment building, because the City's zoning code considers any building with more than two units to be an apartment.

Similar to the apartment building, the applicant has requested waivers as outlined in **Attachment 7**, including waivers for height, outdoor open space, lot coverage, and side setbacks. If the Planning Commission prefers this alternative, staff will provide a full analysis once a complete application is submitted for this concept.

CORRESPONDENCE

The City received 12 letters from Belvedere Residents for Intelligent Growth (BRIG) between February 2022 and September 2023, as well as 14 letters from individual residents in opposition to the project. These letters focused on the following main points:

- The City's Zoning Ordinance does not permit apartment buildings in the R-2 zone.
- The requested concession under State Density Bonus Law to allow a prohibited use is not legally required and is not justified.
- The applicant's Geotechnical Report, dated October 19, 2022, does not adequately address concerns about settlement from construction in an area with underlying Bay Mud.
- The existence of Bay Mud and the ensuing settlement issues is an unusual circumstance that should trigger more extensive environmental review.

The City received two letters from the Belvedere Lagoon Property Owners Association (BLPOA) on February 16 and June 20, 2022. These letters focused on the following main points:

- Need for reengineering and replacement of bulkheads.
- Incompleteness and inadequacy of the geotechnical study.
- Concern about impacts to water quality in the Lagoon resulting from storm drainage, landfill, and subsidence resulting from the project.
- Concerns about the docks and the ability of BLPOA to review and comment on the docks.

City staff met with BLPOA representatives on November 3, 2022, and June 8, 2023 to discuss their concerns.

The City received the following letters of support:

- League of Women Voters of Marin County letter dated March 9, 2022
- Greenbelt Alliance letter dated March 15, 2022
- YIMBY Law letter dated August 13, 2022
- Housing Crisis Action letter dated July 30, 2022
- Bay Area Council letter dated June 3, 2022
- Marin Organizing Committee letter dated October 10, 2022

The City also received a Letter of Technical Advice from HCD regarding the project dated September 29, 2023.

CONCLUSION

Staff recommends that the Planning Commission take one of two possible actions: (1) approve the Design Review and Demolition Permit Resolutions as conditioned and recommend approval of the Tentative Subdivision Map and Revocable License to the City Council; or (2) continue the item and direct staff to analyze Alternative A once the

applicant has submitted a complete application for Alternative A, and return to Planning Commission with a full analysis of Alternative A along with necessary supporting documents

Should the Planning Commission prefer the proposed design in Alternative A, the applicant must complete the application, and City staff will need additional time to fully analyze the alternative and determine consistency with City development standards.

RECOMMENDATION

ACTION 1:

MOTION 1

Adopt the Resolution granting Design Review Approval for six single family homes, five duplexes, and 23 units in an apartment building, finding that the project is categorically exempt from CEQA based on a Class 32 exemption. **(Attachment 1)**

MOTION 2

Adopt the Resolution granting a Demolition Permit for the project located at 1-22 Mallard Road, finding the project to be categorically exempt from CEQA. (Attachment 2)

MOTION 3

Adopt the Resolution recommending City Council approval of the Tentative Subdivision Map, subject to findings and conditions located at **1-22 Mallard Road.** **(Attachment 3)**

MOTION 4

Recommend to the City Council approval of a Revocable License for private improvements located in the public street right-of-way at 1-22 Mallard Road.

OR:

ACTION 2:

ALTERNATIVE

MOTION

Continue the items and direct that the applicant submit a complete application for Alternative A and that staff provide a full analysis of Alternative A along with necessary supporting documents.

ATTACHMENTS

Attachment 1:	Draft Design Review Resolution
Attachment 2:	Draft Resolution for Demolition Permit
Attachment 3:	Draft Resolution for Tentative Subdivision Map
Attachment 4:	Project Applications
Attachment 5:	Project Plans
Attachment 6:	Alternative "A" Project Plans

Attachment 7: Ascent CEQA Memorandum and Appendices
Attachment 8: Replacement Housing and Relocation Plan
Attachment 9: Departmental Reviews
Attachment 10: Correspondence

BELVEDERE PLANNING COMMISSION

MINUTES

REGULAR MEETING

November 14, 2023 6:30 P.M.

A. CALL TO ORDER OF THE REGULAR MEETING

Chair Pat Carapiet called the regular meeting to order at 6:30 p.m. in the Council Chambers. The meeting was also available via Zoom webinar. Commissioners present: Pat Carapiet, Ashley Johnson, Nena Hart, Marsha Lasky, Claire Slaymaker, Kevin Burke, and Alex Seidel. Staff present: Director of Planning and Building Rebecca Markwick, Special Counsel Barbara Kautz, Associate Planner Samie Malakiman, and Technician Nancy Miller. City consultants present: Tricia Stevens, MIG; Michael Parker and Tanya Jones, Ascent Environmental.

B. OPEN FORUM

There were no speakers.

C. REPORTS

There were no reports.

D. PUBLIC HEARINGS

1. Demolition, Design Review, Tentative Subdivision Map, and Revocable License. The project proposes to demolish the existing 22 dwelling units and construct 40 units located at 1-22 Mallard Road (APNs 060-072-27, -28, and -18). The project proposes six single-family homes with one accessory dwelling unit, five duplexes (10 units), and 23 units in an apartment building. Four of the units would be affordable to lower income households. The request includes one concession and multiple waivers under State Density Bonus Law. Staff recommends that the project is categorically exempt from California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15332 Infill Development. Applicant: Bruce Dorfman, Thompson Dorfman. Property Owner: Mallard Pointe 1951, LLC

Director Markwick presented the staff report accompanied by a slide show presentation. Ms. Markwick provided an overview of the project, including an alternative plan.

Barbara Kautz, Partner at Goldfarb Lipman, Special Counsel to the City, provided an overview of housing law, including the Housing Accountability Act (HAA) and Density Bonus Law (DBL); and California Environmental Quality Act (CEQA) provisions related to exemptions.

In response to commissioners' question, Ms. Kautz stated that a project must be consistent with applicable objective standards in the City's General Plan and zoning ordinance; the developer is entitled to one concession and waivers; the project is considered to be consistent with applicable General Plan and zoning standards; the need to construct the affordable units in the first phase of development is included in the conditions of approval; and an adopted standard would need to be applied to require more affordable units than required by Density Bonus Law.

Ms. Kautz confirmed that the Zoning Code includes prohibited land uses; the proposal is considered a single project; the City would decide if a road is designated a private or public road; the construction timeline could be construed as a development standard as defined in Density Bonus Law; provided the DBL definition of “development standard”; and stated that the R-2 Zone is not being eliminated, but would be allowing apartments that would not normally be permitted.

In response to commissioners’ questions, Ms. Kautz noted that the Commission could apply conditions of approval based on subjective standards, and provided examples of conditions of approval, such as the materials to be used in construction, lighting, and landscaping. She stated that the City’s Objective Design and Development Standards (ODDS) could not be applied to the proposed project because a complete preliminary application was submitted before the standards were adopted; defined regulatory concessions; and discussed applying a construction time limit to the entire project and not individual buildings. Ms. Kautz confirmed that the number of units could not be reduced in order to reduce the proposed waivers; conditions of approval must not reduce the total size of the proposed buildings; the proposal does not remove the R-2 Zone from the Municipal Code, but the proposed concession would allow buildings with more than two units in the zone; and all other R-2 requirements, including height and setback limitations, would remain, unless modified by waivers.

Tanya Jones, Senior Environmental Planner, and Mike Parker, Principal, Consultants with Ascent Environmental, Inc., presented its CEQA administrative memorandum for the project. The consultants provided an overview of the Class 32 (Infill) Exemption Criteria under CEQA. In response to Commissioners’ questions, staff, the consultants and counsel discussed the pumping system between Richardson Bay and the lagoon; discussed CEQA definitions related to the designation of the lagoon as an urban use; confirmed that the state of a city’s infrastructure is taken into consideration in the CEQA process; and described the use of helical piers.

In further response to the commissioners, Mr. Parker confirmed their consultants had visited the site in the course of preparing the CEQA administrative memorandum. Staff discussed the need for a storm water pollution prevention plan; regulatory agencies’ participation in the process; potential bulkhead replacement at the building permit application stage; the absence of unusual circumstances that would result in significant environmental impacts; and methods for protecting the bay from potential sediment problems.

Staff also confirmed that additional reports, which included geotechnical, soils, storm water, and structural reports, would be required on submission of the building permit application; that the reports would also be submitted to the Army Corps of Engineers and the San Francisco Bay Regional Water Quality Control Board; repairs to, or replacement of, a bulkhead would not be considered at the planning stage. The consultants confirmed that differences in the buildable lot size and number of units stated in some of the reports would not alter their recommendations; and confirmed the assessment included the potential for bulkhead replacement.

Tricia Stevens, Consultant Planner, summarized the Design Review approval findings, Demolition Permit, Tentative Map and Revocable License. In response to commissioner questions, Ms. Stevens and Ms. Markwick stated that additional story poles would have blocked resident access to their homes; a 3D model of the development will be requested; the R-2 Zone allows single-family homes on the lagoon; staff's recommendations regarding the project that assume the bulk, scale, and mass resulting from the applicant's concession and waivers; privacy has been prioritized for the residences on either side of the units; standards for public roads are not applicable for private roads; staff would confirm if the road width meets required fire access standards; staff will request confirmation from Tiburon Fire Protection District that the driveways comply with local and state standards, and noted that a waiver could not be granted for a state code requirement.

Staff further confirmed that the Construction Management Plan (CMP) would address asbestos removal; staff would research a bond requirement to protect residents from potential damage to property; the proposal meets the minimum parking requirements; state law prohibits increased setbacks for the project; a condition of approval for a 15-foot rear yard setback could apply if it did not result in a reduction in building size or density; and the CEQA guidelines specify that the City must determine if a project qualifies for an exemption.

Chair Carapiet opened the public hearing.

Joanna Julian, Thompson Dorfman LLC, Project Applicant, presented the Mallard Pointe proposal, in addition to Paul Lettieri, The Gazzardo Partnership, Ron Sutton, Sutton Suzuki Architects, Francis Gough, Francis Gough Architect Inc., and Riley Hurd, Attorney.

Following the presentations, Chair Carapiet announced a 10-minute break at 9:22 p.m., which was followed by commissioner questions.

Scott Stevens, Miller Pacific Group, discussed the term "load balancing," and noted that the commissioners were reviewing a preliminary geotechnical report. Mr. Stevens stated that a design-level geotechnical report would determine building loads and the engineering options that would support the loads; structural engineering input would determine whether helical piles or a load-balancing foundation would be used to prevent significant settlement; Miller Pacific would provide geotechnical analysis for bulkhead replacement; and confirmed that he has not viewed the bulkheads from the perspective of the lagoon.

Mr. Stevens discussed the process for repairing or replacing the bulkheads; the fill beneath the footprint of the proposed buildings; confirmed that the Federal Emergency Management Agency (FEMA) does not have a geotechnical requirement; many of the bulkheads have been replaced and older bulkheads may need to be replaced, which would typically be easier before construction started; confirmed construction vehicle loads would not affect the bulkheads; discussed the construction process to replace a bulkhead; discussed the design-level report, which will provide information on the recommended type of foundation for each building; and noted that the proposed geotechnical methodologies are standard practice for waterfront construction.

Chris Mills, BKF Engineers, addressed grading questions from the commissioners, including the amount that would be necessary for the new street, which would affect only the project site; confirmed that the elevation of a garage has been set above the lowest grade, so that floodwater would flow back out to the lagoon; confirmed that the grading of the garages for the fourplex and triplex buildings in Alternative A would not cause floodwater entry; and clarified the phrase “Semi-Subterranean”, which referred to the south end of the project that will be built into the grade.

In response to commissioners’ questions, the project team stated that the proposed material for the base of the garages for the apartment building would be rusticated wood siding and the openings would be provided with wood screens to allow ventilation and ensure the lighting would not be visible from the exterior; all exterior lights would be shielded to ensure downward lighting; one shielded light fixture on each balcony is required by the code; location of the pedestrian entryway, which is located away from the garage entrance, was determined primarily by the location of the lobby and Americans with Disabilities Act (ADA) parking; a structure on the lawn by the garage area is a transformer pad; and air conditioning will be included in the HVAC system.

The project team further clarified the height of the rear deck walls and the wall separating two duplex residences; stated that the anticipated start of construction would be 12 to 18 months from submission of the building permit applications; demolition is expected to take 6 weeks; provided a draft outline of the stages of construction; stated that the entire project should take 2 to 3 years to complete in the right market conditions; noted that the new docks would be constructed on piers and the existing docks would be upgraded; and clarified that some garage spaces would be tandem.

Mr. Sutton stated that the interior lighting plan for the units on the lagoon side has not yet been designed, but would likely be recessed canned lighting; the depth of the recess could significantly affect the level of lighting from a light fixture, and he noted that residents may choose to use additional lamps.

The project team provided the following answers to commissioners’ questions:

- the hours of use for roof deck music could be limited;
- a commitment to building the single-family residences in the first phase of construction could not be made at this stage;
- the construction of 40 units would be needed to maintain a maximum height of two levels and provide for multi-family units;
- it would not be economically feasible to remove the third story of the fourplex units and replace the single-family homes with duplexes in Alternative A;
- the number of proposed bike racks is consistent with encouraging alternate modes of transportation throughout the state;
- the number of proposed exterior bike racks has been limited;
- landscaping has been extended on Community Road by relocating the entryway off Mallard Road;
- less space would be available for walkways if the landscaping were increased;
- the duplexes would each have a separate wall and would not share walls;

- and Mr. Dorfman confirmed they would not demolish the current buildings if financing was not in place to construct new buildings.

Chair Carapiet invited comments from Belvedere Residents for Intelligent Growth (BRIG) and the Belvedere Lagoon Property Owners' Association (BLPOA).

Mark Wolfe, representing BRIG, requested that the commissioners not approve staff's recommendations. Mr. Wolfe discussed BRIG's position that the lagoon did not meet the definition of "qualified urban uses" under CEQA; and an initial study should be required to enable the public and public agencies to comment on the validity of the analysis. He further stated that the lagoon was originally a natural feature connected to the Bay; is designated open space in the General Plan and empties into Richardson Bay; and concluded the project is not exempt from CEQA.

Mr. Wolfe discussed BRIG's position that the project should not be exempt from CEQA because it did not meet the General Plan and zoning code requirements; and a peer review of the geotechnical report concluded that there was insufficient information to conclude the project would not impact neighboring buildings and the environment.

Mr. Wolfe argued that land use prohibitions are not eligible for a concession under the DBL; and there was insufficient evidence to reach the conclusion that waiving the R-2 Zone prohibition would result in sufficient cost reductions.

Wendy Manley of Fennemore Wendel, Attorney for the BLPOA, discussed the risks posed by the project to the lagoon's water quality and the circumstances which precluded the proposed development project from eligibility for the CEQA exemption; confirmed that the BLPOA supports Mr. Wolfe's position that the project is not eligible for the Class 32 Infill Exemption because the lagoon is not an urban use; that the exception to the exemption applies for unusual circumstances; and supports the comments made by David Smith that early detailed geotechnical analyses are necessary.

Ms. Manley discussed the risks of the project on the water quality of the lagoon, including the potential release of sediment and pollutants during construction; concerns that the permits did not address other water quality problems; potential failure of the existing bulkheads; concerns that water quality could be affected to the extent it could not be released to the Bay for flood control purposes; impacts from grade failure; and increased pollutants released during storm conditions during construction.

Ms. Manley requested an in-depth geotechnical evaluation before project approval to provide a thorough investigation of water quality impacts. She discussed the reasons BLPOA believes that individual features of the lagoon together constituted "unusual circumstances"; stated that the lagoon is not an urban use; and argued that the project could not be exempt from CEQA because it might result in significant water quality impacts that would not be addressed by permit requirements.

Ken Johnson, President of the BLPOA, confirmed the BLPOA's agreement with the correspondence submitted by David Smith and David Arquette; and stated that the information submitted on the effects of construction on the water quality is insufficient; the lagoon consists of Bay water, and is not a man-made water feature; and supported the conclusions of previous speakers that the individual features of the lagoon together constitute "unusual circumstances." Mr. Johnson also asked the commissioners not to approve the demolition permit.

The following members of the public offered public comment.

Tom Price discussed his support for not granting the CEQA exemption based on the reasons discussed by Mr. Wolfe; confirmed the need for an environmental review of the project; and asked the commissioners to deny the request for an exemption.

Bethany Hornthal discussed her concerns related to the effects of sound and light; story poles that did not accurately portray the proposed development; the demolition of 22 units that were affordable compared to other properties in Belvedere, and providing just 4 deed-restricted affordable units; the need for transparent CEQA analysis of the proposal, which she stated affected all the residents in Belvedere.

Randy Binstock requested a CEQA analysis; stated that the lagoon is not an urban use and that staff's assertion that the lagoon is classified as an urban use is wrong; and stated that the developer's request for CEQA exemption must be denied.

Bob Lightstein ceded his time to Dr. Andrew Barnett, who discussed his concern that a large amount of excavated dirt would be washed into the lagoon with the first rainfall; the need for a CEQA analysis to identify and mitigate problems caused by construction; the possibility of the project being abandoned mid-construction if funding is insufficient; and the effects of the foundation work on neighboring properties and the lagoon. Dr. Barnett recommended a CEQA analysis before the project moved forward.

Jim Hornthal stated that the project will eliminate 22 relatively affordable units, compared to other residences and will provide only 4 new affordable units; seniors and young families will be displaced; the current zoning is not inconsistent with the General Plan; and the role of the City is not to enable property owners to maximize the profits from construction projects. Mr. Hornthal discussed inaccurate information about the planning process and safety requirements; requested a CEQA review; and urged the commissioners to uphold their commitment to affordable housing and adhere to safety and environmental standards and planning guidelines.

Kirk Usher discussed his concern that a multi-year construction project would impact the community park and people who use the park.

Marika Bergson, BLPOA Board Member, spoke on behalf of the BLPOA Board, and stated that she supported the comments made by previous speakers, including Mr. Wolfe; discussed the negative comments made by the applicant's attorney; stated that the BLPOA has an obligation to the state of California through a permit from the Regional Quality Control Board, and to the residents of Belvedere, to prevent the lagoon from flooding; and discussed the potential impacts from new bulkhead construction on safety and water quality.

Maureen Johnson ceded her time to David Kenneth Smith, resident and professional geologist, who discussed his concerns relating to the environmental integrity of the project over the long term; lack of information on soil components; incomplete information on the impact of an earthquake on the soil materials beneath the lagoon; site subsidence; earth movement; the need for a plan to protect the site and lagoon water, including an integrated bulkhead; and the need for further geological studies and environmental review under the CEQA process.

Charlie Oewel, former Belvedere resident, commented on the Regional Housing Needs Allocation (RHNA) process; and stated that the General Plan did not necessitate changes to the R-2 Zone to accommodate the proposed development.

Harry Smith confirmed his support for the previous remarks made on behalf of BRIG; stated that the intention of the state legislature is to increase opportunities for affordable housing; and that the proposal to build expensive, unaffordable homes, with the exception of four very small houses, which will supplant 22 relatively low-cost units, is outside the spirit of the law.

Jill Barnett ceded her time to Dr. Larry Karp, Engineer, who stated that constructing the buildings would cause a large environmental impact; the helical piers were unsuitable for a large project; and commented on the lack of calculations and drawings. In response to Chair Carapiet, Dr. Karp clarified the contents of the two letters of concern he submitted.

Bernard Huger, representing Huger family members, discussed their support for an environmental impact study; their concerns that pollutants from construction could be expelled into the water and would affect the wildlife in and around the lagoon and the Bay and Pacific Ocean; and stressed the need to understand the environmental impacts of the project.

Bernard Huger Sr. used a slide presentation to demonstrate that the view from their property and neighboring properties would be severely impacted by the proposed dwellings; commented on the impact of the proposed construction on the general community; and stated that Leeward Road is untenable as a staging area because the road has too many cars. Mr. Huger confirmed he agreed with the comments made by Mr. Wolfe, Ms. Manley and other community members.

Mason Smith, Mallard Pointe resident, stated that his home is affordable; and that he would be displaced if the new development is approved.

Richard Fink voiced his support of the project, wants the Planning Commission to support the project.

Ed Greenfield, representing his stepfather, John Nearhout, retired engineer, stated that Mr. Nearhout supported all of the findings submitted by BRIG and the BLPOA; the lagoon is not an urban use; and a CEQA review is essential to determine the environmental impacts.

Bill Watson ceded his time to David Parquet, who commented on his qualifications to discuss CEQA; stated that he disagreed with staff's assertion that the proposed project is categorically exempt from CEQA; did not oppose the project, but opposed the process; and urged the commissioners to request an Initial Study.

Dana Hemberger discussed the need for lagoon homeowners to maintain their property, including the bulkhead; and his support for a CEQA analysis of the project.

Larry Stoehr urged the City not to grant the applicant an exemption from CEQA; discussed damage sustained to the garage floor of his home caused by construction on a neighboring property; stated that the proposed project would most likely have a significant effect on the environment and property; and discussed the need for conditions of approval to protect the neighboring properties.

Katie Koyfman, representing Housing Crisis Action, discussed the need for making housing a top priority; stated that they support the project because it provides 40 new homes for the community, including single-family homes, apartments, duplexes and affordable units. Ms. Koyfman stated that the site offers easy access to transportation, services, and shopping; discussed the industry standards the homes will meet; and stated that the proposal was a good project.

Jenny Silva, representing the Marin Housing Collaborative, discussed the housing crisis and the need for more housing; a workforce that commuted to Marin due to a lack of housing; recruitment difficulties; the need for housing to enable residents to downsize; lack of contemporary housing for young people; and the benefits of new housing, including more energy efficient, water-saving homes, and improved infrastructure. Ms. Silva added that the project will help the City to provide housing units for RHNA needs; and that the developer could have proposed more units on the site.

Jordan Grimes, representing Greenbelt Alliance, discussed the organization's support for the project. Mr. Grimes noted that it was the most significant proposal reviewed by the City for many years; would contribute to the City's RHNA goals, target missing middle housing, present the opportunity for new infill housing, would be more more affordable than other homes in the City, and should reduce vehicle miles travelled (VMT) and greenhouse gas emissions (GHGs), which would ameliorate the impacts of workers needing to travel from outside of Marin. Mr. Grimes stated that the proposal qualifies for the exemption and he urged the Commission to support the project.

Carmela Davis, representing Paul Jensen, Marin Environmental Housing Collaborative, discussed the organization's wholehearted support for the project; stated that the proposal offered an opportunity for the City to provide much needed housing in Marin on a site that is able to accommodate high-density housing; the proposed categorical exemption finding was solid and there is no substantial evidence that the project would result in significant environmental impacts; and that if the lagoon is considered an unusual circumstance that would disqualify a categorical exemption, a precedent could be set that might require properties along the lagoon to be subject to environmental review for rebuilds. Ms. Davis discussed a Loch Lomond project in San Rafael that was completed by Mr. Dorfman, which did not result in gridlock or loss in property values.

No additional members of the public requested to speak.

Chair Carapiet closed public comment.

In response to public comment, Mr. Hurd noted that the Planning Commission was primarily reviewing a design review application and that many of the comments related to aspects of the application that would be reviewed at the building permit stage, including the submission of drawings for bulkheads and a storm water pollution prevention program (SWPP); that dumping silt and pollutants in the lagoon would be illegal; clarified state law regarding "concessions"; stated that DBL clearly indicates that the requirements in addition to development standards are eligible as concessions; stated that the applicants have undertaken an environmental investigation that has found no significant impacts; provided case law demonstrating that the infill exemption could be used for a development with a concession; and stated that the lagoon did not constitute an unusual circumstance or an urban use. Mr. Hurd questioned the need for an Environmental Impact Report (EIR).

