

October 21, 2021

By E-Mail

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

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

Dear Mayor Campbell and Councilmembers:

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

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

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

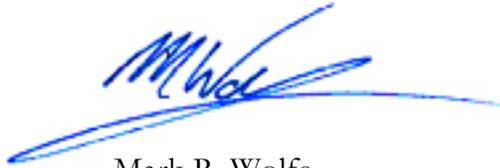
SB 8 contains additional provisions that clarify certain aspects of SB 330 that were arguably ambiguous. These include expanding the definition of "hearing" to include any appeals, and the definition of "housing development project" to include projects that involve no discretionary approvals, projects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

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

Thank you for your consideration of these points.

Most sincerely,

M. R. WOLFE & ASSOCIATES, P.C



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

MRW:sa

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