Mr. Stevens stated that there was no limit to the depth a helical pile could be installed in the ground; that they could be installed with lateral support; and he noted that the ground at Mallard Pointe is not made up of loose sand, unlike the soil beneath Beach Road and San Rafael Avenue.

Mr. Dorfman confirmed that the lagoon was created from bay lands and is not a tidal basin; noted that none of the current 22 units are affordable or deed-restricted for affordability; the average rent is \$6,000; and there is much deferred maintenance. The proposed development will have 40 units, of which 4 will be deed-restricted for affordability and 6 will be affordable by design; and the development will allow prospective residents to downsize. Mr. Dorfman discussed ceiling heights and roof design of the fourplex structures in response to Chair Carapiet.

Chair Carapiet closed the public hearing.

Commissioner Burke stated that the proposed project is not eligible for a categorical exemption for the following reasons: 1. The lagoon is not an urban use because it is a lake connected to the Bay, contains an ecosystem, and is unlike the open space considered in the *Banker's Hill* case; so the project is not substantially surrounded by urban uses. 2. The site presents an unusual

circumstance because it contains over 900 feet of shoreline, which could be affected by construction; and the bulkheads are deteriorating, creating significant and meaningful risks to the lagoon and ultimately the Bay during the demolition and construction process if sediment washes into the lagoon and potentially contaminates the water and impacts water quality. Commissioner Burke added that his preference would lean towards the design that includes 4 fourplex dwellings and 1 triplex unit.

Commissioner Seidel stated that the report did not reach a clear decision on whether the lagoon was an urban use, but in his view the lagoon was a lake, not an urban use. He preferred the 6-building scheme but suggested that the height of the apartment building could be lowered by removing the top floor and allocating the space to the single family dwellings.

Commissioner Lasky suggested she could approve the design of the six-building configuration if the size of the fourplex units was reduced by removing one bedroom, thereby reducing the height and mass; commented on the lack of articulation in the design that adds to the massing; and acknowledged the triplex unit has less mass and a lower height. If the height cannot be reduced, she preferred the apartment building.

Regarding the CEQA process, she stated that there were too many unanswered questions to approve the categorical exemption. In particular, the lagoon is not an urban use; and evidence was presented regarding potential environmental issues including the project's location in a flood zone, Bay mud, earthquakes and traffic that will affect residents.

Commissioner Johnson stated that she could not support the categorical exemption for the project's location is atypical and unusual in that the proposed project is in a FEMA flood zone on a lagoon in an area prone to settlement and liquefaction. Commissioner Johnson added that the project would add density to a County that is running low on water and in a city that lacks a plan to address failing critical infrastructure; and she expressed her support for an Initial Study because it would be unreasonable to approve a project without considering all the impacts on the environment. She further commented on the need to consider projects in the context of safety, disaster preparedness and evacuation planning and agreed with the concerns expressed that the construction could affect the water quality. She stated that the project was inconsistent with the General Plan and Safety Element policy to "limit construction in the flood zone." Commissioner Johnson confirmed she had a preference for the alternative plan if the maximum height of the apartment building could be lowered from 45 feet; that the design is better articulated and there is more open space; and that if the height could not be reduced, she preferred the apartment building.

Commissioner Slaymaker agreed with the previous Commissioner comments that the lagoon is not an urban use and the project may affect water quality, especially because bulkhead repairs or replacement would have a detrimental effect on the lagoon; and would support a CEQA analysis rather than a categorical exemption. Commissioner Slaymaker confirmed her preference for

Alternative A because the design is better articulated, but would prefer the height of the buildings to be lower.

Commissioner Hart agreed with the previous commissioner comments that there is a need for a CEQA analysis, and the project should not be granted an exemption; the lagoon is not an urban use; and that testimony from residents was sufficiently compelling not to approve the exemption. Commissioner Hart confirmed her preference for Alternative A because the apartment building design is superior; there would be more open space; and she suggested the fourplex units should be redesigned to overlook the park.

Chair Carapiet noted that homeowners' views were not protected. She stated that the commissioners were bound by the new housing laws, and the site will be developed. She stated that the commissioners looked to achieve the best design possible. She agreed with her fellow commissioners that an Initial Study should be undertaken, and the exemption could not be approved, because the adjacent lagoon constitutes an unusual circumstance; and the reports from the applicant's engineer and consultants, including the biological report, appeared to misrepresent the project. Chair Carapiet stated her preference for Alternative A because the massing is broken up; it provides more open space; and that she favored the triplex design with an entrance across from the park.

MOTION: Motion to find that the project is not categorically exempt from CEQA based on a Class 32 exemption, for the reasons stated by the commissioners.

MOVED BY: Ashley Johnson seconded by Claire Slaymaker

VOTE:	AYES:	Pat Carapiet, Marsha Lasky, Nena Hart, Kevin Burke, Claire Slaymaker, Ashley Johnson, Alex Seidel
	NOES:	None

MOTION: Motion to continue Design Review to construct 40 units located at 1-22 Mallard Road:

MOVED BY: Ashley Johnson seconded by Claire Slaymaker

VOTE:	AYES:	Pat Carapiet, Marsha Lasky, Nena Hart, Kevin Burke, Claire Slaymaker, Ashley Johnson, Alex Seidel
	NOES:	None

MOTION: Motion to continue the application for a demolition permit to remove 22 units at 1-22 Mallard Road:

MOVED BY: Ashley Johnson seconded by Claire Slaymaker

VOTE: AYES: Pat Carapiet, Marsha Lasky, Nena Hart, Kevin Burke,
 Claire Slaymaker, Ashley Johnson, Alex Seidel
 NOES: None

MOTION: Motion to continue the resolution recommending the City Council approve a Tentative Subdivision Map, subject to findings and conditions of the property located at 1-22 Mallard Road:

MOVED BY: Ashley Johnson seconded by Claire Slaymaker

VOTE: AYES: Pat Carapiet, Marsha Lasky, Nena Hart, Kevin Burke,
 Claire Slaymaker, Ashley Johnson, Alex Seidel
 NOES: None

MOTION: Motion to continue the resolution recommending the City Council approve a Revocable License for Private Improvements located in the public street right of way at 1-22 Mallard Road:

MOVED BY: Ashley Johnson seconded by Claire Slaymaker

VOTE: AYES: Pat Carapiet, Marsha Lasky, Nena Hart, Kevin Burke,
 Claire Slaymaker, Ashley Johnson, Alex Seidel
 NOES: None

Special Counsel Kautz explained that the project applicant may appeal the denial of the CEQA exemption to the City Council.

Meeting was adjourned at 1:30 a.m. on November 15, 2023.

Memo

The logo for ASCENT, featuring the word "ASCENT" in a bold, sans-serif font inside a dark grey rectangular box with a slight shadow effect.

455 Capitol Mall, Suite 300
Sacramento, CA 95814
916.444.7301

Date: October 13, 2023
To: City of Belvedere
From: Mike Parker and Tanya Jones
Subject: Final CEQA Investigation Memorandum for the Mallard Pointe Project

1.1 INTRODUCTION

The City of Belvedere (City) has received an application for design review and subdivision approval for the demolition of 22 residential units in nine duplex buildings and one fourplex building at 1-22 Mallard Road and the construction of 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit (ADU), and a 23-unit apartment building (project). The General Plan land use designation is Medium Density Multi Family Residential (5-20 dwelling units/net acre), and the project will require waivers and a concession under State Density Bonus Law to several R-2 zoning requirements.

As detailed under Section 1.3, "Exemptions under CEQA," the City is reviewing available project information to determine whether the project meets the criteria for a categorical exemption under CEQA Guidelines Section 15332 for infill development projects. This memorandum documents Ascent's evaluation of the project circumstances and a recommendation for the CEQA review process. As part of our evaluation, application materials and technical studies provided by the applicant were reviewed, Ascent provided review comments on the studies and submitted memoranda identifying recommended revisions and inclusion of any other necessary information as it pertained to CEQA. Technical studies reviewed include the following and are also included as attachments to this memorandum:

- ▶ Attachment A: General Plan and Zoning Consistency
- ▶ Attachment B: Photo Simulations
- ▶ Attachment C: Air Quality and Greenhouse Gas Emissions Analysis
- ▶ Attachment D: Biological Site Assessment
- ▶ Attachment E: Historic Resource Evaluation
- ▶ Attachment F: Archaeological Resources Technical Report (Confidential)
- ▶ Attachment G: Preliminary Geotechnical Investigation
- ▶ Attachment H: Paleontological Records Search
- ▶ Attachment I: Phase I Environmental Site Assessment Report
- ▶ Attachment J: Stormwater Control Plan
- ▶ Attachment K: Preliminary Drainage Strategy
- ▶ Attachment L: Construction Noise Impacts Constraints Analysis
- ▶ Attachment M: Transportation Study
- ▶ Attachment N: Preliminary Utility Design Memo

The logo for ASCENT, featuring the word "ASCENT" in a bold, sans-serif font inside a dark grey rectangular box with a slight shadow effect.

1.2 PROJECT DESCRIPTION

1.2.1 Project Location and Setting

The project is located on a 2.8-acre site at 1-22 Mallard Road in the City of Belvedere within the Belvedere Lagoon neighborhood (Figure 1). Assessor's Parcel Numbers (APNs) for the project site include 060-072-27, 060-072-28 and 060-072-18. The site is adjacent to the Belvedere Lagoon to the north, existing residential uses to the east and west and Belvedere Park and City Hall to the south (across Community Road).

Originally built in 1951, the existing 22 units are spread through nine duplex buildings and one fourplex building; eight of the duplex buildings are adjacent to the Belvedere Lagoon, and one duplex building and the fourplex building are adjacent to Community Road. The existing unit mix includes 18 two-bedroom, one-bath units and four two-bedroom, two-bath units.

The Belvedere Lagoon neighborhood consists of about 275 small- to moderate-sized lots, ranging from around 5,000 to 12,000 square feet in size. They contain predominantly one- and two-story homes, which were mainly built in the 1950's and 1960's on artificial fill over underlying Bay mud, with some new homes replacing existing homes in recent years. Most of the lots in this area front on the waters of the Belvedere Lagoon, an artificial lagoon created by diking portions of San Francisco Bay. Tide gates and pumps control the flow of water between the Lagoon and the Bay. Some of this area may be subject to flooding during severe high intensity storms (City of Belvedere 2010). The Belvedere Lagoon neighborhood, including the project site, is in the VE Special Flood Hazard Area with an increased chance of flooding due to storm waves and tidal surges. Properties in the VE Zone are required to comply with the City's Floodplain Ordinance to reduce flood risk.

1.2.2 Local Planning Regulations

The project is within the City of Belvedere and subject to the City of Belvedere General Plan 2030 and Zoning Ordinance in effect on August 6, 2021, when the applicants filed a preliminary application which contained all required information. The project consists of three assessor parcels each of which are designated Medium Density Multifamily Residential (MFR) by the City's General Plan and zoned R-2.

GENERAL PLAN AND ZONING

The City of Belvedere General Plan 2030 land use designation for the project site is Medium Density Multifamily Residential (MFR). The Medium Density MFR land use designation allows for between 2 and 20 units per net acre and anticipates 13.5 to 54 persons per acre. Areas designated as Medium Density MFR primarily occur along the south/southeast boundary of the Belvedere Lagoon with some pockets also designated along the northern boundary of Belvedere Cove and at the intersection of Laurel and Bayview. There are 13.41 acres designated as Medium Density MFR in the City making up approximately 0.95 percent of the City's total designated land uses (City of Belvedere 2010).

The project site is zoned R-2, duplex residential zone. Permitted uses in the R-2 zone include single-family dwellings, accessory dwelling units, accessory uses to single-family dwellings, two-family dwellings and accessory uses, structures, facilities and uses related to any function of municipal government, and transitional and supportive housing facilities. Prohibited uses include any business, boarding house, rooming house, apartment court, apartment house, church, club building, hotel, rental office, or any other use (City of Belvedere 2020). The R-2 zoning also prescribes various additional development standards such as setbacks, lot coverage, floor area ratio, and height limits, as described in Attachment A.



Source: adapted by Ascent Environmental in 2020

Figure 1 Project Location

1.2.3 Project Components

Building and Site Design. The project involves the demolition of the existing 22 residential units and construction of 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit (ADU), and a 23-unit apartment building. The ADU is proposed as a one-bedroom unit to be located above the attached garage of one of the single-family homes. 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. The project site plan is shown on Figure 2. The six single-family homes would all contain four bedrooms with one of the homes constructed with the above garage ADU. Of the ten duplex units, five would be two-bedroom units and five would be three-bedroom units. Of the twenty-three apartment units, six would be one-bedroom units, twelve would be two-bedroom units, and five would be three-bedroom units.

Three of the apartment units would be deed-restricted below-market rate low-income units, and one would be deed-restricted to very low income households, providing four affordable units total¹. All of the affordable units must have two bedrooms to replace the existing units that will be demolished. In addition, the applicants state that one ADU and five one-bedroom apartment units would be affordable by design to moderate-income households, although rents would not be restricted.² On-site parking for 102 cars would be 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 project would also include 114 bicycle parking stalls.

Single-family and duplex homes would be situated along the Belvedere Lagoon, and the apartment building would be situated on the inland portion of the site. Pedestrian enhancements include wider sidewalks, new sidewalks, traffic calming features on Community Road, and crosswalks to improve the connection from Mallard Pointe and the neighboring properties to Community Park. Because the current width of Mallard Road does not comply with Fire Department requirements, 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 a private street.

The applicants state that the architectural style of the apartment building is heavily influenced by other buildings in Belvedere designed by Albert Farr. The lagoon homes would include a mix of traditional and contemporary design as seen among other lagoon homes. The apartment building materials would 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 project would include drought-tolerant landscaping, permeable pavers, energy-efficient appliances, increased insulation, low-flow fixtures, solar panels, and electric vehicle charging stations.

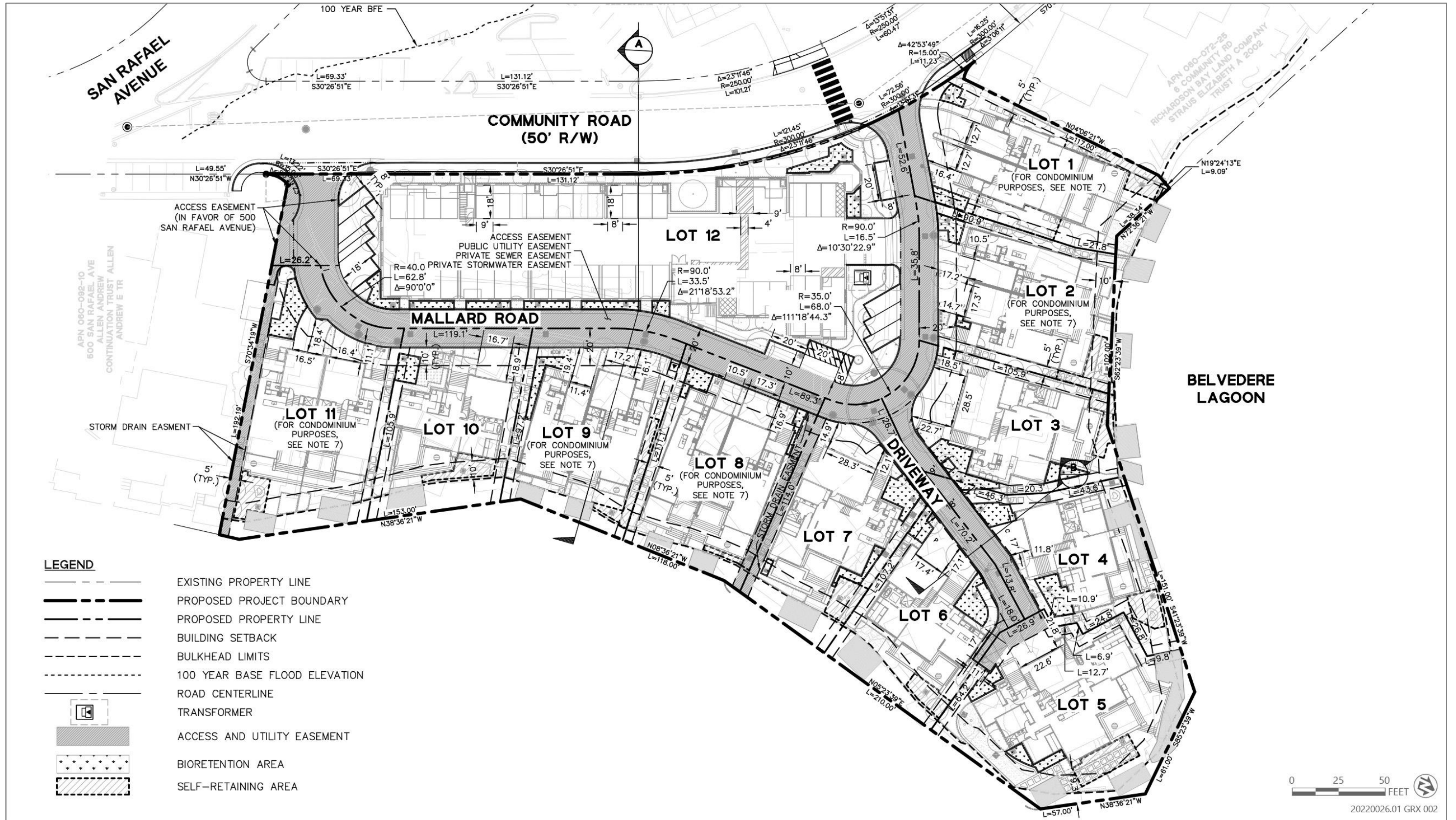
Foundation Design and Compliance with FEMA Standards. Most ground-disturbing activity would occur within the first 3 to 6 feet of fill soil below the ground surface. Shallow foundation systems would include finished-floor elevations using a concrete mat slab or post-tensioned slab-on-grade foundation system to support elevated interior floors above a crawl space. The project would be designed to balance the load of the new buildings so as not to incur new loading on the site. Construction methods for new residential units near the Lagoon could also include deeper foundation systems where Bay Mud underlies the site by more than 30 to 40 feet. In these instances, some of the single-family residences and duplexes may incorporate helical piles which would typically need to extend about 10 to 30 feet below the Bay Mud layer (Attachment G).

¹ Maximum income for a one-person low-income household in 2023 is \$104,400; for a two-person household, \$119,300. Maximum low-income rent for a two-bedroom apartment is \$2,362/month, including utilities. Maximum income for a one-person very low income household is \$65,250; \$74,600 for a two-person household. Maximum very low-income rent for a two-bedroom apartment is \$1,969/month, including utilities.

² Maximum income for a one-person moderate-income household in 2023 is \$147,000; for a two-person household, \$168,000. Maximum rent for a one-bedroom moderate-income apartment in 2023 would be \$3,850/month, including utilities.

The project has also been designed to comply with FEMA flood standards, with the first residential floor in each building raised to Base Flood Elevations plus one foot (11 feet above sea level). All parking on the site including the semi-subterranean garage is designed to meet FEMA standards. As described in the Preliminary Geotechnical Investigation (Attachment G), no additional fill would be brought onsite to meet FEMA requirements, as achievement of finished-floor elevations would use concrete mat slab or post-tensioned slab-on-grade foundation system to support the elevated interior floor above a crawl space. The Preliminary Geotechnical Investigation (Attachment G) also includes an alternative design involving a "traditional" continuous interconnected spread footing (or waffle slab) foundation that could be considered. The project would be designed to balance the load of the new buildings so as not to incur new loading at the site that could potentially induce differential settlement.

Proposed Docks. Docks would be provided for the homes fronting on the Belvedere Lagoon. Figures 4a and 4b provide greater detail on the location of existing and proposed docks. As shown on Figure 4b, on the easterly side of the project site, the existing docks would be removed and replaced with reconfigured docks, which would be located on portions of the Lagoon that are within the project's property. On the northwest part of the site, the existing docks are located on portions of the Lagoon owned by the Belvedere Lagoon Property Owners Association (BLPOA). Repairs or replacement of existing docks located on BLPOA property are proposed to comply with all City and BLPOA requirements and to occur within the same exact footprint of existing structures but would need to receive approval from the BLPOA. The project may also make repairs to the existing bulkhead as required but otherwise does not propose to modify the bulkhead or change its location.



Source: adapted by Ascent Environmental in 2023

Figure 2 Project Site Plan



Source: Image produced and provided by Guzzardo Partnership Inc. in 2022, adapted by Ascent Environmental in 2023

Figure 3 Landscape and Site Lighting Plan



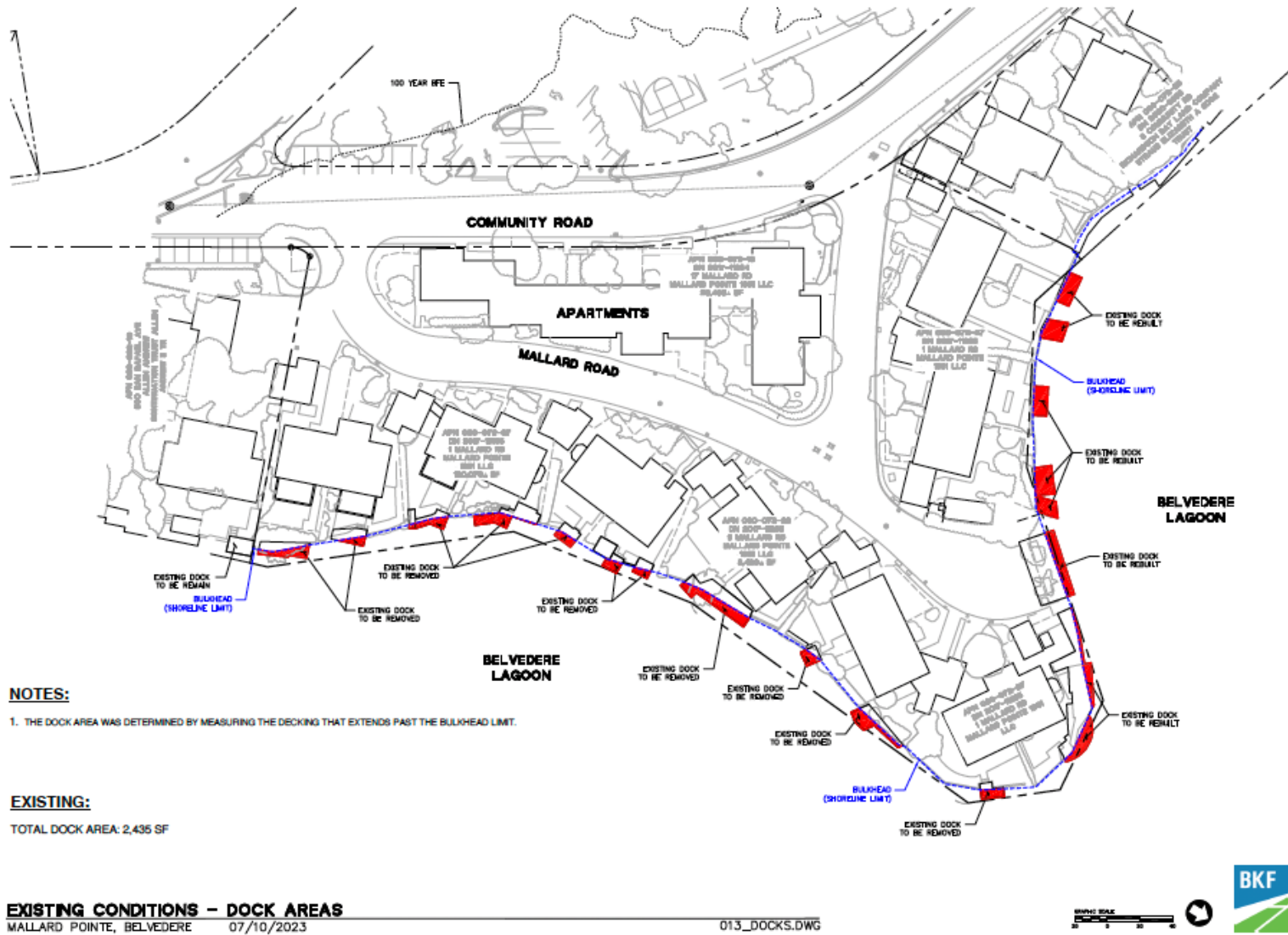


Figure 4a Existing Docks

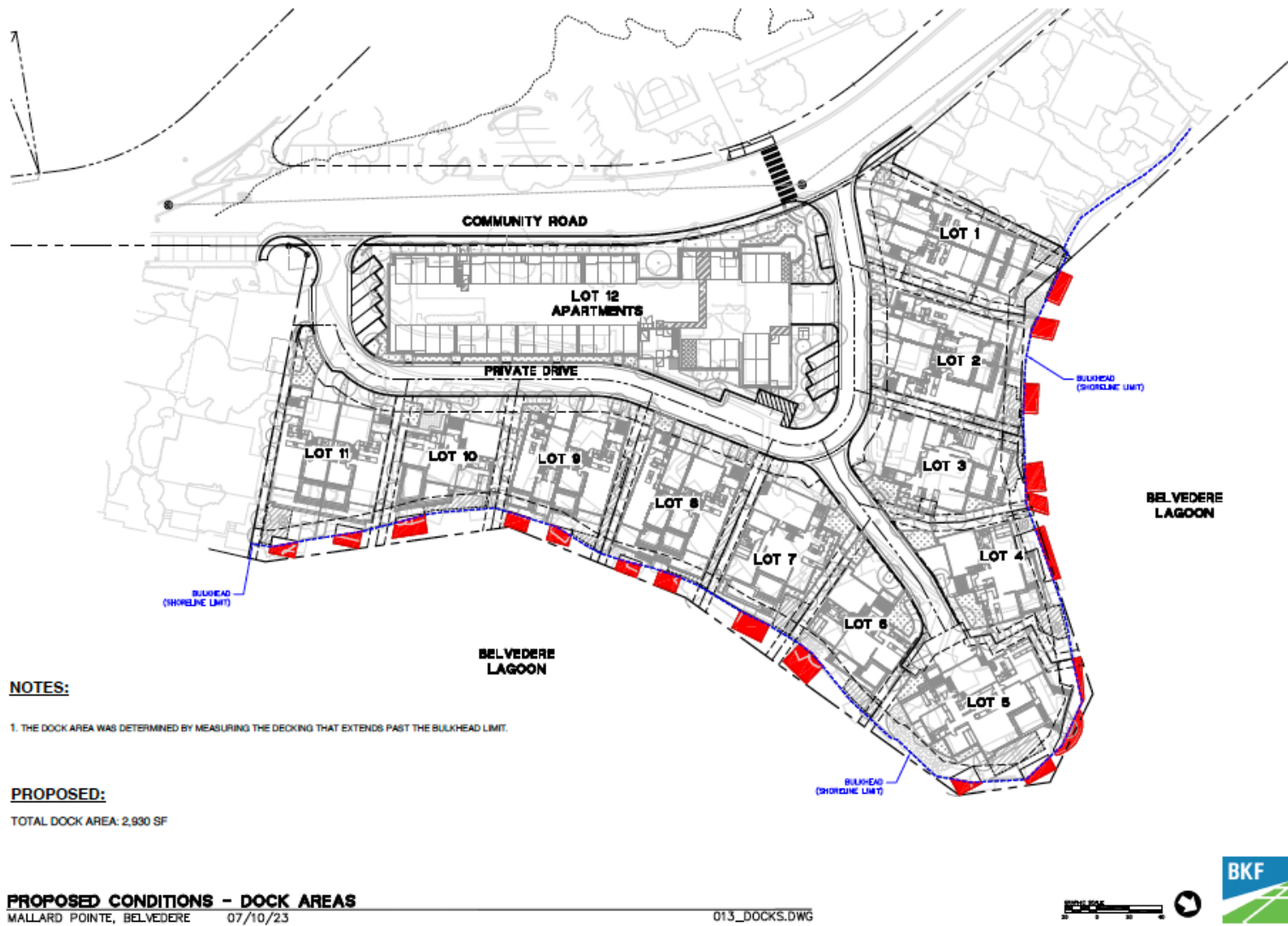


Figure 4b Proposed Docks

1.2.4 Affordable Housing/Density Bonus

Forty units are proposed on the 2.8-acre site, conforming to the site's Medium Density MFR General Plan designation of 20 units per acre. Of the 40 units, four are proposed to be restricted to lower income households (one for very low income households and three for low income households).

Because the project would include 10 percent lower income units, the project is entitled to a density bonus of 20 percent. The project does not seek to develop the additional density bonus units. However, because it is eligible for a density bonus, the applicants may apply for unlimited waivers of development standards, one concession, and reduced parking standards under State Density Bonus law.

Thus, the project seeks waivers for height, lot frontage, lot area per unit, side yard setback, apartment outdoor open space, lot coverage, signage, and construction time limits, as well as a concession from the prohibition on apartments in the R-2 zone (see Attachment A). The project also seeks to include tandem and uncovered spaces based on parking standards in the State Density Bonus Law. The applicant has submitted documentation for the requested concession and waivers. With approval of the concession and waivers, the project would be considered to comply with the applicable requirements of the R-2 zone.

1.2.5 Project Construction

Project construction is anticipated to occur during an approximately 20-21 month construction period (currently proposed from January 2024 through September 2025) and would result in the demolition of approximately 34,103 square feet of existing buildings and 55,480 square feet of pavement. Grading activities are anticipated to result in approximately 1,500 cubic yards of soil export. Construction equipment would include but not be limited to tractors/loaders/backhoes, bulldozers, graders, scrapers, pavers, paving equipment, industrial saws, forklifts, generators, and rollers. Off-site construction hauling and vendor trucks would utilize Beach Road, San Rafael Avenue, Community Road, and Leeward Road. Construction activities would occur between the hours of 8:00am and 5:00pm on weekdays. No construction would occur on weekends and City-recognized holidays in compliance with the City's construction regulations. The project application includes, and would also implement, a Construction Management Plan including noise control, traffic control, dust control, and recycling measures to minimize and reduce impacts from construction activities.

1.3 CLASS 32 CATEGORICAL EXEMPTION - INFILL DEVELOPMENT PROJECTS

1.3.1 Eligibility for Class 32 Categorical Exemption

Section 15332 of the CEQA Guidelines allows for the use of a categorical exemption for infill development, provided the contemplated development meets five criteria, which are listed below. The courts will affirm the City's factual determinations so long as they are supported by substantial evidence. The courts do not weigh conflicting evidence in reviewing the City's evidence. (See, e.g., *Protect Tustin Ranch v. City of Tustin* (2021) 70 Cal.App.5th 951, 960-961.)

"Substantial evidence" is defined in the CEQA Guidelines as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached...Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." (CEQA Guidelines § 15384.) If facts and other substantial evidence support the City's conclusions, the courts will not review conflicting evidence that may contradict the City's conclusions. However,

if a court is interpreting the scope of a categorical exemption, the court will review this as a question of law, subject to de novo review. (*Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817.)

This memo discusses the evidence that may qualify the project for the Class 32 categorical exemption. This Section 1.3 summarizes the conclusions based on the available evidence and discusses the interpretation of the second criterion, while Sections 1.4 and 1.5 and Attachment A summarize the evidence provided regarding the project's eligibility for the Class 32 exemption.

1. The project must be consistent with the applicable general plan designation and all applicable general plan polices as well as with applicable zoning designation and regulations.

The project would conform to the density allowed by the Medium Density MFR General Plan designation in that the proposed density is 13.9 dwelling units per acre. Under the Housing Accountability Act, the project has been deemed consistent with other General Plan policies. See Attachment A for a further explanation.

As discussed above in Section 1.2.4, Affordable Housing/Density Bonus, because the project would include 10 percent lower income units, it is eligible for unlimited waivers of development standards, one concession, and reduced parking standards under State Density Bonus Law. Therefore, the project seeks waivers for height, lot frontage, lot area per unit, side yard setback, apartment outdoor open space, lot coverage, signage, and construction time limits, as well as a concession from the prohibition on apartments in the R-2 zone (see Attachment A). The project also seeks to include tandem and uncovered parking spaces based on parking standards in the State Density Bonus Law. The applicant has submitted documentation supporting the requested concession and waivers. With approval of the concession and waivers, the project would be considered to comply with the applicable requirements of the R-2 zone.

See attached General Plan and zoning consistency analysis (Attachment A).

2. The proposed development must occur within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project is located on a 2.8-acre site within the limits of the City of Belvedere with residential uses associated with the Belvedere Lagoon neighborhood and City Hall surrounding the project site on three sides.

One side of the project site (the longest side) fronts Belvedere Lagoon. Approximately 876 feet of the project's boundary occurs along Belvedere Lagoon which represents approximately 57 percent of the project boundary. The other approximately 638 feet of the project boundary abuts residential uses and Community Road. There is no definition in the Class 32 exemption of "urban uses," nor what is meant by "substantially surrounded," nor any reference to other definitions in the CEQA Guidelines.

If the Lagoon is considered an "urban use," then the site would be entirely surrounded by urban uses and would be eligible for the Class 32 exemption. According to the website of the Belvedere Lagoon Property Owners Association (BLPOA), which owns most of the Lagoon and is responsible for its maintenance and operation, approved uses of the lagoon include swimming, manually powered craft (such as canoes, paddleboats, rowboats) and sailboats (monohulls up to a maximum of 15 feet in length). The Belvedere Lagoon is also home to the Belvedere Sailing Society (BLPOA 2023). Although the Belvedere Lagoon is a water feature that historically connected to Richardson Bay, it has since been substantially modified by development of roads that isolated the lagoon from the Bay and installation of peninsulas and other geomorphic shaping. Hydrological connection to the Bay is now only provided via pumping. The Lagoon is maintained and operated as a human-made recreational water feature, including periodic dredging and application of algicides. Its entire bank is developed with structures, roads, and other infrastructure. Despite its historic origins as a piece of the Bay, the Lagoon has functioned for over 70 years as a human-made urban recreational water feature. This may allow the lagoon to be considered an "urban use." Additionally, CEQA's definition of "infill site" includes any site that has previously been developed for "qualified urban uses." (Public Resources Code Section 21061.3(b).) The project site is currently developed for residences; "qualified urban uses" include residences.

On the other hand, the definition of "qualified urban uses" in CEQA includes only "any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." (Public Resources Code Section 21072.) The Belvedere Lagoon is not a public facility, includes none of the listed uses, and so is not a "qualified urban use." "Substantially surrounded" is defined in the CEQA Guidelines to mean that 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. (Guidelines Section 21159.25(a)(2).) The Belvedere Lagoon occupies more than 25 percent of the perimeter of the site. The Lagoon is also considered to be a lake under the jurisdiction of the US Army Corps of Engineers, Regional Water Quality Control Board, and other state agencies. If the Belvedere Lagoon is not considered to be an "urban use," then the site would not qualify for the infill exemption.

In the only case to consider the definition of "urban uses," the Court of Appeal considered an urban use to be "characteristic of a city or a densely populated area." The Court characterized Balboa Park in the City of San Diego to be a "quintessential urban park, heavily landscaped, surrounded by a densely populated area, and containing urban amenities such as museums, theaters, and restaurants," and concluded it constituted an urban use. (Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego (2006) 139 Cal.App.4th 249, 272.) Here, while the Lagoon is surrounded by developed properties and used for recreation by homeowners, it is not landscaped and does not contain urban amenities.

The project would qualify for the Class 32 exemption if the Lagoon is considered to be an "urban use," or if CEQA's definition of "infill site" (in Public Resources Code Section 21061.3) which is not specifically mentioned in the criteria for the Class 32 exemption but is used for other CEQA streamlining provisions, is used to help interpret how CEQA more broadly defines infill development.

3. The project site may have no value as habitat for endangered, rare, or threatened species.

As discussed in detail in Section 1.4.2 below, no natural vegetation communities or native plant habitats are present in the project area, and the project site (including the portion extending into the Lagoon) does not provide suitable habitat conditions for any special-status species known to occur in the region.

4. Approval of the project may not result in any significant effects relating to traffic, noise, air quality, or water quality.

Traffic. Projects generating Vehicle Miles Traveled per capita (VMT) 15 percent below that in the County or the City are considered to have an insignificant traffic impact. The City is currently utilizing the City VMT threshold in evaluating the environmental impacts of the housing element. Because the project would generate VMT more than 15 percent below the existing average City of Belvedere VMT per capita, the project would not have a significant VMT impact. Please see discussion in Section 1.4.7.

As discussed in Section 1.4.7 below, the project will improve pedestrian access, does not create any hazardous conditions, and will not impede emergency access.

Noise and Air Quality. The project would not result in any significant effects relating to noise or air quality, as discussed in detail in Sections 1.4.1, 1.4.3, and 1.4.5 below. Compliance with the City's permissible hours of construction and compliance with the recommendations in the engineering report to use helical piles would ensure that temporary increases in noise levels would not result in disruptive noise, and associated adverse effects, to nearby receptors. Operational traffic noise also would not result in a perceptible increase in noise. No activities during construction or operation are proposed that would substantially affect air quality.

Water Quality. As discussed in Section 1.4.4, "Hydrology and Water Quality," the project would reduce the amount of impervious surface on the site and would install bioretention basins to reduce the amount of runoff into the Belvedere Lagoon during storms. All runoff must also be treated through filtered bioswales. Because runoff from the site in the existing condition is entirely untreated and uncontrolled, this would improve the quality of stormwater flowing into

the Lagoon. In addition, standard erosion control measures are required to avoid water quality impacts during construction.

Any maintenance, replacement, removal, or construction of docks or repair of the bulkheads in the Lagoon will require authorization from the Regional Water Quality Control Board (RWQCB) and may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. The General Requirements for Construction and Maintenance of Overwater Structures (Order No. R2-2018-0009) adopted by the RWQCB contain standard requirements that must be met to ensure that no water quality impacts are caused by dock construction.

5. **The site must be adequately served by all required utilities and public services.**

As discussed in Sections 1.4.6 and 1.4.8, the project site currently receives utility services from Marin Municipal Water District (MMWD), Sanitary District No. 5 of Marin County, and Pacific Gas & Electric (PG&E), and public services from the City of Belvedere, Tiburon Fire District, and Reed and Tamalpais School Districts. It is anticipated that the existing water and wastewater systems, as well as the natural gas and electricity lines providing service to the project site, will have capacity to service the project. Similarly, police, fire, parks, and other public services have adequate capacity to serve the project.

1.3.2 Exceptions to the Use of Categorical Exemptions

The City must also consider whether the project may fall under a list of exceptions to all classes of categorical exemptions, as detailed under Section 15300.2 of the CEQA Guidelines:

- (a) **Location.** Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

This exception would not apply to a Class 32 exemption.

- (b) **Cumulative Impact.** All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

No projects of the same type, in the same place, are currently proposed in the City of Belvedere or in downtown Tiburon. Therefore, no cumulative impacts would occur, and the project would not represent a cumulatively considerable contribution to cumulative impacts related to air quality, greenhouse gas emissions, biological resources, historic resources, hazardous materials, hydrology and water quality, noise, public services, transportation, and utilities and service systems. This exception does not apply.

- (c) **Significant Effect.** A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Section 1.5 below discusses this issue in detail and concludes that no unusual circumstances exist that are applicable to the project and no substantial evidence exists that the project will have a significant effect on the environment.

- (d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

The project site is not located within or adjacent to a highway officially designated as a state scenic highway. Highway 101 is the nearest state scenic highway to the project site and the site is not visible from Highway 101. The

project would therefore have no effect on any scenic resources within any state scenic highway and this exception would not apply to the project.

- (e) **Hazardous Waste Sites.** A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

The project is not located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code (Attachment I). Therefore, this exception would not apply to the project.

- (f) **Historical Resources.** A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

The project would not cause a substantial adverse change in the significance of a historical resource. The existing buildings at 1-22 Mallard Road are not listed on the California Register of Historical Resources (CRHR) nor on the City of Belvedere's historic register. A Historic Resource Evaluation (Attachment E) was conducted, and the report concluded that the buildings, constructed in two phases from 1951-1953 and 1954-1956, do not meet any CRHR or City of Belvedere criteria. The buildings are not directly associated with events or persons that have made a significant contribution to broad patterns of local or regional history; do not individually or collectively embody distinctive characteristics of a type, period, region or method of construction or represent the work of a master architect; and do not appear to have any potential to yield information of any historical importance. Therefore, the buildings at 1-22 Mallard Road are not resources for the purpose of CEQA, pursuant to Section 15064.5, and the project would not result in any impacts to historical resources.

1.4 DETAILED ENVIRONMENTAL ANALYSIS FOR CLASS 32 EXEMPTION

The following analysis provides a more detailed evaluation of the air quality, biological, noise, traffic, public services, utility, and water quality impacts applicable to the Class 32 categorical exemption for In-Fill Development Projects, based on the relevant checklist questions in Appendix N of the CEQA Guidelines. It also examines whether there are unusual circumstances applicable to the project. This section summarizes the substantial evidence supporting the project's eligibility for the Class 32 exemption.

1.4.1 Air Quality (CEQA Guidelines Section 15332(d))

Would the project conflict with or obstruct implementation of the applicable air quality plan?

Bay Area Air Quality Management District (BAAQMD) attains and maintains air quality conditions in the San Francisco Bay Area Air Basin (SFBAAB), including San Mateo County, through a comprehensive program of planning, regulation, enforcement, technical innovation, and promotion of the understanding of air quality issues. BAAQMD adopted an updated Clean Air Plan, titled the *2017 Clean Air Plan: Spare the Air, Cool the Climate* (BAAQMD 2017a). The *2017 Clean Air Plan* includes all feasible measures to reduce emissions of ozone precursors—reactive organic gases (ROG) and nitrogen oxides (NO_x)—and reduce transport of ozone and its precursors to neighboring air basins and includes efforts to reduce emissions of fine particulate matter and toxic air contaminants. According to BAAQMD guidance (BAAQMD 2017b), a project is considered to be consistent with the Clean Air Plan when it 1) supports the goals of the Clean Air Plan, 2) includes applicable control measures from the Clean Air Plan, and 3) would not disrupt or hinder implementation of any control measure included in the Clean Air Plan. In general, projects that result in emissions below BAAQMD CEQA thresholds of significance and that incorporate all feasible air quality plan control measures from the Clean Air Plan are considered to be consistent with the Clean Air Plan.

As discussed in the Air Quality and Greenhouse Gas Emissions Analysis prepared by First Carbon Solutions and included in Attachment C, the project would incorporate relevant control measures from the Clean Air Plan including building, energy, natural and working lands, stationary, and transportation control measures. In addition, the project would be consistent with the Medium Density Multi-Family Residential land use designation in the Belvedere General Plan. Thus, the project would be consistent with the growth projections in the Clean Air Plan and would not introduce land uses that would disrupt or hinder implementation of the Clean Air Plan. Lastly, the project would result in emissions during construction and operation that are far below BAAQMD CEQA thresholds of significance for each criteria pollutant. As such, because the project would be consistent with current land use designations, would be consistent with Clean Air Plan control measures, would not result in emissions above thresholds, the project would not conflict with or obstruct implementation of the applicable air quality plan. Therefore, this impact would be less than significant.

Would the project 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?

According to the BAAQMD 2022 CEQA Guidelines, to meet air quality standards for criteria air pollutant and air precursor impacts, the proposed project must not: 1) Contribute to CO concentrations that exceed the state ambient air quality standards; 2) Generate daily construction emissions of ROG, NO_x, or PM_{2.5} (exhaust) greater than 54 pounds per day or PM₁₀ exhaust emissions greater than 82 pounds per day; or 3) Generate operational emissions of ROG, NO_x, or PM_{2.5} greater than 10 tons per year, or 54 pounds per day, or PM₁₀ emissions greater than 15 tons per year, or 82 pounds per day.

The details regarding project construction and operational emissions modeling are provided in Attachment C.

Short-Term Construction-Related Criteria Air Pollutant and Precursor Emissions

Construction emissions were quantified using the CalEEMod (Version 2020.4.0) land use emission model. Emissions are based on a combination of project-specific information provided by the applicant and CalEEMod defaults. Emissions account for removal of existing buildings and pavement as well as construction of new uses. As summarized in Table 2 of Attachment C, the proposed project's construction emissions would not exceed BAAQMD significance thresholds.

BAAQMD has not established thresholds of significance for mass fugitive PM₁₀ and PM_{2.5} emissions. BAAQMD considers fugitive PM₁₀ and PM_{2.5} from earth moving activities to be less than significant with application of BAAQMD's Best Management Practices (BMP), also required by adopted BAAQMD rules (Regulation 6, Rule 1, Regulation 6, Rule 6, Rule 6-1). These measures are required of all projects in the Bay Area and include the following:

- ▶ All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
- ▶ All haul trucks transporting soil, sand, or other loose material offsite will be covered.
- ▶ All visible mud or dirt track-out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- ▶ All vehicle speeds on unpaved roads, driveways, or driving surfaces shall be limited to 15 mph.
- ▶ All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
- ▶ Post a publicly visible sign with the telephone number and the name of the person to contact at the lead agency regarding dust complaints. This person will respond and take corrective action within 48 hours. The phone number of the BAAQMD will also be visible to ensure compliance.

Because the project is subject to BAAQMD's construction BMPs, this impact during construction would be less than significant.

Long-Term Operation-Related Regional Criteria Air Pollutant and Precursor Emissions

Operational emissions were quantified using the CalEEMod (Version 2020.4.0) land use emission model. Emissions are based on a combination of project-specific information provided by the applicant and CalEEMod defaults. Emissions assume a 2025 operational year for the proposed uses. As summarized in Table 3 of Attachment C, the proposed project's operational emissions would not exceed BAAQMD significance thresholds. As such, this impact during operations would be less than significant.

Would the project expose sensitive receptors to substantial pollutant concentrations?

Criteria Air Pollutants and Precursors

The closest sensitive receptors (i.e., land uses/populations sensitive to air pollutants, including children, elderly, and those with preexisting serious health problems, including specific uses such as schools, health care facilities, residences, and recreational facilities) to the project site are the residential unit immediately adjacent to the proposed project's southern boundary, residences as close as 25 feet northwest of the project site, and Belvedere Park, which is approximately 35 feet southwest of the project site. The evaluation is based on the closest receptors because as the distance from the source of emissions increases, pollution concentrations substantially reduce; thus, if impacts are determined to be less than significant at the nearest receptors, impacts would be reduced at further distances.

As discussed above, project implementation would not result in emissions of criteria air pollutant or precursor emissions from construction or operation that exceed applicable BAAQMD thresholds of significance. Thus, project-generated criteria air pollutant and precursor emissions would not expose sensitive receptors to substantial pollutant concentrations. No significant impact would occur.

Toxic Air Contaminants

Diesel PM represents the primary toxic air contaminant (TAC) of concern for construction activities in the region (BAAQMD 2017a,b). The project would result in the short-term use of diesel-powered engines that would generate emissions (i.e., diesel PM) from the exhaust of off-road, heavy-duty diesel equipment during construction and application of architectural coatings, as well as on-road truck travel.

BAAQMD recommends an analysis of health risk and hazard impacts if sensitive receptors are within a 1,000-foot radius of a project site. Given the proximity of receptors, a quantitative health risk assessment (HRA) was performed and is included in Attachment C. As summarized in Table 5 of Attachment C, project construction would result in health risk below BAAQMD's cancer risk, chronic non-cancer hazard, and annual PM_{2.5} thresholds of significance at any receptor location. See Attachment C for a detailed description of this modeling. Additionally, as summarized in Table 6 of Attachment C, the cumulative impact of nearby emissions sources, which include permitted stationary sources, local roadways, local freeways, and rail lines, would be less than the BAAQMD's cumulative thresholds of significance. Thus, the cumulative health risk impacts from project construction would be less than significant.

Once operational, the project would not result in any new or additional sources of TACs in comparison to existing land uses. The project is residential in nature and would not result in any stationary sources or major sources of diesel truck traffic that are typically associated with substantial TAC-generating land uses. Emissions would be limited to passenger vehicle traffic and minor amounts of area sources, dispersed throughout the project area. Thus, project-generated TAC emissions would not be significant.

Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?

Project construction could expose existing nearby residents to odorous emissions from off-road equipment and the application of architectural coatings. However, such emissions would be short-term in nature and would dissipate rapidly with increasing distance from the source. Project operation would not involve any major odor sources. Thus, the project would not result in the exposure of odorous emissions adversely affecting a substantial number of people, and this impact would not be significant.

1.4.2 Biological Resources (CEQA Guidelines Section 15332(c))

Would the project 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 Wildlife or the U.S. Fish and Wildlife Service?

The project site is composed of developed urban habitat constructed on fill materials along the Belvedere Lagoon. FirstCarbon Solutions conducted a desktop review and field survey of the project site on November 5, 2021 and reviewed aerial photography to evaluate habitat on and near the project site for potential to support special-status plants and wildlife or other sensitive biological resources (Attachment D). No natural vegetation communities or native plant habitats are present in the project area, and the site does not provide suitable habitat conditions for any special-status species known to occur in the region. As discussed in the Biological Site Assessment prepared by FirstCarbon Solutions for the project and included in Attachment D, this conclusion is consistent with an evaluation of biological resources conducted by WRA for the area in 2008. The Belvedere Lagoon was found to be a low-quality habitat because the pumping station does not allow the safe passage of fish, and the Lagoon is regularly treated with dyes to control algae.

The land area is made up entirely of existing buildings, sidewalks, driveways, roadways, and landscaped ornamental vegetation. Trees were inventoried during the biological survey, and of the 48 trees on site, only four are native species (Coast live oak, *Quercus agrifolia*), and these do not represent a sensitive natural community type due to their location and spacing within an existing landscaped setting.

Special-status plant species known in the region were evaluated for potential to occur in the project area, and due to the fully developed nature and urban land use of the project site and adjacent areas, and use of herbicides in the Lagoon, no suitable habitat for sensitive or special-status plant species is present in the project area. Therefore, there would be no impact to special-status plants.

Special-status wildlife species assessed for potential to occur in the project area include Pallid bat (*Antrozous pallidus*), California red-legged frog (*Rana draytonii*), western pond turtle (*Emys marmorata*), and San Pablo Song Sparrow (*Melospiza melodia samuelis*). Potential for other nesting birds or roosting bats was also evaluated. The Belvedere Lagoon does not provide suitable habitat for freshwater aquatic species such as frogs or western pond turtle because it contains high salinity levels which can be toxic to frogs and pond turtles and does not contain viable upland habitat adjacent to the lagoon, which these species rely on for upland dispersal, breeding, and foraging. Sensitive bat species require hibernation and maternity roost areas that are relatively free from noise disturbance, and the well-maintained structures in the urban project area do not provide this type of habitat. Marsh habitat suitable for nesting by protected bird species such as San Pablo song sparrow does not exist along the Belvedere Lagoon due to the lack of dense emergent vegetation that they rely on for breeding, refugia, and foraging. Pumps on the Lagoon prohibit safe fish passage into the Lagoon from the San Francisco Bay so special-status fish species are not expected to occur in the project site. Therefore, there would be no impact on special-status fish or wildlife.

Although the project area does not provide suitable habitat for special-status bat or bird species, landscaped areas may provide suitable nesting habitat for common migratory or native resident bird species in trees, shrubs, and structures, and common bat species that are more tolerant of noise disturbance and presence of humans may roost in landscape trees in the project area. However, these species are not rare locally or in the region and the project would not have potential to cause a substantial loss of common bird nests or common bat roosts. The project would be implemented in accordance with laws regulating common bird nests. Therefore, potential impacts to common nesting birds and roosting bats would not be significant.

Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?

The project is located on the Belvedere Lagoon. No emergent wetland vegetation cover or upland riparian habitat suitable for riparian flora or fauna is present within the lagoon. Belvedere Lagoon does not provide riparian habitat because of the developed nature of the lagoon, heavy residential use, landscaping along the shore and lack of natural vegetation, and treatment of the lagoon with herbicides to control algal growth, which reduces viability of the aquatic habitat. Pumps on the lagoon do not allow for fish passage into the lagoon from the San Francisco Bay. No sensitive natural communities are present in the project area. Therefore, the project would not have a significant impact on any riparian habitat or other sensitive natural community.

Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The Belvedere Lagoon is considered a "lake" under the federal Clean Water Act and so is under the jurisdiction of the Army Corps of Engineers. It is also under the jurisdiction of the San Francisco Bay Area Regional Water Quality Control Board (RWQCB). The project does not propose to remove any part of the Lagoon, create a hydrological interruption, or take any other actions that would have a substantial adverse effect on the Lagoon. Docks proposed for maintenance, replacement, removal, or new construction, and repairs to the bulkheads would be required to obtain authorization from the RWQCB and may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. RWQCB authorization would require compliance with the General Requirements for Construction and Maintenance of Overwater Structures (General Requirements). These specify discharge prohibitions (such as removal of creosote piles), discharge specifications (such as use of erosion and sediment best management practices), receiving water limitations, and other requirements, such as protection of eelgrass beds. Because of the use of herbicides in the Belvedere Lagoon, there are no eelgrass beds that would be affected by the docks. Compliance with standard regulatory requirements would ensure no impacts would occur to federally protected wetlands.

1.4.3 Greenhouse Gas Emissions (CEQA Guidelines Section 15332(d))

The Class 32 exemption does not specifically require that the greenhouse gas (GHG) emissions from the project be analyzed. However, because GHG emissions are considered an air pollutant by the Bay Area Air Quality Management District (BAAQMD), GHGs are considered an aspect of air quality.

Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

BAAQMD's CEQA Guidelines (2022) provide that a project consistent with a local GHG reduction strategy is considered not to have a significant impact. The City recently adopted its Climate Action Plan (CAP) in June 2022, which includes a range of strategy categories to guide the City's effort in reducing GHG emissions. The CAP lays out measures that will meet the 2030 target and put the City on a trajectory to meet the 2050 goal. The proposed project includes several design features that are consistent with strategies and actions from the CAP. Sustainability features would include drought tolerant landscaping, permeable pavers, energy-efficient appliances, increased insulation, low-flow fixtures, solar panels, and electric vehicle charging stations. Additionally, the project is consistent with the "Medium Density Multi-Family Residential" designation in the Belvedere General Plan and would promote infill development, which reduces vehicle trip lengths and promotes active forms of transportation. Therefore, the project would not generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.

Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?

As noted above, the proposed project would be consistent with the City's CAP and General Plan by incorporating sustainability measures and infill development. Therefore, the project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions.

1.4.4 Hydrology and Water Quality (CEQA Guidelines Section 15332(d))

Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality or conflict with or obstruct implementation of a water quality control plan?

The project site is greater than 1 acre in size and would therefore be required to comply with the California Construction General Permit Order 2022-0057-DWQ. This permit requires the preparation of a Stormwater Pollution Prevention Plan (SWPPP) prior to construction which outlines best management practices (BMPs) that the project would implement in order to minimize impacts to water quality. The project would also comply with applicable City and County regulations such as the City of Belvedere urban runoff pollution prevention ordinance, grading and erosion control regulations including submission of an erosion control plan, and the Marin County Stormwater Pollution Prevention Program. In addition, the project would comply with the State Water Resources Control Board Phase II Stormwater National Pollutant Discharge Elimination System (NPDES) Permit for small MS4s. Provision E.12, "Post-Construction Stormwater Management Program," mandates municipalities to require specified features and facilities—to control pollutant sources, control runoff volumes, rates, and durations, and to treat runoff before discharge from the site—be included in development plans as conditions of issuing approvals and permits. The Bay Area Stormwater Management Agencies Association (BASMAA), through the BASMAA Phase II Committee, created the BASMAA Post-Construction Manual (BASMAA 2019) to assist applicants for development approvals to prepare submittals that demonstrate their project complies with the NPDES permit requirements. Pursuant to BASMAA Post-Construction Manual, this project is considered a "regulated" project and the applicant must submit a "Stormwater Control Plan" detailing the stormwater facilities that will be integrated into the planning, design, construction, operation, and maintenance for stormwater compliance. Compliance with existing regulations and implementation of on-site BMPs would require treatment of runoff before discharge from the site and ensure that there are no significant impacts to water quality.

Docks proposed for maintenance, replacement, removal, or new construction and repairs to the bulkheads would be required to obtain authorization from the RWQCB and may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. RWQCB authorization would require compliance with the General Requirements for Construction and Maintenance of Overwater Structures (General Requirements). These specify discharge prohibitions (such as removal of creosote piles), discharge specifications (such as use of erosion and sediment best management practices), receiving water limitations, and other requirements, such as protection of eelgrass beds. Because of the use of herbicides in the Belvedere Lagoon, there are no eelgrass beds that would be affected by the docks or bulkhead repairs. Compliance with standard regulatory requirements would ensure no impacts to water quality would occur.

Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion, flooding, or polluted runoff?

The project site is built entirely on previously developed land, and no stream or river runs through the site. The project would include greenspaces and bioretention facilities and would decrease the amount of existing impervious area by 0.31 acres (Attachment J). Per the Stormwater Control Plan (Attachment J), the project would be designed to limit impervious surfaces to the extent practicable, integrate bioretention facilities and bioswales to treat runoff from the project site, and incorporate control measures in compliance with NPDES Permit for small MS4s, provision E.12, "Post-Construction Stormwater Management Program." The storm drain system would be redesigned to capture and convey the 10-year event through the project area and would reduce flooding at low points within Community Road (Attachment K). The project would also implement BMPs as required by the California Construction General Permit Order 2022-0057-DWQ, which would minimize the potential for substantial erosion, flooding, or water quality impacts. Because the existing runoff from the site is entirely uncontrolled and untreated, the project would be expected to improve the quality of runoff into the Lagoon.

1.4.5 Noise (CEQA Guidelines Section 15332(d))

Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or in other applicable local, state, or federal standards?

Temporary (Construction) Noise

Temporary increases in noise would occur during the construction period of the project and would cease when construction is complete. Construction is performed in discrete steps, each of which has its own mix of equipment and, consequently, its own noise characteristics. These various sequential phases would change the character of the noise generated on each construction site and, therefore, would change the noise levels as construction progresses. Despite the variety in the type and size of construction equipment, similarities in the dominant noise sources and patterns of operation allow construction-related noise ranges to be categorized by work phase. Based on published reference noise levels for typical construction equipment, noise levels for individual pieces can range from 55 dBA L_{max} to 85 dBA L_{max} , with driven and vibratory piles as high as 95 dBA L_{max} . The project will not use either driven or vibratory piles but only helical piles. According to FirstCarbon Solutions, the helical piles would have similar noise characteristics of Caisson drilling which is identified in the Noise Study. See Attachment L for a complete list of equipment and associated noise levels.

Based on a conservative assumption that three types of equipment (i.e., grader, loader, and tractor) would operate at the same time, construction noise levels could reach 88 dBA L_{max} and 86 dBA L_{eq} at the nearest sensitive receptor, a single-family home located 35 feet to the south and west of the project site.

These noise levels would result in a temporary increase in ambient noise levels in the project vicinity that could result in annoyance or sleep disturbance of nearby sensitive receptors if construction were to occur at night. The City's General Plan contains Policy N-1.3 to minimize noise due to construction impacts by enforcing the City's Municipal Code standards restricting construction to daytime hours between 8:00 a.m. and 5:00 p.m. on weekdays and prohibiting construction on weekends and holidays. The General Plan also requires that a noise control plan be reviewed as part of design review if pile driving or jack hammering is involved. The project application includes, and would also implement, a Construction Management Plan including noise control. Compliance with the City's permissible hours of construction and compliance with the noise control plan would ensure that temporary increases in noise levels would not result in disruptive noise, and associated adverse effects, to nearby receptors.

In addition to noise generated from the use of heavy-duty equipment, construction activities generate vehicle trips (e.g., worker commute, vendor delivery/hauling) that can increase noise on local roadways. Project construction could result in an increase of 71 daily trips. Regarding increases in noise, a doubling of the noise source is required to result in a perceptible (i.e., 3 dB) increase. Thus, the addition of 71 daily construction trips, when combined with an existing daily trip volume of 128 (Attachment L), would not double the existing traffic volumes; thus, would not result in a perceptible increase in noise. Further, it should be noted that when construction is complete, construction-related vehicular noise will also cease.

Permanent (Operational) Noise

Operational noise associated with land use projects can typically be described as either stationary or mobile. Stationary sources associated with land use projects could include mechanical building equipment (e.g., heating, ventilation, and air conditioning units [HVAC]) and mobile sources include traffic-generated roadway noise associated with increases in daily vehicle use.

Because the proposed project is replacing existing residential units with additional residential units, the project would not introduce new unique stationary sources, not already at the project site; thus, stationary noise would not be anticipated to increase over existing conditions.

Regarding increases in traffic, new residential units are directly associated with increases in daily vehicle use and the project would result in a net increase of 18 residential units. As shown in Table 2 of the transportation study prepared for the proposed project, project generated weekday daily trips would be 156 and weekend daily trips would be 173 (Attachment M). As described above, a doubling of a noise source (i.e., traffic volumes on a roadway) would need to occur in order for a perceptible (i.e., 3 dB) increase in noise to occur. Comparing project-generated trip volumes to the existing trip generation of the site, results in an increase in 28 weekday trips (22 percent increase) and 49 weekend trips (40 percent increase). As all new trips would be additive to existing volumes on nearby roads and considering that the incremental increases due to the project do not result in a doubling of trips generated by the project, combined with the fact that all trips would be distributed over more than one road/direction, increases in ADT from the project would not result in a perceptible increase in noise on nearby roadway segments.

Summary

Compliance with the City's permissible hours of construction and compliance with the approved noise control plan would ensure that temporary increases in noise levels would not result in disruptive noise, and associated adverse effects, to nearby receptors. Operational traffic noise would not result in a perceptible increase (i.e., 3 dB) in noise. Thus, project-generated temporary and long term increases in noise would not exceed applicable City standards or result in adverse effects to nearby receptors. This impact would be less than significant.

Would the project result in generation of excessive groundborne vibration or groundborne noise levels?

Vibration can result in structural damage to fragile buildings or disturbance to people in places where people sleep or where sensitive interior operations are occurring (e.g., laboratory). Project operation would not result in new vibration

sources; thus, this impact addresses construction-related vibration only. Regarding construction vibration, different equipment results in varying levels of vibration, with the greatest vibration levels occurring from the use of pile drivers. The project does not include use of driven piles and instead would use helical piles which produce significantly less vibration. According to First Carbon Solutions, the helical drill piles would produce similar groundborne vibration levels as Caisson drilling and would be less than use of vibratory rollers. Refer to Table 3 of Attachment L for a complete list of typical equipment and associated vibration levels.

The nearest off-site structure to the proposed project construction footprint is the residence to the south of the project boundary perimeter, approximately 20 feet from the nearest construction footprint where the heaviest construction equipment would potentially operate, assumed to be a vibratory roller. At this distance, groundborne vibration levels would range up to 0.14 peak-particle velocity in inches/second (in/sec PPV, unit of measurement used to evaluate vibration through the ground/structures), below the Federal Transit Administration's (FTA) Construction Vibration Impact Criteria of 0.2 in/sec PPV for this type of structure. As discussed above, construction would not occur during the sensitive hours of the night; thus, vibration would not result in sleep disturbance to nearby receptors. Project construction activities would not generate groundborne vibration or groundborne noise levels in excess of established standards and impacts to off-site receptors would be less than significant.

For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?

Nearby airports include San Rafael and Oakland International, located 20 miles and 35 miles away, respectively. The project would not result in exposure of people to noise levels generated by airports. Therefore, no impact would occur.

1.4.6 Public Services (CEQA Guidelines Section 15332(e))

Would the project be adequately served by all required public services?

Fire and Police Protection

The Tiburon Fire District provides fire protection services to the city of Belvedere, the town of Tiburon, and the surrounding unincorporated area. There are two fire stations in the service area including Station 11 which is also the administrative headquarters located at 1679 Tiburon Boulevard and Station 10 located at 4302 Paradise Drive. The closest station to the project site is Station 11 located approximately 0.7 mile east of the project site. The Tiburon Fire District is a combination department with 21 career safety employees, one clerical and one finance officer, 13 volunteer firefighters, and 6 trainee firefighters. The Fire District's boundaries represent a diverse community with responsibility for commercial, residential, wildland/urban interface, and parts of the San Francisco Bay to Angel Island State Park (Tiburon Fire Protection District 2022). District apparatus by station is shown below in Table 1.

Table 1. District Apparatus by Station

Station 10	Station 11	Waterfront	Angel Island
<ul style="list-style-type: none"> ▶ 1 type 1 engine ▶ 1 ambulance ▶ 1 4x4 utility pick-up truck 	<ul style="list-style-type: none"> ▶ 1 type 1 engine ▶ 1 type 1 reserve engine ▶ 2 type 3 engines ▶ 1 medium duty rescue unit ▶ 1 Battalion Chief command vehicle ▶ 2 prevention vehicles 	<ul style="list-style-type: none"> ▶ 1 type 2 fireboat 	<ul style="list-style-type: none"> ▶ Patient transport utility vehicle

	<ul style="list-style-type: none"> ▶ 1 Chief's SUV ▶ 1 utility 4x4 pick-up truck ▶ 1 staff car 		
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Source: Tiburon Fire Protection District 2021

The Tiburon Fire District responded to a total of 1,827 calls in the 2020-2021 fiscal year with 71 percent (or 1,294 calls) related to rescue/EMS incidents. Fourteen percent (or 261 calls) were for service calls and 8 percent (or 142 calls) for false alarms (Tiburon Fire Protection District 2021). The average response times for the Tiburon Fire District are shown in Table 2. The Tiburon Fire District's objective is to respond to 90 percent of calls within eight minutes; 79 percent of 2020-2021 in-district calls were under 8 minutes; 66 percent were under seven minutes (Tiburon Fire Protection District 2021).

Table 2. Tiburon Fire Protection District Average Incident Response Time

Incident Type	Average Response Time in Minutes
Fire	5:26
Rescue/EMS	6:18
Overpressure/rupture	6:22
Hazardous Condition	6:36
Good Intent	6:51
False Alarm	6:58
Service Call	7:10

Source: Tiburon Fire Protection District 2021

The Belvedere Police Department is responsible for providing police protection within the City of Belvedere. The primary function of the police department is deterring crime, stopping crimes in progress, investigating crimes, and serving as first responders for emergencies and situations that threaten public safety. The Belvedere Police Department is located immediately across Community Road within approximately 450 feet of the project site at 450 San Rafael Avenue. The police department employs seven full time sworn officers.

Operation of the project would lead to a minor increased demand for fire and police protection services by increasing the number of residential units on the site as well as the permanent population. The project would construct 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building and approximately 51 new residents³ on the project site. However, given the City's estimated population of approximately 2,080 (California Department of Finance 2022), the project would represent an approximate increase of two percent. Therefore, existing fire and police protection services are adequate to serve the project, and no new or expanded facilities would be required.

Schools, Parks, and Other Public Facilities

The Reed Union School District and Tamalpais Union High School District provide public education for the project site. Reed Union School District operates two elementary schools and one middle school which feed into Tamalpais Union High School District which operates one high school serving the project site including (City of Belvedere 2022a):

- ▶ Reed Elementary School (serving grades pre-kindergarten through second grade)
- ▶ Bel Aire Elementary School (serving grades three through five)

³ The estimated total number of residents is based on the Marin County Sanitation District No. 5 code 5.20.010 Sewer Design Criteria. The code assumes that the average single-family unit is 2.5 persons per residence (the code does not provide an assumption for multi-family units). For additional dwelling units (ADU), an assumption of 1 person per unit was applied.

- ▶ Del March Middle School (serving grades six through eight)
- ▶ Redwood High School (serving grades nine through twelve)

Table 3 displays enrollment by school provided by the California Department of Education for the 2022-2023 academic year.

Table 3. Enrollment by School

School	Grade Level	Enrollment
Reed Elementary School	Pre-Kindergarten – Second Grade	335
Bel Aire Elementary School	Third Grade – Fifth Grade	303
Del March Middle School	Sixth Grade – Eighth Grade	385
Redwood High School	Ninth Grade – Twelfth Grade	1,862

Source: Data Quest 2023a-d

Implementation of the project would involve demolition of the existing 22 residential units and construction of 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building resulting in an increase in 18 new residential units on the project site. The ADU is proposed as a one-bedroom unit to be located above the attached garage of one of the single-family homes. Using the Reed Union School District's current student generation factor for detached and attached housing units to evaluate student population, the project would generate approximately 7 new students as outlined in Table 4. For residential developments within the Reed Union School District, no development fees would be required for the Tamalpais Union High School District as the elementary school students would feed into the high school district (O'Leary, pers. comm., 2022). Because the project would represent approximately a one percent increase in current elementary school enrollment, the project is not expected to result in an additional strain on school services that new or expanded facilities would be required. State law provides that payment of school fees mitigates the impacts of increased enrollment.

Table 4. Student Generation for the Project

Housing Type	Number of Existing Units On Site	Total Number of Units Proposed	Number of Additional New Units Proposed On Site	Student Generation Factor	Total Number of New Students Generated
Single-family attached and detached	22	40	18	0.364	7

Source: Woodard, pers. comm., 2023

As described in the city's General Plan Parks, Recreation, and Open Space Element (City of Belvedere 2010), existing open spaces in the City include water-related areas, parks, lanes, paths, and view areas. Exhibit 6 of the city's General Plan shows the location of parks, recreation, and open space within the city. The public park closest to the project is Belvedere Community Park located immediately across Community Road within approximately 450 feet of the project site adjacent to the police station. Other recreation and open space areas in the city include properties that contain public or private recreational use, including a beach, park, playground, boardwalk, esplanade, open walk, path, pier, wharf, or other facility for boats including (City of Belvedere 2010):

- ▶ Beaches and tidelots, including parts of Belvedere Cove
- ▶ The China Cabin
- ▶ Tom Price Park, a 1-acre park between Lagoon Road and Tiburon Boulevard
- ▶ Land Company Park, an 8,600-square-foot park in the traffic island at the intersection of Beach Road and San Rafael Avenue
- ▶ Centennial Park, a 5,265-square-foot public space along lower Hawthorne Lane
- ▶ Oak Mini-Park, a 1,162-square-foot public space at Oak Avenue and Buckeye Road
- ▶ Belvedere Way Mini-Park at the intersection of Belvedere Way and Belvedere Avenue
- ▶ Corinthian Island overlook at the southeast end of Corinthian Island
- ▶ Golden Gate Avenue cul-de-sac at the southeast end of Golden Gate Avenue
- ▶ Cliff and hillside areas above West Shore Road

Water-related open space areas include:

- ▶ The navigable open water areas within the City limits (both publicly and privately-owned)
- ▶ Cove Beach, the area along Beach Road between the China Cabin and the Tiburon town limit
- ▶ Parts of Belvedere Cove towards the tip of Belvedere Island
- ▶ The edge of Richardson Bay along San Rafael Avenue (Seawall)

Operation of the project would lead to an increased demand for public services including nearby park facilities by increasing the number of residential units on the site as well as the permanent population. The project would construct 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building and approximately 51 new residents on the project site. However, given that the City's estimated population of approximately 2,080 (California Department of Finance 2022), the project would represent an approximate increase of two percent. Thus, any increased use of nearby park facilities as result of implementation of the project it is not anticipated to result in significant impacts to recreational facilities requiring the construction of new facilities. Additionally, all single-family and duplexes would comply with the R-2 zone open space requirement of 450 square feet per unit of private open space. The apartment building would provide 2,868 square

feet of private open space; however, is required to provide 10,350 square feet equating to a deficit of 7,482 square feet. As described above in Sections 1.2.4 and 1.4.8, as part of the State Density Bonus Law, the project is seeking a waiver for usable open space for the deficit. Nonetheless, because private open space does not substitute for the opportunities provided by the City's recreational facilities, the project is not expected to result in a need for new or expanded park and recreation facilities.

1.4.7 Transportation

Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?

As detailed in Section 1.2, "Project Description," the project would include the construction of pedestrian enhancements including 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. Additionally, the project would provide 114 on-site bicycle parking stalls and the surrounding bicycle network would remain unchanged with implementation of the project.

The project would close existing sidewalk gaps and provide on-site bicycle parking, thus improving the pedestrian network, increasing pedestrian safety, enhancing pedestrian access to local transit stops, and supporting and facilitating the use of bicycles for non-recreational uses. Therefore, the project would not conflict with any goal or policy in the Transportation and Circulation Element of the City of Belvedere General Plan.

Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3(b), which pertains to vehicle miles travelled?

State CEQA Guidelines Section 15064.3 was added on December 28, 2018, to address the determination of significance for transportation impacts. It requires that vehicle miles traveled (VMT) be used as the basis of transportation analysis instead of measures of traffic congestion (such as Level of Service). The change in the focus of transportation analysis is intended to shift the focus from congestion to reduction in greenhouse gas emissions, encouraging mixed-use and infill development, and other factors. State CEQA Guidelines Section 15064.3(b) identifies criteria for analyzing the transportation impacts of a project.

Section 15064.3(b)(1) addresses land use projects. The proposed project consists of the development of 40 residential units; thus, is considered a land use project. Section 15064.3(b)(1) provides that projects within one-half mile of either a "major" or "high quality" transit should be presumed to cause a less than significant transportation impact. As defined in PRC Section 21064.3, a "major transit stop" means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. PRC Section 21155(b) defines a "high-quality" transit corridor as a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Additionally, Section 15064.3(b)(1) also states that projects resulting in a decreased VMT in the project area as compared to existing conditions should also be presumed to have a less than significant effect.

A bus stop is located approximately one quarter mile from the project site; however, the headways of the transit service serving this stop have service intervals of longer than 15 minutes during peak commute hours and two major routes do not intersect there; thus, it is not a major transit stop or high-quality transit. Additionally, as shown in Figure 4, the Tiburon Ferry Terminal to the east of the project site is located more than one-half mile from the project site. Thus, the project is not close enough to a major transit stop or high-quality transit to qualify for Section 15064(b)(1)'s "less than significant VMT impact" presumption.



Sources: adapted by Ascent Environmental in 2023

Figure 4 Project Aerial Buffer

Section 15064.3(b)(4), "Methodology," explains that lead agencies, such as the City of Belvedere, have discretion to choose the most appropriate methodology to evaluate VMT subject to other applicable standards such as State CEQA Guidelines Section 15151 (standards of adequacy for EIR analyses). The VMT analysis here relies on the guidance provided in CEQA Guidelines Section 15064.3 and the OPR *Technical Advisory on Evaluating Transportation Impacts in CEQA (Technical Advisory)* (OPR 2018).

The OPR Technical Advisory provides advice and recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. As detailed in the OPR Technical Advisory, a proposed residential project that is not at least 15 percent below existing VMT per capita may indicate a significant transportation impact. Therefore, for the purposes of this analysis a significant impact to VMT would occur if the proposed project generates VMT that is not at least 15 percent below existing VMT per capita. Additionally, the OPR Technical Advisory states that the existing VMT per capita may be measured as regional VMT per capita or as city VMT per capita.

The Mallard Pointe Transportation Study memo completed by Parisi Transportation Consulting (Attachment M) and peer-reviewed by Ascent, used the TAM Travel Demand Model to estimate VMT for the project based on existing and cumulative year VMT of the traffic analysis zone (TAZ) in which it is located (i.e., 19.0 and 11.3 VMT per resident, respectively). Under this approach, if existing city VMT per capita is used as the standard, the project would generate VMT more than 15 percent below the existing City of Belvedere VMT per resident (i.e., 24.9), representing a reduction of approximately 24 percent. Additionally, in the cumulative scenario (year 2040) the project would generate VMT more than 15 percent below the City of Belvedere VMT per resident (i.e., 17.2), representing a reduction of approximately 34 percent. However, the density and housing types being proposed (i.e., six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building) differ considerably from the majority of the existing housing within the TAZ (i.e., single family detached); thus, their VMT generation characteristics could also differ. Therefore, it should be noted that a more refined analysis of the project-generated VMT could demonstrate even lower VMT per capita.

However, if County VMT is used as the standard, the project-generated VMT of 19.0 VMT per resident would not be 15 percent below the existing Marin County (regional) VMT per resident (i.e., of 15.8 VMT per resident) and in fact would exceed County VMT per resident. Therefore, depending on which baseline VMT per resident (i.e., city or county) the project generated VMT is compared to, the significance conclusion would differ. The City is currently using City VMT per capita to evaluate the environmental impacts of the Housing Element. Applying the same standard to Mallard Pointe, the project would generate VMT more than 15 percent below the existing City of Belvedere VMT per resident and therefore would not be considered to have a significant VMT impact.

The City elected to use City of Belvedere VMT as the standard in reviewing the Housing Element because of the City's remote geographic location on a peninsula away from the main County center and transit network connections (with limited ferry and bus service) and the City's predominantly residential character, compared to the rest of the County of Marin. Employment centers, schools, retail, and other services are limited or non-existent within the City limits, resulting in longer average home-based trip distances originating in Belvedere. Hence, the lengthy distances to the usual destinations from residences results in longer trips that are not typical of average County of Marin travel patterns. Measuring project VMT against the City of Belvedere VMT results in the most appropriate approach consistent with OPR guidelines.

Would the project substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

There are no sharp curves or dangerous intersections in the vicinity of the project. To the extent that construction vehicles may be considered "incompatible uses," the project is required to comply with the City of Belvedere *Construction Project Regulations* and *Contractor Guidelines* (City of Belvedere 2023a, b). These documents provide that, as a condition of most building permits, a Staging, Parking and Material Delivery Plan must be submitted to, and approved by the Police Chief or Public Works Manager. Additionally, the Contractor Guidelines include the

requirement that encroachment permits be obtained when working on City property or the City right of way, as well as employing the use of oversize vehicles, placement of debris boxes or parking of equipment on City streets. Finally, the Contractor Guidelines state that a minimum of 10 feet of paved way must be left clear and unobstructed for free passage of other vehicles.

In addition to the requirements described above, and as detailed in the Transportation Study, the applicant has completed and submitted a Construction Management Plan (CMP) to the City of Belvedere for review. The Transportation Study notes that the CMP includes proposed traffic control measures that will be implemented during construction and states that construction should be performed to not restrict emergency access. Moreover, the Transportation Study acknowledges that the roadway design has been reviewed and approved by the Tiburon Fire Protection District. Therefore, the project would not result in a substantial increase in transportation hazards during construction.

Mallard Road would provide primary access to, and internal circulation within the project site. As detailed in Section 1.2, "Project Description," because the current width of Mallard Road does not comply with Fire Department requirements, 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. As detailed in the Transportation Study, Mallard Road is shown on the proposed project plans as being 20 feet wide.

Further, all new roadway and pedestrian infrastructure improvements associated with the project would be subject to, and designed in accordance with, City design and safety standards. Therefore, the project would not increase transportation hazards.

Would the project result in inadequate emergency access?

As detailed above, the project is required to comply with the City of Belvedere *Construction Project Regulations* and *Contractor Guidelines* (City of Belvedere 2023a, b) which require that as a condition of most building permits, a Staging, Parking and Material Delivery Plan must be submitted to, and approved by the Police Chief or Public Works Manager. The *Contractor Guidelines* (City of Belvedere 2023b) require that a minimum of 10 feet of paved way must be left clear and unobstructed for free passage of other vehicles.

In addition to the requirements described above, and as detailed in the Transportation Study, the applicant has completed and submitted a Construction Management Plan (CMP) to the City of Belvedere for review. The applicant's Transportation Study notes that the CMP includes proposed traffic control measures that will be implemented during construction and states that construction should be performed to not restrict emergency access. Traffic control measures would include, but not limited to, flag persons will be used for traffic control on the public streets anytime traffic is slowed, stopped, or re-directed. No work will be undertaken on public right of way without the required Encroachment Permit, and no street closures or significant traffic disruption will be done without at least 24 hours prior notice to affected neighbors. Therefore, adequate emergency access will be provided during project construction.

Mallard Road would provide primary access to, and internal circulation within the project site. As detailed in Section 1.2, "Project Description," because the current width of Mallard Road does not comply with Fire Department requirements, 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. As detailed in the Transportation Study, Mallard Road is shown on the proposed project plans as being 20 feet wide. This meets the emergency vehicle minimum horizontal clearance requirement of 20 feet for roadways. Additionally, the Transportation Study notes that the primary site driveway is currently designed to be 18 feet wide, which exceeds the minimum width for a driveway in this location.

Further, emergency access to the project site would be subject to review by the City and the responsible emergency service agencies (e.g., Tiburon Fire Protection District). As noted in the Transportation Study, the Tiburon Fire

Protection District has reviewed and approved the roadway and driveway designs. Therefore, adequate emergency access would be provided during project operation.

1.4.8 Utilities and Service Systems (CEQA Guidelines Section 15332(e))

Would the project be adequately served by all required utilities?

Water Supply

The project site is currently connected to the City's existing water conveyance infrastructure and receives water supplies from Marin Municipal Water District (MMWD). Per the Utility Design Memo prepared for the project and included as Attachment N, the existing water utilities are owned and operated by MMWD and are located within Mallard Road. The water system is fed by a 6-inch water main along Community Road and the existing water mains within the project site are 4-inch cast iron pipe with sections of 4" asbestos cement pipe. Each apartment unit has its own separate 5/8" water meter.

With construction of the project, water utilities would be designed per MMWD standard specifications and details. The preliminary sizing of each meter would be per the 2019 California Plumbing Codes, Section 610.8 with final sizing to be determined by MMWD. The project proposes to reduce the number of buildings and water services in the project site from 22 to 18 (16 single family residences/duplexes plus one apartment building plus one ADU). The existing 22 building meters are 5/8-inch in size with an approximate total cross-sectional area of 6.8 square inches. Per the Utility Design Memo (Attachment N), the new 16 single family residences/duplex plus one ADU meters would be sized to 5/8-inch, while the apartment building would be sized to 1.5-inches, for a proposed total cross-sectional area of 6.7 square inches. Table 5 below shows a comparison of existing and proposed water service. With this reduction in cross-sectional area for water meters, it is expected that the existing water system would have capacity to service the project.

Table 5. Comparison of Existing and Proposed Water Service

	Units	Service Size (inches)	Total Cross Sectional Area (square inches)
Existing Condition	22	5/8	6.8
Proposed Project (16 single family residence/duplexes + 1 ADU + 1 apartment building)	17	5/8	6.7
	1	1.5	

Source: Attachment N

Wastewater Infrastructure

The existing wastewater infrastructure in the project site is a private system that discharges to the public sewer owned and maintained by Sanitary District No. 5 on Community Road. Each apartment has its own sewer lateral that connects to the private main in Mallard Road.

Per the Utility Design Memo (Attachment N), with construction of the project, wastewater infrastructure would be designed per the Marin County Sanitary District No.5 Code Title 5 Standard Specifications Chapter 5.20 Design Standards. The project proposes to build six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building. There would be 17 dwelling units combined from the single-family units and duplexes (including the one ADU). The proposed apartment building would contribute an additional 23 dwelling units, totaling 40 dwelling units all together. A factor of 400 gallons per day will be applied to the 40 dwelling units,

which results in a total design flow of 0.02 CFS (10.8 GPM). Per the Sanitation District No.5 Standards, for areas less than 2,000 people, the unit design flow shall be 400 gallons per capita per day. The

sewer lines will be sized to a minimum of 6-inches. The District has confirmed that the existing wastewater system would have capacity to serve the project.

Solid Waste

Mill Valley Refuse Service is the approved solid waste and recyclable material and organic waste hauler for the city. The project would cause a temporary increase in the generation of solid waste as a result of construction and demolition activities. Compliance with 2019 California Building Code requirements would result in a reduction in the overall level of construction waste and demolition debris. Recyclable materials, including concrete, metals, wood, and various other recyclable materials, would be diverted to recycling facilities. Senate Bill 1383 became effective January 1, 2022 and is being implemented in the City of Belvedere under the Organics Reduction & Recycling Ordinance that is currently in effect. The ordinance requires residents (including Single family and Multi-family residents) and businesses to recycle their organic waste – all food scraps, food-soiled paper products, and yard waste (City of Belvedere 2022b).

The majority of landfilled waste would be delivered to the Redwood Landfill in Novato, California which is a 420-acre site of which 222.5 acres are dedicated to waste disposal. The remaining land supports composting, recycling, and reuse services and facilities operations. The Redwood Landfill is a Class III disposal facility for non-hazardous materials and accepts yard waste and residential food composting; metals and appliances recycling construction and demolition debris recycling, reuse, and disposal; and municipal solid waste. It is permitted to accept 2,310 tons of material per day (totaling 843,150 tons per year) (Waste Management 2022). Operation of the project would add an additional 18 new dwelling units combined from the single-family units, duplexes, apartment, and the one ADU) and approximately 51 new residents. Based on model outputs from the Air Quality and Greenhouse Gas Emissions Analysis (Attachment C), the project would generate approximately 26 tons of solid waste per year. This would be an increase of approximately of approximately 16 tons per year as compared to the existing uses, comprising approximately 0.002 percent of the site's yearly allocation. This would not result in a significant increase over existing solid waste generation and disposal within the region. In addition, compliance with state and local regulations would continue to reduce landfill contributions. Therefore, no significant impact on solid waste generation would occur, and the expansion of existing or construction of new solid waste facilities would not be necessary.

Gas and Electricity

The existing residential units at the project site currently receive natural gas and electricity supplies from Pacific Gas & Electric (PG&E). Existing distribution lines within adjacent roadway rights-of-way would not be modified as a result of project implementation, but the connections from the project site to the existing lines may be replaced/updated. As the sizing of utility distribution lines is based on land use designations and zoning and because the project would be consistent with existing land use and zoning for the site, the natural gas and electricity lines providing service to the project site are projected to have adequate capacity to service the site. Further, although the project would involve construction of 40 new residential units including six single-family units, five duplex buildings, one accessory dwelling unit, and a 23-unit apartment building and approximately 51 new residents on the project site, it would modernize structures onsite to be more energy efficient through conformance and compliance with LEED standards and CBC Title 24 Energy Code requirements. As a result, demand for energy supplies and natural gas and electricity service at the site are not anticipated to result in significant impacts and no new infrastructure would be required to adequately serve the project.

1.5 UNUSUAL CIRCUMSTANCES APPLICABLE TO THE PROJECT

A categorical exemption, such as the infill exemption, may not be used if there is a reasonable possibility that the project will have a significant effect on the environment due to “unusual circumstances.” (Guidelines Section 15300.2(c).) Under *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104-1107, the categorical exemption will not apply if:

1. The project presents unusual circumstances; and there is a fair argument that, because of the unusual circumstances, the project may have a significant environmental impact. The environmental impacts may be considered only if some project circumstance is unusual; or
2. There is substantial evidence that the project *will* have a significant environmental impact.

The City’s determination will be upheld regarding these issues if the City has substantial evidence to support its findings.

The City has received correspondence stating that the project presents unusual circumstances because: (a) it is constructed on dredged, filled, and flooded marshland; (b) the project will require driven or cased piles; (c) the project is within a FEMA-designated Special Flood Hazard Area; and (d) the proposed apartment is five times as long as it is wide without architectural features to accommodate large differential settlements.

Construction on dredged, filled, and flooded marshland. The map prepared by the California Geological Survey entitled, *Geology of Ring Mountain and Tiburon Peninsula, Marin County, California* (David A. Bero, 2014) shows that the entire Belvedere Lagoon neighborhood, areas adjacent to San Rafael Avenue, and downtown Tiburon are all constructed on artificial fill, deposited on dredged, filled, and flooded marshland. Most residences in the Belvedere Lagoon have docks. The existing apartments in the City are all constructed on artificial fill. Construction on dredged, filled, and flooded marshland is not unusual in Belvedere.

Required use of driven or cased piles. The project’s geotechnical report (Attachment G) states that driven piles and drilled piers are not recommended due to excessive noise and vibrations; helical piers, which create the least amount of noise and vibration, are likely the most feasible and cost-effective option for deep foundation support where required. Because of the presence of artificial fill, according to City staff, development in the Belvedere Lagoon neighborhood has frequently required the use of piles, and this construction technique is not unusual.

Location within a FEMA-designated flood area. Most of the residences located on the Belvedere Lagoon are also located within a Special Flood Hazard Area as shown on FEMA’s Flood Maps. The site’s location within a FEMA-designated Special Flood Hazard Area is not unusual in Belvedere. In addition, location in a flood hazard area is considered an impact of the environment on the project, which is not an environmental impact under CEQA. (*Calif. Bldg. Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369.)

Apartment house configuration. The City does not have comparable data on the dimensions of other apartment houses and other large buildings constructed on fill in Belvedere and downtown Tiburon to determine if the dimensions of the apartment house are unusual. Even assuming that the dimensions of the apartment house are unusual, the effect of the fill and Bay mud on the apartment house is an impact of the environment on the project and is not an environmental impact under CEQA.

Because none of these project characteristics are “unusual,” the project will qualify for the infill exemption unless there is substantial evidence that the project *will* have a significant environmental impact. The City has received correspondence stating that the geology of the site will result in significant environmental impacts. The section below examines whether there is substantial evidence that the project *will* result in significant geologic impacts.

Geology and Soils

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving 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 California Geological Survey Special Publication 42.)

As discussed in the Preliminary Geotechnical Investigation prepared by Miller Pacific Engineering group, included in this memorandum as Attachment G, under the Alquist-Priolo Earthquake Fault Zoning Act, the California Geological Survey produced 1:24,000 scale maps showing the locations of both active and potentially active faults, and defined zones within which special fault studies are required. The nearest known active fault to the project site is the San Andreas Fault which is located approximately 13.3 kilometers to the southwest of the project site. Since the project site is not located within an Alquist-Priolo Special Studies Zone, the probability that a fault surface rupture would occur in the development area is low (Attachment G). It is therefore unlikely that the project would cause potential substantial adverse effects due to earthquake fault rupture.

The geologic map entitled, *Geology of Ring Mountain and the Tiburon Peninsula*, shows a concealed fault, whose precise location is unknown near the project site, running under Richardson Bay and extending through the Belvedere Lagoon. However, there is no evidence that this fault is active. Therefore, impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving strong seismic ground shaking?

As discussed in Attachment G, the project site would likely experience seismic ground shaking similar to other areas in the seismically active Bay Area. The intensity of ground shaking would depend on the characteristics of the causative fault, distance from the fault, the earthquake magnitude and duration, and site-specific geologic conditions. Structural failure and collapse of structures or non-structural building elements (such as light fixtures, shelves, cornices, etc.) can occur, presenting a hazard to building occupants and contents. The active faults that could most significantly affect the project site along with their maximum credible magnitude, closest distance to the center of the planning area, probable peak ground accelerations, and 84th percentile peak ground accelerations are summarized in Attachment G. To address these risks, structures would be designed in accordance with the provisions of the 2022 California Building Code, Belvedere General Plan, and City of Belvedere Building Code and in accordance with engineering recommendations in Attachment G. Incorporating these criteria into building designs would ensure that structures are able to withstand strong seismic ground shaking, greatly reducing the possibility of structural failure and building collapse. Therefore, impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction?

As described in Attachment G, liquefaction refers to the sudden, temporary loss of soil shear strength during strong ground shaking. Liquefaction-related phenomena include liquefaction-induced settlement, flow failure, and lateral spreading. These phenomena can occur where there are saturated, loose, granular deposits. For the project, saturated granular layers were observed during field visits to the project site conducted by Miller Pacific Engineering Group. Additionally, the site is mapped by the Association of Bay Area Governments (ABAG) as being very highly susceptible to liquefaction. The Miller Pacific Engineering Group also performed a series of geotechnical tests confirming that several liquefiable layers of various thicknesses underlie the site at various depths between 30 and 50-feet below the ground surface (Attachment G). Risks from liquefaction can include building settling, cracked building foundations, slope erosion, retaining wall failure, damage to pile foundations, and damage to utilities.

To address these risks, the project would implement the recommendations of the Preliminary Geotechnical Investigation included in Attachment G. This would involve project design features to comply with building codes and address common and typical concerns. Shallow foundation systems will be designed to withstand up to 1.5-inches of total and 0.75-inches of liquefaction induced differential settlement over 30-feet. Deeper foundation systems, including the use of helical piles, would be required in areas where Bay Mud underlies the site by more than 30 to 40 feet, generally in the northwesterly part of the site where single-family homes and duplexes are proposed. Foundation systems in these areas would typically need to exceed about 10 to 30 feet below the Bay Mud layer. Any deep foundations would be designed to account for localized layers of reduced skin friction for seismic conditions. Flexible utility conduits and connections would also be used to reduce the likelihood of damage due to differential post-liquefaction settlements. Impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving landslides?

Landslides are several forms of mass wasting that may include a wide range of ground movements, such as rockfalls, deep-seated slope failures, mudflows, and debris flows. Landslides generally occur on relatively steep slopes and/or on slopes underlain by weak materials. Because the project site lies on nearly level terrain, landslides are not considered a significant geologic hazard (Attachment G). Therefore, no impact would occur.

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving result in substantial soil erosion or the loss of topsoil?

Sandy soils on moderately steep slopes or clayey soils on steep slopes are susceptible to erosion or topsoil loss when exposed to concentrated surface water flow. The potential for erosion or topsoil loss is increased when established vegetation is disturbed or removed during normal construction activity. When these phenomena occur, soil nutrients can become contaminated or depleted, and increased pollution and sedimentation can find its way into nearby water bodies. Furthermore, lands degraded by soil erosion are often less able to hold onto water, which can worsen flooding.

To control the effects of erosion and/or topsoil loss at the project site, careful attention would be paid to finished grades and the project civil engineer would design the site drainage system to collect surface water into a storm drain system that discharges water at appropriate locations (see Attachments J and K for the stormwater control plan and preliminary drainage strategy). Vegetation would also be reestablished on disturbed areas to minimize erosion. In addition, and as discussed above, erosion control measures during and after construction would be carried out in accordance with a prepared Storm Water Pollution Prevention Plan and would conform to the most recent version of the California Stormwater Quality Association, Stormwater Best Management Practice Handbook. Therefore, impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving 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?

As discussed in Attachment G, the project area is relatively flat and currently developed with existing residential structures and asphalt drive areas. The site is located over a relatively thick (from 10-to 70-foot deep) deposit of bay mud, a substance that can experience significant settlement when loads (fill or structures) are placed at points along its surface. Because the site was filled long ago (about 70 years ago), the bay mud has completed most of its primary consolidation settlement under the loads from the existing fill and structures in areas where bay mud thickness is less than 30 feet, generally the area proposed for the apartment house and the southerly portion of the site. In those portions of the site, 0 inches to 0.2 inches of additional settlement is expected from the existing fill. In the northerly part of the site underlain by more than 30 feet of Bay mud, the existing fill may result in 0.4 – 8.5 inches of additional

settlement, depending on the depth of the Bay mud. Smaller secondary compression settlements (up to several inches) are also still occurring across the entire site area. , Consequently, the project would implement the common and typical project design features recommended in the Preliminary Geotechnical Investigation included in Attachment G to minimize all future settlement. These include achieving required finish floor elevations without additional fill and use of lightweight materials, flexible utility connections and emergency shut-off valves. Shallow foundations may be used in areas underlain by less than 30 feet of Bay mud, and deep foundations using piles may be used in other areas. Neither driven piles nor traditional drilled piers are recommended, with helical piers the most feasible and cost-effective. With implementation of the recommendations included in Attachment G, impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, involving being located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994, as updated), creating substantial direct or indirect risks to life or property?

Soil expansion occurs when clay particles interact with water causing seasonal volume changes in the soil matrix. The clay soil swells when saturated and then contracts when dried. These volume changes may damage lightly loaded foundations, concrete slabs, pavements, retaining walls and other improvements. Because the project site is located on a previously developed surface, substantial effects from soil expansion are not anticipated. Any loose sandy surficial soil would be compacted as part of the site grading and building foundations would be properly designed to improve performance of structures over potentially expansive soils (Attachment G). Therefore, impacts would be less than significant.

Would the project directly or indirectly cause potential substantial adverse effects, involving soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?

As the project site is located in a developed urban area in the City of Belvedere, no septic tanks or alternative wastewater disposal systems would be required to manage wastewater. Therefore, no impact would occur.

Would the project directly or indirectly cause potential substantial adverse effects, involving directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?

A paleontological records search was conducted for the project and can be found in Attachment H. The entire project site consists of Quaternary artificial fill over marine and marsh deposits, which are too young to contain fossils. In addition, surrounding half-mile search area also has various mostly metamorphic rocks of the Cretaceous–Jurassic Franciscan Complex. Vertebrate fossils are extremely rare in the Franciscan Complex. Thus, the paleontological potential and sensitivity are both considered to be very low. No known unique paleontological resources, sites, or unique geological features exist on or near the project site. Therefore, no impact would occur.

1.6 REFERENCES

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1.7 PREPARERS

Mike Parker	Project Director
Tanya Jones	Project Manager
Grace Mannell	Biologist
Tammie Beyerl	Senior Biologist/Permitting Specialist
Matt McFalls	Senior Air Quality/Greenhouse Gas Specialist
Alta Cunningham	Cultural Resources Specialist
Dimitri Antoniou	Senior Noise Specialist
Zach Miller	Senior Transportation Specialist
Eric Cohen	Environmental Planner
Brian Perry	Graphics

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NOV 27 2023



City of Belvedere

APPEAL OF PLANNING COMMISSION ACTION

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

FOR STAFF USE ONLY

Appeals must be checked for sufficiency by the Office of the City Attorney before they are accepted by Staff.

Date: 11/27/2023 Rec'd. by: R.M. Amount: \$1,000 Receipt No.: _____

APPEAL PROCEDURE

Appeals of actions taken by the Planning Commission are governed by Section 20.04.070 of the Belvedere Municipal Code and must conform to the provisions thereof:

The applicant or any interested person may file an appeal with the City Council from any denial, approval or conditional approval of any application by the Planning Commission pursuant to this Chapter. Said appeal shall be in writing and shall be filed with the City Clerk not later than the tenth calendar day after the Planning Commission's action. Appeals shall set forth the alleged inconsistency or nonconformity with procedures or criteria set forth in this Chapter, and shall be accompanied by a filing fee as is hereafter fixed from time to time by City Council resolution. The City Clerk shall, not less than ten calendar days prior to the date set for the Council hearing on the appeal, give written notice to the appellant or his representative, and to the property owner, of the date, time and place of the hearing. The Council may affirm, reverse or modify the decision of the Planning Commission, at all times being guided by the criteria set forth in this Chapter. The Building Official, Planning Consultant, and Planning Commission shall each be advised of the Council decision.

The appeal fee is nonrefundable.

To protect the rights of all parties, the appeal will normally be scheduled for hearing at the next available City Council meeting occurring not less than two weeks after the appeal is filed, providing that the necessary noticing requirements can be met. Any request for delay or continuance of the hearing is subject to approval by the property owner and the City Council.

APPELLANT INFORMATION

Appellant is: Property owner Other interested party

Name of Appellant: Mallard Pointe 1951, LLC

Mailing Thompson Dorfman Partners Daytime phone: 415-381-3001

Address: 39 Forrest St. Suite 202 Fax: _____

Mill Valley, CA 94941 Email: bd@thompsondorfman.com

Appellant's representative (Optional): Bruce Dorfman
Mailing Same as above Daytime phone: _____
Address: _____ Fax: _____
_____ Email: _____

BASIS OF APPEAL

Date of Planning Commission action: November 14, 2023 Agenda Item No.: D.1
Address of property: 1-22 Mallard Rd., Belvedere, CA
Action you are appealing: Planning Commission decision that the Mallard Pointe project ("Project") is not exempt from CEQA.

State the inconsistency or nonconformity you are alleging with procedures or criteria set forth in Chapter 20, *Architectural & Environmental Design Review*, and/or Chapter 19, *Zoning*, of the Belvedere Municipal Code (you may attach additional pages and/or exhibits in support of your appeal):

1. The Project is exempt from CEQA pursuant to the Infill Exemption.
2. The Planning Commission decision to deny the exemption was not supported by evidence in the record, was based on misstatements of facts and law, and was contrary to the findings of every objective, third-party, professional hired by the City to evaluate the issue.
3. The man-made Belvedere Lagoon is an "urban use" pursuant to case law and codes.
4. The adjacency of the Lagoon does not constitute an "unusual circumstance."
5. The amount of analysis conducted to verify the Project qualified for the exemption is unprecedented and confirmed there were no significant environmental impacts, including impacts to water quality or geotechnical conditions.
6. The City has committed to the development of the Project in the updated Housing Element and describes the area around the Lagoon as "well-suited for additional density."

I, the undersigned, hereby make appeal of the Planning Commission action cited, and I hereby certify that the facts, statements and information presented herein and in the attached exhibit(s) are true and correct to the best of my knowledge and belief.

I understand the contents of this document are a Public Record.

Signature:  _____

Name: Mallard Pointe 1951, LLC
By: TDP-Belvedere-2020, LLC, its Managing Member
By: Bruce Dorfman, Manager

Date: November 27, 2023



Ragghianti | Freitas LLP

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Riley F. Hurd III
rhurd@rflawllp.com

December 19, 2023

Via E-Mail Only

Members of the City Council
City of Belvedere
450 San Rafael Ave
Belvedere, CA 94920

Re: Mallard Pointe - Appeal of Planning Commission CEQA Determination

Dear Members of the City Council:

This letter accompanies the appeal of the November 14, 2023, Planning Commission decision that the Mallard Pointe project ("Project") is not exempt from CEQA.

EXECUTIVE SUMMARY:

1. The Project is exempt from CEQA pursuant to the Infill Exemption.
2. The Planning Commission decision to deny the exemption was not supported by evidence in the record, was based on misstatements of facts and law, and was contrary to the findings of every objective, third-party, professional hired by the City to evaluate the issue.
3. The man-made Belvedere Lagoon is an "urban use" pursuant to case law and codes.
4. The adjacency of the Lagoon does not constitute an "unusual circumstance."
5. The amount of analysis conducted to verify the Project qualified for the exemption is unprecedented and confirmed there were no significant environmental impacts, including impacts to water quality.
6. The City has committed to the development of the Project in the updated Housing Element and describes the area around the Lagoon as "well-suited for additional density."



I. Introduction

From the outset of the November 14th meeting, it was clear that rather than having an unbiased discussion regarding the Project, the Commission was instead aggressively searching for *any* manner in which to delay/deny the Project. Because the Legislature has usurped so much of the City's local control over the processing of multifamily housing projects, the Commission quickly honed in on the only remaining angle of attack: CEQA.

The Commission had to overrule numerous specialized professionals in order to find that the Project was not exempt from CEQA. Specifically, the Commission had to disregard the opinion of:

- The City Planning Director
- The City Attorney
- Two outside attorneys hired by the City to opine on CEQA
- Ascent Environmental, a third-party environmental consulting firm hired by the City to analyze the project

The fact is, the CEQA Infill Exemption is a technical, legal analysis, which is exactly why experts are retained by the City. The Commission's deliberation contained numerous misstatements of law and misunderstandings of the CEQA process, as well as misapplications of the exemption criteria. Corrective comments from staff and the consultants were ignored, as denying the exemption clearly felt like the Commission's last line of attack on the Project.

II. Background

The Project was specifically designed to fit the CEQA infill exemption. A detailed memorandum was submitted with the Project application explaining why the infill exemption applied.

Despite the fact that CEQA does not require *any* documentation for making an exemption determination, the City elected to hire a third-party consultant to analyze the Project. The City charged the applicant over \$100,000 and took a year and a half to produce a memo from Ascent Environmental analyzing the applicability of the infill exemption to the



Project. This memo was perhaps the most comprehensive “exemption confirmation” ever produced. The analysis went well beyond the limited categories of the exemption and instead fully analyzed the categories of the CEQA Initial Study checklist. While this approach was extreme, it guaranteed that the Project did **not** have any significant environmental impacts.

Despite the findings of the Ascent report and recommendations from staff and outside counsel that the Project was exempt, the Planning Commission voted that the exemption did not apply and that the applicant needed “to do a CEQA.” The Commission based its decision on two primary allegations:

1. That the man-made Belvedere Lagoon is not “urban use,” and
2. That the adjacency of the Project to the Lagoon is an “unusual circumstance.”

As will be discussed below, both of these points are legally and factually inaccurate.

III. The Lagoon is an Urban Use

CEQA Guidelines 15332 states that infill development is exempt from CEQA review if among other things:

“The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by **urban uses.**”

The Commission asserted that the Lagoon was not an urban use because it had a connection to the San Francisco Bay and was more akin to a natural feature. In reality, the Lagoon is a water feature that has been substantially modified by the installation of peninsulas, the development of roads, and extensive other geomorphic shaping that isolated the lagoon from the Bay. The entire bank of the Lagoon is developed with homes, roads, and other infrastructure. Despite its historic origins as a piece of the Bay, the Lagoon has functioned for over 70 years as a human-made urban recreational water feature and drainage catchment. Since that time, extensive development and redevelopment has occurred, primarily consisting of single-family homes and duplexes nearly identical to that which is being proposed on the Lagoon at Mallard Pointe, and not



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once has there been a suggestion that the CEQA exemptions used for those projects were inapplicable.

The issue of what constitutes an urban use has been considered by the courts before. In *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, (2006) 139 Cal.App.4th 249, the court analyzed whether a project that had obviously urban uses on some sides, but then was located adjacent to a park on another side, was precluded from relying on the infill exemption because the park did not constitute an "urban use." The court turned to case law that defined the term "urban uses" as used in the Community Redevelopment Law, specifically *Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511.

In *Friends of Mammoth*, the court explained that the term "urban" means "characteristic of, or taking place in a city." The court found that "urban" refers more to the location of a use than to the type of use. Based on this guidance, the *Banker's Hill* court determined that **a park qualified as an "urban use" because it was surrounded by populated areas and was an urban amenity.** This is the exact scenario here, the Lagoon is literally in the middle of Belvedere.

In *Bankers Hill 150 v. City of San Diego* (a different *Bankers Hill* case), the court discussed the other *Banker's Hill* case cited above, in analyzing whether the city's **general plan** considered a park as being part of the "natural environment" for the purposes of mandated minimal development on parcels adjoining par. ((2022) 74 Cal.App.5th 755, 780.) In this newer case, the court stated that "while a particular park may be considered part of the 'natural environment' because it includes 'natural features' based on its unique characteristics, not all parks fall within that category." Importantly, the court noted that the city's **general plan** stated that the park "**modified the natural environment,**" implying it is **no longer a purely natural environment.**" Thus, the court held that the park was not a "natural feature" just as in *Banker's Hill* the court held that the park was a "developed urban park" and thus constituted an "urban use" of land. So, a key factor is a City's own discussion within the General Plan of the feature in question.

Here, the City's General Plan explicitly discussed how the Lagoon is a modification of the natural environment in several places:



“The City is urbanized, and does not contain large expanses of open space that could be utilized by special status plant and wildlife species. Terrestrial habitat is fragmented and has been altered from its native state. **Belvedere Lagoon is considered low-quality habitat for biological resources.** The pump station does not generally allow for safe and effective passage of fish species in and out of the Lagoon. **In addition, the residential use and treatment of the Lagoon with dyes to control algal growth reduces the viability of aquatic habitat in Belvedere Lagoon.**” (General Plan, Page 93.)

“Recreation areas in Belvedere include:

- **Belvedere Lagoon.**” (General Plan, Page 109.)

“In addition to the public park facilities and the public schools, Belvedere is home to three other recreation facilities: the San Francisco Yacht Club, **the Belvedere Lagoon**, and the Corinthian Yacht Club. **These are private facilities and require membership for access and use.**” (General Plan, Page 112)

The Belvedere Lagoon neighborhood is the most extensively graded area within the City limits. The elevated areas that now support the streets and residential lots in the lagoon neighborhood was created in the mid-to late 1940’s by construction of dikes at Beach Road and San Rafael Avenue and draining of the original interior lagoon. **Native soils were excavated from the existing lagoon areas, and placed as fills to form elevated streets and building pads.** (General Plan, Page 157.)

The City’s own General Plan confirms:

- The Lagoon is man-made.
- The native soils were removed from the original Lagoon and used to fill it and create roads and building sites.
- The Lagoon is a recreational facility, is private, and requires membership for access and use.
- The Lagoon is totally surrounded by development.
- The Lagoon is treated with chemicals.



It's very clear that what used to be a natural resource was heavily modified by humans for the purpose of development and is now an urban use. The operation of the Lagoon by the BLPOA to remove sediment, vegetation, and other deleterious materials is specially intended to *keep* the Lagoon from returning to its natural state. Similar examples of urban lagoons are found throughout the Bay Area in both smaller scale (Larkspur and Corte Madera) and larger scale (Oakland, San Mateo, Redwood Shores and Foster City), and routinely utilize CEQA exemptions for all types of development.

Other parts of CEQA confirm that the infill exemption applies to the Project site. For example, CEQA's definition of "infill site" includes any site that has **previously been developed for "qualified urban uses."** (Public Resources Code Section 21061.3(b).) Qualified urban uses are defined as, "any **residential**, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." (Public Resources Code Section 21072.) The Project site is currently developed with residences, which are a "qualified urban use," and is therefore an infill site.

IV. The Project and the Lagoon are not "Unusual Circumstances"

The Planning Commission alleged that adjacency of the man-made Lagoon, the 900-feet of Project "shoreline," and the presence of fill and Bay mud constituted unusual circumstances such that the Infill Exemption would not apply. This argument was made because a project will not qualify as exempt if, among other things:

"There is a reasonable possibility that the activity will have a **significant effect** on the environment due to **unusual circumstances.**"

This exception to the exemption is a 2-pronged test considering:

1. Whether the project presents unusual circumstances; **and**
2. Whether there is a reasonable possibility of a significant effect on the environment due to those unusual circumstances.

This is a conjunctive test, where both elements must be present in order for the exemption to not apply. Here, neither element is satisfied, and there is no exception to the exemption.



There is nothing unusual about the Project or its location. The entire Lagoon is surrounded by development that routinely utilizes CEQA exemptions. The frontage of the Project site is actually being subdivided as part of the Project and each lot will have standard frontage widths. Even if the frontage remained at 900-feet, nothing about that fact is unusual or causes a significant environmental effect. Finally, development occurs all over the Bay Area on fill and Bay mud, in fact, the entirety of the Lagoon neighborhood is constructed under similar conditions, including multiple existing multifamily housing developments.

Case law strongly affirms that, even when opponents point to distinctive aspects of a project or its location, a typical project such as this is not subject to the “unusual circumstances” exception. (See, e.g., *Berkeley Hillside Pres. v. City of Berkeley*, 241 Cal. App. 4th 943, 955 (2015) (no “unusual circumstances” despite claims of unusual size, environmental setting, and inconsistency with general plan); *Protect Tustin Ranch v. City of Tustin*, 70 Cal. App. 5th 951, 962 (2021) (no “unusual circumstances” despite claims of unusually large project configuration); *Wollmer v. City of Berkeley*, 193 Cal. App. 4th 1329, 1336 (2011) (98-unit mixed use development affirmed under Class 32 exemption despite claimed unusual location and traffic issues).) Also, the memorandum prepared by Ascent Environmental confirmed that the Project has no significant environmental impacts. Accordingly, the second prong of the conjunctive test is not satisfied and the exception to the exemption would not apply even if this were considered an unusual circumstance.

V. There is no Significant Effect on Water Quality

In order to qualify for the Infill Exemption, a Project cannot have a significant effect on water quality. The Planning Commission claimed that the Project *would* have a significant effect on the water quality of the Lagoon. This argument failed to consider the actual design of the Project, and ignored the voluminous conditions already applicable to the Project that would completely safeguard water quality. The Planning Commission position was also difficult to reconcile with the fact that the Lagoon is treated with herbicides on a regular basis thereby preventing the growth of environmentally beneficial eelgrass and other aquatic plants.

First, the project would reduce the amount of impervious surface on the site and would install bioretention basins and bioswales to reduce the amount of, and treat, runoff into the Lagoon. Because runoff from the site currently entirely untreated and uncontrolled,



this would improve the quality of stormwater flowing into the Lagoon. The same cannot be said for the large volume of surface water runoff from both Belvedere and Tiburon that flows into the Lagoon by design. Because the Lagoon is a floodwater detention basin characteristic of an urban environment, it has to be managed by dredging and an annual water release to make room for the runoff during the wet season. The Lagoon is clearly an urban amenity.

Second, numerous standard erosion control measures are required to avoid water quality impacts during construction. Part of the Commission's water quality discussion centered on a theory that somehow the construction of the Project would result in silt entering the Lagoon. This discussion ignored the fact that this is a "regulated" project pursuant to the Bay Area Stormwater Management Agencies Association and therefore the applicant must submit a "Stormwater Control Plan" detailing the stormwater facilities that will be integrated into the planning, design, construction, operation, and maintenance for stormwater compliance. Also, even the City's own Public Works Department required the submittal of an Erosion and Sediment Control Plan for approval by the City prior to the issuance of a Building Permit.

Furthermore, because the Project site is greater than 1 acre in size, the Project must comply with the California Construction General Permit Order 2022-0057-DWQ, which requires the preparation of a Stormwater Pollution Prevention Plan prior to construction which outlines best management practices that the project would implement in order to minimize impacts to water quality. Compliance with these existing regulations would require treatment of runoff before discharge from the site and ensure that there are no significant impacts to water quality.

Finally, much of the Commission's discussion centered around bulkheads and docks at the Project site. Similar to the siltation water quality issues, there are many conditions already applicable to the Project that would safeguard water quality in the event of dock or bulkhead work. Any maintenance, replacement, removal, or construction of docks or repair of the bulkheads in the Lagoon would now have to comply with a new requirement that hasn't been previously enforced by the City - permitting by the Regional Water Quality Control Board (RWQCB) and in addition, may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. The General Requirements for Construction and Maintenance of Overwater Structures (Order No. R2-2018-0009) adopted by the RWQCB contain standard



requirements that must be met to ensure that no water quality impacts are caused by dock construction.

Water quality is one of the most-regulated environmental issues. This Project will not, and cannot, have significant water quality impacts.

VI. There is no Significant Effect on Geology and Soils

A detailed geotechnical investigation report was prepared by Miller Pacific Engineering and submitted with the Project. This report was thoroughly reviewed by Ascent Environmental and it was confirmed that there are no unusual geological circumstances at the Project site and that there is no reasonable possibility of a significant effect on the environment due to unusual circumstances. Much ado was made at the Planning Commission regarding the presence of Bay mud at the Project site, and other alleged geotechnical issues. These comments ignored the fact that development in such conditions occurs regularly all over the Bay Area, including longstanding multifamily developments already adjacent to the Lagoon.

The Project as-proposed would follow the recommendations of the Miller Pacific report and would also be subject to the provisions of the 2022 California Building Code, and City of Belvedere Building Code, all of which have foundation and strengthening requirements that address the Project location and soil conditions. Because the Project site was filled 70 years ago, the Bay mud has completed most of its primary consolidation settlement under the loads from the existing fill and structures already on site. Helical piers and certain foundation options ensure that the Project will not have a significant effect on the environment and that the exemption remains applicable. The Council is encouraged to read Pages 34-36 of the October 13, 2023, Ascent Environmental report for an extremely detailed explanation of the geologic conditions at the subject property and how the Project proactively addresses such conditions.

VII. Conclusion

The Project fully conforms to the requirements of the infill exemption, which is routinely used for exponentially larger projects throughout the State. The Commission's decision was not supported by findings or accurate evidence, and the hearing appeared more like a focused interrogation of the objective, third-party consultants who specialize in CEQA with the sole goal of denying the exemption. The Commission's discussion wholly ignored the fact that Mallard Pointe is a project listed in the City's Housing Element, and



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also that significant further density is proposed around the Lagoon in order to meet the City's housing obligations. If this Project's mild increase of 18-units is supposedly so impactful, this jeopardizes the City's entire housing program.

The heavily researched and thorough Ascent memo concluded that this Project will have no significant environmental impacts. This conclusion will not change simply because the Commission voted to deny the exemption and proceed with an Initial Study. The vote only adds delay and cost in an attempt to thwart the project, and forces the developer into a more intense alternative development program.

We would ask that the Council overturn the Commission's decision, find the Project exempt from CEQA, and hold a merits hearing.

Thank you.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive, slightly slanted style.

Riley F. Hurd III

CC: Client
Barbara Kautz
Ann Danforth

November 13, 2023

Via E-Mail

Planning Commission
c/o City Clerk
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920
bhaener@cityofbelvedere.org

**Re: Design Review, Demolition, Tentative Subdivision Map, and
Revocable License, for 40 units at 1-22 Mallard Road**

Dear Members of the Belvedere Planning Commission:

On behalf of Belvedere Residents for Intelligent Growth (BRIG), please accept and consider the following points concerning the above-referenced Mallard Pointe development project (Project). As explained in detail below, the Project plainly does not satisfy the criteria for the Infill Development exemption from the environmental review requirements of the California Environmental Quality Act (CEQA), despite City Staff's conclusion to the contrary. Furthermore, the Project may not lawfully evade the R-2 Zoning District's clear prohibition on apartment buildings under the guise of a "concession" under the State Density Bonus Law (SDBL). BRIG accordingly respectfully requests that the Planning Commission decline to approve any aspect of the Project at this time, and instead direct Staff to prepare and circulate for public review and comment an Initial Study of the Project's potential environmental impacts. No further action on the pending applications should be taken until the CEQA process is fully completed.

Please note that the Planning Commission is by no means bound by the Staff recommendation, nor by advisory opinions of employees of the State Housing and Community Development Department (HCD). The Belvedere Planning Commission is an independent deliberative body charged by State law with reviewing development projects for consistency with the City's General Plan and Zoning Code. It is also

charged by CEQA with exercising its independent judgment in determining compliance with that law's environmental review requirements. Accordingly, BRIG strongly urges the Planning Commission to examine the Staff report with appropriate circumspection and skepticism, and to reach its own conclusions as to whether the Project is exempt from CEQA, and whether its apartment building is permissible notwithstanding the R-2 Zoning District's clear prohibition of such use. The Planning Commission should also of course carefully consider the comments and testimony from members of the community who will be directly impacted by the development of this Project.

I. The Project is Not Exempt from CEQA; Formal Environmental Review is Required Before Any Approval Action.

Relying on a report prepared by Ascent Environmental, the City's environmental consultant, Staff recommends that the Planning Commission find the Project exempt from environmental review under CEQA, based on the categorical exemption for "Infill Development" projects. Preliminarily, please be aware that the consequence of finding the Project CEQA-exempt is significant, as it will allow the City to avoid preparing a thorough analysis of the Project's environmental impacts and subjecting that analysis to public scrutiny by way of a formal public comment period. By contrast, if the Project is deemed not exempt from CEQA, the City will be required to circulate its analysis for review and comment by the public and other agencies, and will have a mandatory duty to respond to any comments received. Such publicly scrutinized environmental analysis is of paramount importance where, as here, the Project is of a scale unprecedented in Belvedere in decades.

As the Staff report correctly states, the Project would need to meet all of the following criteria in order to qualify for CEQA's Infill Development exemption:

- (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.)

As explained below, the Project does not satisfy all of these criteria, as it is inconsistent with the applicable zoning designation and regulations, is not substantially surrounded by urban uses, and is otherwise not exempt due to unusual circumstances stemming from construction of a long, narrow apartment structure on Bay mud and fill material.

A. The Project is not consistent with applicable zoning designations and regulations.

There is no dispute that the applicable designations and regulations of the R-2 (“Duplex”) Zone flatly prohibit apartment buildings. Indeed, this is precisely why the developer is seeking a waiver of this prohibition as a “concession” under the SDBL. Leaving aside the question whether waiver of a land use prohibition is permissible under these circumstances (it is not), the fact remains that the Project is patently not consistent with R-2 Zoning requirements. The developer’s request for the concession is itself an admission of this fact.

Ascent and Staff both assert, however, that “[w]ith approval of the concession and waivers, the project would be considered to comply with the applicable requirements of the R-2 zone.” (Ascent report, p. 11; Staff report, p. 9.)

It is correct that a given project’s need for waivers and concessions from planning and zoning requirements does not render the project inconsistent with those requirements for purposes of the Housing Accountability Act or Density Bonus Law. This, however, is not the case with respect to compliance with the environmental

review provisions of CEQA, which is **an entirely different statute**. CEQA's Infill Development exemption mandates zoning consistency for environmental protection reasons. Categorical exemptions, including the one for Infill Development projects, reflect the State Resources Agency's determination that certain classes of projects, by virtue of their characteristics, may appropriately be deemed not to have significant environmental impacts. (Pub. Resources Code § 21084(a); CEQA Guidelines, § 15300 ("the Secretary for Resources has found that the following classes of projects listed in this article do not have a significant effect on the environment, and they are declared to be categorically exempt from the requirement for the preparation of environmental documents".).)

When an infill development project is consistent with governing zoning regulations (and meets the other criteria listed), there often is no need for additional environmental review since the general plan zoning regulations were themselves subject to CEQA review when they were enacted. In other words, since the City has necessarily already considered the environmental effects of duplex units in the R-2 Zone when it last updated the General Plan and Zoning Code, it is not necessary to consider those effects again, as that effort would be duplicative. However, the City has decidedly not previously considered the environmental impacts of an apartment building at this site since the Zoning Code expressly prohibits such a structure.¹

Staff have suggested in the "FAQ" sent to the Planning Commission that the Project's request to evade the R-2 Zone's apartment building prohibition as a "concession" under the SDBL would, if granted, render that prohibition no longer "applicable," such that the Project would meet this first criterion for the Infill Development exemption from CEQA. As will be discussed in greater detail in section IV below, the R-2 Zone's prohibition of apartment buildings is a **land use**

¹ To the contrary, the CEQA Initial Study and Negative Declaration adopted by the City Council for the last Housing Element in 2015 expressly states that the housing mix described in the Element, **including duplexes in the R-2 district**, would not result in significant environmental impacts "as growth and land use intensity are consistent with the City's current General Plan and current zoning." (*See Initial Study for the City of Belvedere General Plan Housing Element Update* (March 2015), p. 15.)

restriction. It is not a “development standard” that can be waived or bypassed as a “concession” under the SDBL.²

In sum, the Project cannot be deemed exempt from CEQA under the Infill Development exemption because it is patently inconsistent with applicable land use prohibitions (as distinct from development standards) in the Zoning Code restrictions. Whether the Project may lawfully evade the R-2 Zone’s apartment restriction as a “concession” of the SDBL (it may not) is immaterial to its compliance with CEQA’s mandatory requirements.

B. The Project site is not substantially surrounded by urban uses, since the Belvedere Lagoon is plainly not an “urban use,” as Ascent expressly acknowledges.

Even if the Project were consistent with the R-2 Zoning requirements (again it is not), it would still plainly not qualify for CEQA’s Infill Development exemption because it is not on “a site of no more than five acres substantially surrounded by urban uses.” (CEQA Guidelines, § 15332(b).) Although less than five acres, the 2.8-acre site is bounded on 56 percent of its perimeter by the Belvedere Lagoon. While the Infill Development exemption does not define the term “substantially surrounded,” the CEQA statute itself defines it 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.**

² In *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, the Court of Appeal upheld Berkeley’s approval of an apartment building based on a density bonus that included a waiver of 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.) The Court observed that the SDBL prohibits a local municipality from applying “any **development standard** that will have the effect of physically precluding the construction” of a density bonus-qualifying development,” and that Berkeley’s waiver and reduction of “zoning standards for height, floor area ratio and setbacks,” rendered those **standards** inapplicable for purposes of the Infill Development exemption. (*Id.* at 1348.) The case simply did not hold that a project seeking to avoid a categorical land use prohibition would still qualify for the Infill Development exemption.

(See Pub. Resources Code § 21159.25(a)(2), emphasis added.)

CEQA in turn defines “qualified urban uses” as including only “any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.” (Pub. Resources Code § 21072.) Here, as Ascent expressly acknowledges, “[t]he Belvedere Lagoon is not a public facility, includes none of the listed uses, and so is not a ‘qualified urban use.’” (Ascent Report, p. 11.) Ascent also expressly acknowledges that the Lagoon is considered to be a lake under the jurisdiction of the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and other state agencies.” (*Id.*) Ascent also observes, correctly, that if the Belvedere Lagoon is not considered to be an “urban use,” then the site would not qualify for the infill exemption. (*Ibid.*)³

Inexplicably, however, the Staff Report disregards Ascent’s discussion on this point – and, in particular, Ascent’s determination that the Lagoon is not a “qualified urban use” -- and instead blithely asserts that “after consideration, the staff recommends that the Lagoon be considered an “urban use” because it is a human-made urban recreational water feature.” (Staff Report, pp. 27-28.) This statement not only ignores Ascent’s discussion but is a gross mischaracterization of the Lagoon. Although engineered by humans over decades for flood protection and water quality preservation, the Lagoon originated as an arm of San Francisco Bay (see photos, **Attachment 1**), and to this day remains a “water of the United States” subject to the regulatory jurisdiction of the U.S. Army Corps of Engineers and Regional Water Quality Control Board pursuant, respectively, to the federal Clean Water Act and the State Porter-Cologne Water Quality Control Act. Contrary to Ascent’s incorrect statement, a hydrologic connection remains with Richardson Bay, with water from the Bay flowing into the Lagoon by gravity at high tide, and out by gravity at low tide, unless its flood protection gates are closed.

³ For legal support, Ascent states: “In the only case to consider the definition of “urban uses,” the Court of Appeal considered an urban use to be “characteristic of a city or a densely populated area.” The Court characterized Balboa Park in the City of San Diego to be a “quintessential urban park, heavily landscaped, surrounded by a densely populated area, and containing urban amenities such as museums, theaters, and restaurants,” and concluded it constituted an urban use. (*Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 272.) Here, while the Lagoon is surrounded by developed properties and used for recreation by homeowners, it is not landscaped and does not contain urban amenities. (Ascent, p. 12.)

In addition, 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.) It is therefore disingenuous for Staff and Ascent to characterize the Lagoon as merely a "human-made urban recreational water feature." 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.

III. CEQA's Exemption for Infill Development Does Not Apply To The Project Due To Unusual Circumstances.

Even if the Project were consistent with applicable zoning requirements, and even if the Belvedere Lagoon somehow constituted an "urban use" (again, neither is true), the Project would still not be exempt from CEQA. The CEQA Guidelines provide a "blanket exception" to the applicability of any categorical exemption, including the Infill Development 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.

Attached to the Ascent Report is a January 18, 2022 "Preliminary Geotechnical Report" prepared by Miller Pacific Engineering Group ("Initial 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. (Initial 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. He recently was retained by the City and County of San Francisco to advise them on engineered retrofit solutions to address settling at the Millennium Tower in that City. Dr. Karp's letters addressing some of the geotechnical engineering concerns relating to the Project are attached as **Attachment 2**, together with a statement of his credentials.

As Dr. Karp explains, the Initial Miller Report does not address the unusual circumstances potentially giving rise to significant impacts from 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.⁴

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

⁴ Miller Pacific's October 19, 2022 Updated Preliminary Geotechnical Investigation ("Updated Report"), which is not appended to the Ascent Report, does not address the points that BRIG and Dr. Karp raised with respect to the Initial Miller 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. The technical appendices are unchanged, and there is no indication of any new sub-surface investigations. Dr. Karp addresses this in a follow-up letter. *See Attachment 2.*

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.

Ascent acknowledges that “The City does not have comparable data on the dimensions of other apartment houses and other large buildings constructed on fill in Belvedere and downtown Tiburon to determine if the dimensions of the apartment house are unusual. Even assuming that the dimensions of the apartment house are unusual, the effect of the fill and Bay mud on the apartment house is an impact of the environment on the project and is not an environmental impact under CEQA.” (Ascent, p. 33.) Ascent’s point is irrelevant. The issue decidedly is **not** whether fill and Bay mud might have impacts on the apartment house; the issue is that engineering measures necessary to prevent differential settling of the apartment house due to the presence of fill and mud will themselves significantly impact the environment.

In sum, 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.)⁵

For these reasons, regardless of whether the Infill Development 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.

⁵ 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.)

IV. The Project Cannot Evade the R-2 Zone's Apartment Building Prohibition as a "Concession" Under the SDBL

Preliminarily, the developer's claim for a concession should be viewed in context with the overarching purpose of the SDBL. 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 SDBL defines "incentive or concession" 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).) Nothing in the SDBL suggests that "development standards" or "zoning code requirements" include categorical land use restrictions such as like the R-2's apartment building prohibition. 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 financially feasible without them.

Although the SDBL 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 cases 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 SDBL'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 if it actually reduces the cost of providing affordable housing.

Here, the Project will include six large, multimillion-dollar 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 fact, 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 Dr. Karp 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 SDBL – 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).)

Again, the purpose of the SDBL 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 proposing to build fewer 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 SDBL.

Conclusion

For the above reasons, the Planning Commission should find that the Project is NOT EXEMPT from environmental review under CEQA, and consequently should take no further action on the requested approvals until such environmental review is complete. In the event the Planning Commission finds the Project is in fact exempt from CEQA, it should nevertheless decline to grant the requested waiver of the R-2 Zoning District's prohibition on apartment buildings as a "concession" under the SDBL.

Belvedere Planning Commission

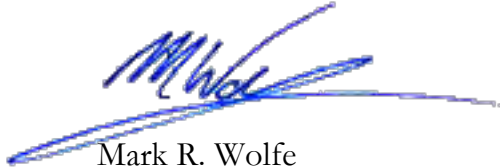
November 13, 2023

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Thank you for your consideration of these concerns.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C

A handwritten signature in blue ink, appearing to read 'M Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe

On behalf of BRIG

cc: Rebecca Markwick, Director of Planning & Building
Andrew Shen, City Attorney
Robert Zadnik, City Manager

ATTACHMENT 1

ATTACHMENT 1

ATTACHMENT 1

ATTACHMENT 1

ATTACHMENT 1

ATTACHMENT 1



Ca. 1925
Source: Belvedere-Tiburon Landmarks Society



Ca. 1925
Source: Belvedere-Tiburón Landmarks Society

ATTACHMENT 2

ATTACHMENT 2

ATTACHMENT 2

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



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

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



LAWRENCE B. KARP
CONSULTING GEOTECHNICAL ENGINEER

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

February 20, 2022

SOIL MECHANICS, GEOLOGY
GROUNDWATER HYDROLOGY
CONCRETE TECHNOLOGY

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





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By Email: Rzadnik@cityofbelvedere.org
JLynch@cityofbelvedere.org

Robert Zadnik, Belvedere City Manager
James Lynch, Belvedere Mayor
450 San Rafael Avenue
Belvedere, CA 94920

Re: Proposed Mallard Pointe Development

Dear Mr. Zadnik and Mr. Lynch,

On behalf of the Belvedere Lagoon Property Owners Association (“BLPOA”), thank you for the conference call regarding the proposed Mallard Pointe Development (“the Project”) on the shore of the Belvedere Lagoon. BLPOA officers and members appreciated the opportunity to speak with you along with City staff and consultants about the BLPOA’s concerns. As you know the BLPOA is NOT a homeowner association. It is a property owners association. This letter is to follow-up to clarify and elaborate on the BLPOA’s concerns voiced during the call.

It is in a spirit of cooperation and collaboration that we seek a more thorough examination of the Project. Most importantly, we believe the BLPOA and the City share the same objectives and responsibilities when it comes to protecting and preserving the Lagoon.

BLPOA’s concerns arise from its obligations for management and protection of the Lagoon. The Lagoon serves as a recreation area for swimming, boating and fishing; an aesthetic amenity; an ecological resource; and a critical element of storm water management and flood control for Tiburon and Belvedere. BLPOA manages the Lagoon to optimize these values and benefits. It is from this perspective that these comments have been prepared.

After reviewing the Project, BLPOA has concluded that the Project does not, as claimed by the Project proponent, qualify for a categorical exemption from environmental review, and even if it did, there is at the very least a reasonable possibility of significant effects on the environment due to unusual circumstances that preclude application of a categorical exemption.

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CEQA Guidelines

The Project proponents seek an exemption from the California Environmental Quality Act (“CEQA”) as a Class 32 In-Fill Development Project pursuant to Public Resources Code (“PRC”) Section 15332 (“Class 32 Exemption”). Among the conditions for a Class 32 Exemption is the following:

“(d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality or water quality.” PRC Section 15332(d).

Even if the Class 32 Exemption were nominally applicable to the Project, other CEQA provisions would disqualify the Project from exemption:

“(c) A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”

PRC Section 15300.2 (c) (the “Exemption Exception”).

As explained below, the history and conditions of the Project site along the Belvedere Lagoon make it virtually impossible to conclude that the Project would not result in any significant effects to water quality. The Class 32 Exemption is therefore inapplicable. Moreover, and in any event, the unique features of the Lagoon and the location of the Project along its shore present unusual circumstances that evoke the Exemption Exception and disqualify the Project from the Class 32 Exemption.

The information provided by the Project proponent has not been sufficient to allow a meaningful evaluation of the Project’s environmental impacts. BLPOA urges the City to deny the exemption request and to prepare an Initial Study under PRC Section 15063 to examine whether there may be significant environmental impacts from the Project. These comments address these two CEQA provisions.

Class 32 Exemption – Inapplicable due to Water Quality Impacts

As the steward of the Belvedere Lagoon and on behalf of the community, BLPOA actively manages the Lagoon and attends its other concerns with water quality at top of mind. Good water quality is essential to several management objectives, including recreation, habitat, and aesthetics. Lagoon staff regularly tests Lagoon water for salinity, pH, turbidity, dissolved oxygen, and temperature. Additionally, BLPOA must adhere to the mandates and restrictions of its NPDES¹ permit, which include reporting of water quality test results. If there were to be an

¹ NPDES (National Pollutant Discharge Elimination System) Permits are a requirement of the Federal Clean Water Act, 33 USC 1351 et seq.

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impact to water quality resulting from the Project, the Regional Water Quality Control Board would be expected to turn to BLPOA, as manager of the Lagoon, with questions or to direct an investigation, as it has done in the past.

Given its role and responsibilities for managing and protecting the Lagoon, BLPOA is concerned about the potential impacts to water quality from the Project, including demolition, grading, excavation, construction, and bulkhead repair/replacement, collectively referred to as “Construction Activities.” The primary concern is that Construction Activities will cause a discharge or release of sediment, a pollutant, into the Lagoon. As described below, sediment would be released by slumping or sloughing along the shoreline or under the waterline due to operation of heavy equipment, application of fill, pile-driving, bulkhead failure, stormwater runoff, and settlement of fill material. The high likelihood of sediment release establishes the reasonable possibility that the Project will have a significant impact on water quality in the Lagoon.

1. Construction Activities Will Release of Sediment to the Lagoon

The fill used to create the Project site when the Lagoon was constructed over 70 years ago² includes dredged bay mud, which is fine-grained material that causes turbidity when suspended in water. Disturbance of this fill material during demolition, excavation, surface grading, or construction is more than likely to result in the release of sediment to the Lagoon. Sediment (and legacy pollutants possibly within the fill material) may be transported by both wind and storm runoff into the Lagoon. Slumping evident along the shoreline of the site and the aged condition of the bulkhead indicate fill material, below water as well as above, will be prone to sloughing off or collapsing into the Lagoon during site Construction Activities. Visual inspection of the bulkhead along the roughly 920 linear feet of Project shoreline shows that the entire area is already showing signs of slumping and bulkhead failure, which will be unable to withstand the high impact and stress load from the Construction Activities.

Additionally, modern methods of fill engineering in practice now were not employed in the 1940s, and consequently, the site and surrounding properties will be vulnerable to liquefaction and settlement during construction from vibration associated with heavy equipment use and pile driving. These activities can also resuspend sediment in the Lagoon, either directly, or by accelerating slumping of shoreline sediment or the existing bulkhead.

2. Bulkhead Work Will Release Sediment to the Lagoon

Work associated with the bulkhead, including excavation, removal, repair, or replacement of the existing bulkhead, will undoubtedly release sediment directly into the Lagoon. BLPOA is

² The Belvedere Lagoon was impounded and dredged in 1947.

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particularly concerned about the scale of in-water work associated with the bulkhead. Because the affected bulkhead is some 920 linear feet (three times the length of a football field), the sediment released and resulting turbidity may overwhelm the Lagoon and compromise water quality for weeks or months.

It is not only *how* this is done that will affect the Lagoon, but also *when* it is done. Bulkhead work undertaken as a final phase of site construction, as proposed, causes great concern because of the likelihood of damage to or even failure of the existing bulkhead during construction. If the bulkhead is not replaced first, heavy equipment use during demolition, grading and pile-driving may damage or cause the collapse of weak or unstable portions of the existing bulkhead, potentially resulting in a substantial release of sediment to the Lagoon, reducing its capacity and degrading water quality. Given the definition of sediment as a “Pollutant,” sediment-laden water cannot be released from the Lagoon to Richardson Bay. If a construction-caused incident were to occur in Spring or Summer, turbidity would be present during the season of high recreational use. More critically, if an incident were to occur from Fall through Spring, turbidity could prevent BLPOA’s seasonal drawdown of the Lagoon for flood control, putting hundreds of homes and other public and private property in the AE Flood Zone at risk of flooding.³

BLPOA has other concerns related to the bulkhead. The bulkhead serves as an important structural element at the interface of the Lagoon and the Project site. A structurally sound bulkhead protects the water quality of the Lagoon, and protects the structural stability of the fill behind it, controlling settlement, providing seismic stability, and limiting movement of groundwater from fill material into the Lagoon, which could transport any contaminants in the fill. Settlement and slumping of the existing bulkhead indicate not only that its structural integrity is compromised (probably along its full length), but that it does not provide an effective barrier between the fill and the Lagoon. As a result, given that the bulkhead is the original construction dating from the 1950s, without any lateral support across its 920-foot length, and at a high risk of failure causing substantial damage, it should be replaced in its entirety. At present, it appears the Project proponent’s intent is to merely shore it up. BLPOA has seen no plans showing bulkhead design or any information about how it will be constructed to protect the Lagoon from negative water quality impacts and loss of capacity. It appears the Project proponent intends to put off plans for the bulkhead until *after* Project approval, working out the design and structural elements in coordination with the City Building Department. BLPOA is

³ Also within the 100-year flood hazard zone are the lower parking lot and entrance to the Belvedere Police Department, Community Center and City Hall, a pre-school, and commercial center.

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very concerned that without a fully vetted plan from the outset, the Building Department process will result in unintended consequences to the Lagoon for decades to come.

3. Additional Fill Could Release Additional Sediment

The shoreline elevation of the Mallard Point site is one of the two lowest locations on the Lagoon. We understand that up to four feet of additional fill may be necessary to satisfy FEMA requirements or City Floodplain Management Requirements.⁴ BLPOA is concerned that the weight of any additional fill may, over time, squeeze sediment and contaminants in the fill directly into the Lagoon.

There are other ramifications of building on historic fill prone to settlement, including, for example, the need to install pilings to provide a stable building foundation, which not only causes noise interference to neighboring properties, but as noted above, may cause liquefaction and settlement, damaging structures and bulkheads on neighboring properties and discharging sediment into and within the Lagoon.

The Preliminary Geotechnical Report dated January 2, 2022, submitted by the Project proponent and “updated” on October 6, 2022, lacks site-specific information and is too general to enable meaningful evaluation of risks.⁵ A “preliminary report” may suffice for a small, simple project; but the proposed Project along 920 linear feet of Lagoon shore is a substantial project in size and scope given its location. No project of this size has occurred on the Lagoon since the Lagoon was developed in the 1950s.

Without an understanding of the plans for bulkhead work or the structural integrity of the existing fill in this location, it is impossible for the City to determine that the Project will meet the conditions of Class 32 Exemption (i.e., not result in any significant effects relating to water quality or noise.) Project approval should not proceed without a proper substantive geotechnical study of the Project Site.

4. Sediment Impairs Water Quality

Sediment is widely recognized as a water pollutant that causes turbidity, compromises water quality, and impairs the beneficial uses of receiving waters. It is defined as a “pollutant” in federal, state and local laws regulating water quality,⁶ and a release of sediment above

⁴ See, e.g., Municipal Code 16.20.020-16.20.035; 16.20.300-16.20-320.

⁵ BLPOA’s concerns are heightened by the April 16, 2022 comments of Dr. Lawrence B. Karp submitted April 27, 2022 and June 16, 2023 to the City by the Belvedere Residents for Intelligent Growth (“BRIG”). BLPOA is not a member of BRIG.

⁶ For example, suspended sediment, known as total suspended solids or TSS, is a conventional pollutant under the Federal Clean Water Act (40 CFR 401.16). The State NPDES General

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permitted thresholds into the Lagoon would violate federal, state and local laws (including the Belvedere Municipal Code.)

Suspended sediment degrades wildlife habitat and interferes with biological processes such as by clogging fish gills, impeding larval development, curtailing photosynthesis, and disrupting natural food chains. Decaying vegetation, particularly in warmer water, depletes dissolved oxygen, potentially to levels too low to support fish and other aquatic organisms. It is also possible the fill material contains legacy contaminants, as has been found elsewhere in the Bay Area, that could be released to the Lagoon. Depending on the type of contaminants, their release into the Lagoon could pose a risk to human health and safety for those in water-contact recreation, as well as for wildlife and habitat.

Because of the unique features of the Belvedere Lagoon and the fine grain size of bay mud, sediment released by the Project to the Lagoon will persist in suspension for an extended period, perhaps many weeks, potentially aggravated by windy conditions. Unlike other enclosed waters in the Bay Area, the Belvedere Lagoon is not tidal, but is effectively isolated from San Francisco Bay, except for seasonal management of water levels.⁷ Because of this, there is no regular flushing of the water to the Bay. Additionally given that sediment is a recognized pollutant, the existence of suspended sediment in Lagoon waters could prevent BLPOA from releasing water into Richardson Bay as needed and expected by BLPOA and the Cities of Belvedere and Tiburon for stormwater management and flood prevention.

5. Sediment Could Reduce Lagoon Capacity

In the winter, the Lagoon serves as a catch basin for stormwater runoff from portions of Belvedere and Tiburon, preventing flooding of buildings (including some 250 Belvedere homes), public streets and utilities. Any sediment released to the Lagoon ultimately settles in the Lagoon, making it shallower and reducing its capacity for stormwater runoff. A significant release of sediment from the Project will hasten that process. Ultimately, sedimentation in the Lagoon will require the Cities of Belvedere and Tiburon to reduce their reliance on the Lagoon

Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities, NPDES No. CAS000002, which defines TSS in Attachment B, is largely focused on preventing the discharge of sediment from construction sites. Sediment is within the scope of "Pollutant" under the Belvedere Municipal Code (Sec. 8.36.030 P.).

⁷ In the fall, BLPOA lowers the level of the Lagoon significantly to provide catchment capacity for storm runoff to prevent flooding of surrounding properties, roads and portions of the greater Belvedere and Tiburon communities. Additional releases of water may occur throughout the rainy season as needed following, or in advance of, storm events to maintain the catchment capacity. In the spring, the Lagoon is filled with saline bay water, and topped off periodically over the summer to replace evaporated water and maintain optimal levels.

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for flood control, reroute runoff away from the Lagoon, or undertake dredging of the Lagoon, which will be very costly. Additionally, FEMA may revise its map to expand the flood zone, designating a larger number of homes vulnerable to flooding.

6. Water Quality of Stormwater Runoff

BLPOA is concerned about the quality of stormwater runoff to the Lagoon over the long-term following construction. Recognizing that current requirements for site features to address stormwater quality post-construction are far superior to the era of original construction, BLPOA is optimistic that as a result of the Project, the water quality of stormwater runoff from the Project site may be improved. However, the constituents in fill material should be taken into consideration, along with the discharge of water pumped from the underground garage of the apartment building, which would contain vehicle-related pollutants such as petroleum, volatile organic compounds, and heavy metals. New construction materials may leach contaminants as well. A high level of stormwater treatment will be necessary to protect Lagoon water quality. And, the volume of stormwater discharged from the Project site to the Lagoon will increase if the area of impervious surface is greater. BLPOA has insufficient information to know whether this will be significantly more than at present.

7. Further Investigation of Water Quality Issues is Essential to Evaluate Applicability of the Class 32 Exemption

The City initiated a biological investigation to determine if the Project site contains any habitat for endangered, rare or threatened species (*see*, PRC Section 15332(c)), although as a fully developed site, this would appear unlikely. By contrast, the disturbance of fill material and Lagoon sediment in the demolition and construction of the Project would seem quite likely to release contaminants to the Lagoon, and should prompt a site-specific geotechnical investigation *before* Project approval. Just as the City sought an investigation to determine if the Project meets condition (c) of the Class 32 Exemption, it should undertake an investigation to determine if the Project meets condition (d) of the Class 32 Exemption (*see*, PRC Section 15332(d)).

With uncertainty about a potential environmental impact, it is incumbent on the City to err on the side of environmental review and find the Class 32 Exemption inapplicable. *See*, *Sierra Club v. County of Sonoma* (1992) 6 Cal.App 4th 1307, 1316-17 (In the context of the initial preparation of an EIR, Section 21151 “reflects a preference for resolving doubts in favor of environmental review when the question is whether such environmental review is warranted.”)

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Class 32 Exemption – Inapplicable to Project Not Substantially Surrounded by Urban Uses

The fundamental assumption of the Class 32 Exemption is that urban infill projects meeting the criteria of the exemption typically do not have significant environmental impacts. One criterion is that Projects exempt by Class 32 Exemption must be “substantially surrounded by urban uses,” which means at least 75% of the perimeter adjoins urban uses. PRC Sections 15332(b), 21159.25(a)(2). The Project is not even close to being substantially surrounded by urban uses -- only 44% of the Project perimeter is adjacent to urban use. The balance of the perimeter is bordered by the Lagoon. BLPOA refers to and agrees with BRIG’s analysis and finding that the Lagoon is NOT an urban use.⁸ The Class 32 Exemption is thus not applicable to the Project.

The Exception to the Categorical Exemption Applies

Even if the Project were eligible for the Class 32 Exemption – which it is not – the CEQA Guidelines provide that a categorical exemption “shall not be used for an activity where there is a **reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.**” PRC Section 15300.2 (c); boldface type added for emphasis. The inquiry is analyzed in two steps.

First, unusual circumstances may be established by some feature of the proposed project that distinguishes it from others in its exempt class, such as size or location. *Berkeley Hillside Preservation v. City of Berkeley*, 3/2/2015, 60 Cal.4th 1086, 1105; 184 Cal.Rptr.3d 643, 658. Additionally, the determination of unusual circumstances can be based on conditions in the immediate vicinity of a proposed project. *Berkeley Hillside* at 60 Cal.4th 1118, 184 Cal.Rptr.3d 669. This is essentially a factual inquiry. *Berkeley Hillside* at 60 Cal.4th 1114, 184 Cal.Rptr.3d 665.

The second question is whether the unusual circumstances give rise to a reasonable possibility that the project will have a significant effect on the environment. *Berkeley Hillside* at 60 Cal.4th 1105, 184 Cal.Rptr.3d 658. It is sufficient to show a potential environmental effect, and agencies should find for the exception if there is a fair argument for a potential environmental effect. *Berkeley Hillside* at 60 Cal.4th 1115, 184 Cal.Rptr.3d 666.

As explained below, the unusual circumstances of the proposed Project relate primarily to its location on historic fill and adjacent to a unique, enclosed waterbody, and its large scale in the context of the local neighborhood. There is a reasonable possibility of significant environmental effects due to these factors, including water quality of the Lagoon, damage to nearby structures

⁸ See the Letter from Mark Wolf dated April 27, 2022, pages 4-5.

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including the bulkhead, diminished floodwater capacity of the Lagoon, and flood risk due to operational constraints during construction.

1. Unusual Circumstances Distinguish the Project from Typical Infill Development.

The location of the Project on historic fill along the shore of Belvedere Lagoon is an unusual circumstance for typical “infill” developments subject to Class 32 Exemption. First, as noted above, the site is on historic fill that was not engineered as it would be today. While projects on historic fill are not uncommon in the Bay Area, most “infill” projects are surrounded by developed land in urban use. The proposed Mallard Pointe Project, in contrast, is on historic fill adjacent to a waterbody (a non-urban use) on 56% of its perimeter, and separated by a 70-year-old bulkhead. Thus, unlike most urban infill projects that are physically supported by surrounding land, the Project is weakly supported by an aged bulkhead.

Belvedere Lagoon itself is unique among enclosed or semi-enclosed waters in the Bay Area. It is the only enclosed waterway in the San Francisco Bay Area that is physically and, with limited exception, hydraulically isolated from San Francisco Bay.⁹ It is not subject to the daily fluctuations of the tides, unlike all other similarly situated waters.

The Project is unusual within the context of the Lagoon. First, other Lagoon projects are undertaken for individual homes, not multiple homes. There has not been a major residential project of this size since the original development in the 1950s. Second, most of the lots on the Lagoon typically border the Lagoon on only one of four sides. Size and scope of a project in the context of conditions in the immediate vicinity are appropriate in the evaluation of unusual circumstances under Section 15300.2 (c). *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* CA Court of Appeal, Third District 11/23/2015, 242 Cal.App.4th 555, 195 Cal.Rptr.3d 168. The Project thus has much greater potential to impact the Lagoon because six large single-family homes, one with an ADU, five duplexes, and a multi-story 23-unit apartment house with a subterranean garage will be under construction exposing 920 linear feet of Lagoon shoreline to Construction Activities.

2. Significant Environmental Impacts Due to the Unusual Circumstances

As explained above, fill material is vulnerable to settlement, subsidence and liquefaction. These processes are accelerated and magnified by vibrations of heavy equipment and pile driving from Construction Activities, resulting in structural weakening of fill material and damage to, or

⁹ As described above, gates are kept closed except for a short period in spring to allow Bay water to enter, and seasonally in fall and during the rainy season to allow Lagoon water to exit to maintain flood control catchment capacity.

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even failure of, the aging bulkheads. Under these conditions, sediment and legacy pollutants in fill material may be released to the Lagoon.

Fine sediment in the water column creates turbidity, which compromises water quality of the Lagoon. Without the tidal flushing of most estuarine waterways, Lagoon waters would be expected to remain turbid for an extended period.

Without a final, comprehensive geotechnical study of the Project site, the pile driving and other work necessary to stabilize soils for support of building foundations is unknown. Due to the Project's size and location on the Lagoon, and its disproportionately larger interface with Lagoon waters, the environmental impacts of the Project, including to water quality, will be disproportionately larger and more significant than for any other prior projects since the original construction of the Lagoon over 70 years ago.

Significant water quality impacts are due to the unusual circumstances of the Project's location on historic fill adjacent to a non-tidal waterbody separated by a degraded bulkhead.

3. The Project Presents a Reasonable Possibility of Significant Environmental Impacts

The potential environmental impacts of the Project are not merely speculative, but are based on well-known processes along with long-term understanding of Belvedere Lagoon. The evidence indicates the environmental impacts to water quality of the Lagoon are not just a reasonable possibility, but rather have a relatively high likelihood, as described above. Based on the presence of legacy pollutants throughout much of San Francisco Bay, there is a reasonable possibility that those pollutants could adversely impact the Lagoon if released from fill material.

Long term observations of settlement of fill material informs our understanding of the potential impacts of pile driving and other Construction Activities on soils and nearby structures. Moreover, as referenced in Footnote 4, BLPOA is aware of, and supports, Dr. Lawrence Karp's opinion 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 is therefore not exempt from CEQA. As Dr. Karp's explains, 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 in the form of damage to structures and bulkheads on neighboring property, and the release of sediment to the Lagoon.

Conclusions

The Project does not qualify for the Class 32 Exemption because it will result in significant effects relating to water quality of Belvedere Lagoon. Additionally, the Project is not substantially surrounded by urban uses, also disqualifying it from the Class 32 Exemption.

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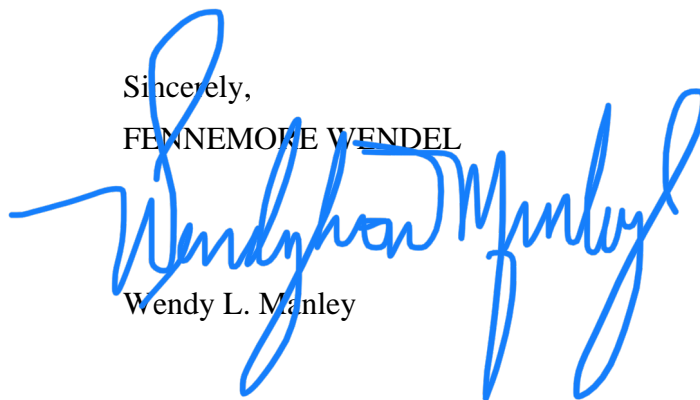
Even if the Class 32 Exemption did apply – which it does not – the Project would be subject to the Exemption Exception because significant environmental impacts are reasonably possible due to unusual circumstances. The Project is located on historic fill adjacent a unique waterbody that provides flood control for the greater surrounding community, and is a large Project in the context of the immediate vicinity. Due to these factors, there is a reasonable possibility of significant environmental effects including water turbidity in the Lagoon, damage if not failure to the bulkhead and nearby structures, sedimentation of the Lagoon causing diminished floodwater capacity, and interference with flood management during the wet season.

Current information about the Project, including specifically a geotechnical understanding of the site and draft plans of bulkhead improvement, is inadequate to conclude that the Project will not have significant impacts on the environment. BLPOA therefore requests that the Project proponent's request for categorical exemption be denied and that the City prepare an Initial Study as contemplated by 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 will be required before the City may lawfully act to approve the Project.

The BLPOA appreciates the opportunity to present its concerns to the City and welcomes any requests for further information.

Sincerely,

FENNEMORE WENDEL



Wendy L. Manley

WMAN

cc Ken Johnson, President
BLPOA Board of Directors

CITY OF BELVEDERE
RESOLUTION NO. 2024 -05

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE GRANTING
APPEAL OF PLANNING COMMISSION'S DETERMINATION REGARDING CALIFORNIA
ENVIRONMENTAL QUALITY ACT ("CEQA") EXEMPTION**

WHEREAS, Mallard Pointe 1951, LLC ("Mallard Pointe"), has applied to the City for approval of a project to be located at 1-22 Mallard Road; and

WHEREAS, among other approvals, Mallard Pointe has sought approval of design review, a tentative subdivision map, and revocable license; and

WHEREAS, with respect to the proposed project's CEQA obligations, Mallard Pointe has taken the position that the project qualifies for a Class 32 Infill Exemption, established by CEQA Guideline 15332; and

WHEREAS, the City engaged Ascent Environmental, an environmental consulting firm, to assist in the evaluation of Mallard Pointe's eligibility for a Class 32 Infill Exemption; and

WHEREAS, at its November 14, 2023, meeting, the Planning Commission considered arguments, testimony, and written submissions from Mallard Pointe, Ascent Environmental, and the public regarding the project's eligibility for a Class 32 Infill Exemption; and

WHEREAS, on November 17, 2023, Mallard Pointe filed a timely appeal of the Planning Commission's CEQA determination; and

WHEREAS, on January 22, 2024, the City Council held a duly noticed public hearing regarding the appeal, heard argument and testimony from Mallard Pointe and its representatives, and received public comment; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belvedere does hereby determine that the project is categorically exempt from CEQA under 14 Cal. Code Regs. 15332, subject to the following condition:

1. Mallard Pointe shall hold the City of Belvedere and its officers harmless in the event of any legal action related to or arising from the granting of this appeal, shall cooperate with the City in the defense of any such action, and shall indemnify the City for any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (collectively "Claims") that are caused by any third party challenges to the City's granting of this appeal or any other approvals of the Mallard Pointe project. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. Mallard Pointe shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. Mallard Pointe shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

Counsel for the City in any such legal action shall be selected by the City in its sole discretion.

PASSED AND ADOPTED at a regular meeting of the Belvedere City Council on January 22, 2024, by the following vote:

AYES:

NOES:

ABSENT

RECUSED:

APPROVED: _____

Peter Mark, Mayor

ATTEST: _____

Beth Haener, City Clerk

EXHIBIT A

CEQA Findings for Class 32 Exemption

The findings below summarize the City Council's conclusions regarding the project's eligibility for the Class 32 CEQA exemption (CEQA Guidelines Section 15332) and the evidence included in the record, including but not limited to the memo dated October 13, 2023 and all attachments prepared by Ascent Environmental (the "Ascent Memo"); all staff reports, oral and written, along with all attachments and exhibits; oral testimony from all parties; all written and graphical information posted in the City's website; and all written information submitted to the City Council.

To be eligible for the Class 32 exemption, a project must meet five criteria and cannot be excluded by the exceptions to the use of categorical exemptions listed in Guidelines Section 15300.2. The five criteria are listed in items A – E below.

A. The project is consistent with the applicable general plan designation and all applicable general plan polices as well as with applicable zoning designation and regulations.

As described in the staff report regarding General Plan and Zoning compliance, and in the Ascent Memo and in Attachment A to the Ascent Memo, the project is consistent with the applicable General Plan designation and all applicable Zoning Ordinance regulations.

B. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.

The project site is within the Belvedere city limits on a site of only 2.6 acres. The site is adjacent to other residential uses and public streets for about 43 percent of its perimeter and bounded by the Belvedere Lagoon for the remaining 57 percent.

The Guidelines for the Class 32 exemption do not define "urban uses" nor what is meant by "substantially surrounded." The City Council finds that the Lagoon is an "urban use" because it is a human-made, urban recreational water feature. In addition, the site currently contains residences, which are urban uses.

C. The project site has no value as habitat for endangered, rare, or threatened species.

No natural vegetation communities or native plant habitats are present in the project area, and the project site, including the portion extending into the Lagoon, does not provide suitable habitat conditions for any special status species known to occur in the region.

Additional analysis is provided in Section 1.4.2 of the Ascent Memo and in Attachment D to the Memo.

D. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

Traffic: Projects generating Vehicle Miles Traveled (VMT) 15 percent below that in the County or the City are considered to have an insignificant traffic impact. The City is currently utilizing the City VMT threshold in evaluating the environmental impacts of the Housing Element. Because the project would generate vehicle miles traveled (VMT) more than 15 percent below the existing average City VMT per capita, the project would not have a significant VMT impact. The project will also improve pedestrian access, does not create any hazardous conditions, and will not impede emergency access. Additional analysis is provided in Section 1.4.7 of the Ascent Memo and in Attachment M to the Memo.

Noise: The project would not result in any significant effects relating to noise. Compliance with the City's permissible hours of construction and compliance with the recommendations in the engineering report to use helical piles would ensure that temporary increases in noise levels would not result in disruptive noise, and associated adverse effects, to nearby receptors. Operational traffic noise also would not result in a perceptible increase in noise. Additional analysis is provided in Section 1.4.5 of the Ascent Memo and in Attachment L to the Memo.

Air Quality: No activities during construction or operation would substantially affect air quality. Additional analysis is provided in Sections 1.4.1 and 1.4.3 of the Ascent Memo and in Attachment C to the Memo.

Water Quality: The project would reduce the amount of impervious surface on the site and would install bioretention basins to reduce the amount of runoff into the Lagoon during storms. All runoff would also be treated through filtered bioswales. In addition, standard erosion control measures during construction would avoid water quality impacts.

Any maintenance, replacement, removal, or construction of docks or repair of the bulkheads in the Lagoon will require authorization from the Regional Water Quality Control Board (RWQCB) and may require permits or authorization from the Army Corps of Engineers or California Department of Fish & Game. The General Requirements for Construction and Maintenance of Overwater Structures (Order No. R2-2018-0009) adopted by the RWQCB contain standard requirements that must be met to ensure that no water quality impacts are caused by dock construction. The City has no evidence that replacement and construction of docks in the Lagoon creates water quality impacts.

Additional analysis is provided in Section 1.4.4 of the Ascent Memo and in Attachments G, J and K to the Memo.

E. The site can be adequately served by all required utilities and public services.

The project site currently receives utility services from Marin Municipal Water District, Sanitary District No. 5 of Marin County, and Pacific Gas & Electric, and public services from the City of Belvedere, Tiburon Fire Protection District, and Reed and Tamalpais School Districts. It is anticipated that the existing water and wastewater systems, as well as the natural gas and electricity lines providing service to the project site, will have capacity to service the project. Similarly, police, fire, parks, and other public services have adequate capacity to serve the project. Additional analysis is provided in Sections 1.4.6 and 1.4.8 of the Ascent Memo and in Attachment N of the Memo.

F. Exceptions to the Use of Categorical Exemptions

- a. **Location. Categorical exemption Classes 3, 4, 5, 6, and 11 are qualified by consideration of where a project is to be located.**

This exception does not apply to a Class 32 exemption.

- b. **Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.**

No projects of the same type, in the same place, are currently proposed in the City of Belvedere or in downtown Tiburon. Therefore, no cumulative impacts would occur and the project would not represent a cumulatively considerable contribution to cumulative impacts related to air quality, greenhouse gas emissions, biological resources, historic resources, hazardous materials, hydrology and water quality, noise, public services, transportation, and utilities and service systems.

- c. **Unusual Circumstances/Significant Impacts. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.**

Under *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1104-1107, the categorical exemption will not apply if:

1. The project presents unusual circumstances; and there is a fair argument that, because of the unusual circumstances, the project may have a significant environmental impact. The environmental impacts may be considered only if some project circumstance is unusual; or
2. There is substantial evidence that the project *will* have a significant environmental impact.

The Ascent Memo concludes that no unusual circumstances exist that are applicable to the project and no substantial evidence exists that the project *will* have a significant effect on the environment. The entire Lagoon and downtown Belvedere and Tiburon are located in a flood hazard zone on filled marshland underlain by Bay mud, so this is not an unusual condition; and, for the purposes of the proposed construction, piles of various types have often been used for other homes near the Lagoon. The effect of Bay mud on the apartment house and the site's location in a flood zone are considered effects of the environment on the project and are not environmental impacts under CEQA. (*Calif. Bldg. Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369.) Many homes are adjacent to the Belvedere Lagoon and may require replacement of bulkheads, which are routinely reviewed by the City and require permits from the Regional Water Quality Control Board and possibly Army Corps of Engineers. Additional analysis is provided in Section 1.5 of the Ascent Memo and in Attachment G to the Memo.

- d. Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.**

The project site is not located within or adjacent to a highway designated as a state scenic highway. Highway 101 is the closest state scenic highway to the project site and the site is not visible from Highway 101. The project would therefore have no effect on a scenic resource within a state scenic highway.

- e. Hazardous Waste Site. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.**

The project is not located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. Additional information is provided in Attachment I to the Ascent Memo.

- f. Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.**

The project would not cause a substantial adverse change in the significance of a historical resource. The existing buildings are not listed on the California Register of Historical Resources, or the City of Belvedere's historic register and the buildings do not meet requirements for either of these historic registers. The buildings are not directly associated with events or persons that made a significant contribution to broad patterns of local or regional history, do not individually or collectively embody distinctive characteristics of a type, period, region or method of construction or represent the work of a master architect, and do not appear to have any potential to yield information of any historical importance. The buildings located at 1-22 Mallard Road are not historic resources under CEQA and the project would not result in impacts to a historical resource. Additional analysis is provided in Attachment E to the Ascent Memo.

CITY OF BELVEDERE

RESOLUTION NO. 2024 - 06

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELVEDERE DENYING
APPEAL OF PLANNING COMMISSION'S DETERMINATION REGARDING CALIFORNIA
ENVIRONMENTAL QUALITY ACT ("CEQA") EXEMPTION**

WHEREAS, Mallard Pointe 1951, LLC ("Mallard Pointe"), has applied to the City for approval of a project to be located at 1-22 Mallard Road; and

WHEREAS, among other approvals, Mallard Pointe has sought approval of design review, a tentative subdivision map, and revocable license; and

WHEREAS, with respect to the proposed project's CEQA obligations, Mallard Pointe has taken the position that the project qualifies for a Class 32 Infill Exemption, established by CEQA Guideline 15332; and

WHEREAS, the City engaged Ascent Environmental, an environmental consulting firm, to assist in the evaluation of Mallard Pointe's eligibility for a Class 32 Infill Exemption; and

WHEREAS, at its November 14, 2023, meeting, the Planning Commission considered arguments, testimony, and written submissions from Mallard Pointe, Ascent Environmental, and the public regarding the project's eligibility for a Class 32 Infill Exemption; and

WHEREAS, at the conclusion of its November 14, 2023 meeting, the Planning Commission determined that the Mallard Pointe project was ineligible for a Class 32 Infill Exemption, finding that:

- the site is not substantially surrounded by urban uses;
- the analysis of potential effects on water quality did not adequately consider the failing bulkheads and potential soil erosion during construction; and
- the project presents unusual circumstances, in that it has a shoreline of nearly 900 feet next to the Belvedere Lagoon, is located in a flood zone and on Bay mud susceptible to liquefaction and settlement, with failing bulkheads, and that substantial evidence had been presented that these unusual circumstances may cause sedimentation into the Lagoon and have a significant effect on water quality and Lagoon habitat; and

WHEREAS, on November 17, 2023, Mallard Pointe filed a timely appeal of the Planning Commission's CEQA determination; and

WHEREAS, on January 22, 2024, the City Council held a duly noticed public hearing regarding the appeal, heard argument and testimony from Mallard Pointe and its representatives, and received public comment; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Belvedere does hereby deny Mallard Pointe's appeal from the Planning Commission's November 14, 2023 decision and determine that the project is not categorically exempt from CEQA under 14 Cal. Code Regs. 15332 based on the following findings:

PASSED AND ADOPTED at a regular meeting of the Belvedere City Council on January 22, 2024, by the following vote:

AYES:

NOES:
ABSENT:
RECUSED:

APPROVED: _____
Peter Mark, Mayor

ATTEST: _____
Beth Haener, City Clerk