

# **BELVEDERE LAGOON PROPERTY OWNERS ASSOCIATION**

**P.O. BOX 465**

**BELVEDERE, CA 94920**

February 16, 2022

Dear Mayor Wilkenson, Belvedere City Council members Campbell, Lynch, Block and Kemnitzer,

In response to Belvedere City's deadlines to notify the developers of Mallard Pointe, the BLPOA Board held a special meeting to evaluate the recent application that appears on the City's website and wishes to comment as follows:

The Board considers the application incomplete because of the following:

1. The bulkhead issues and risks of subsidence impacting the Lagoon and adjacent structures identified by the BLPOA in its previous correspondence to the City and the developers remain unaddressed. The City's Building Department has a policy in place regarding the requirement for engineered bulkheads to be installed as a condition for new FEMA compliant structures adjacent to the Lagoon. The BLPOA also has been working with the City and Lagoon residents to improve bulkheads for all existing home and/or dock remodels. The requirement for engineered bulkheads should be made clear to the developer, and the developer's plan to address the geotechnical issues with the entirety of its proposed project, including installing engineered bulkheads to protect its new construction as well as the Lagoon, should be in the application and reviewed as part of the Design Review.
2. Given that this project is being applied for as a single project for the purposes of demolition and site preparation, the City should require that the engineered bulkhead be designed and installed by the developer as a single, comprehensive bulkhead supporting the entire property and installed as part of site preparation for the full project. The analysis on bulkheads memo attached to the end of the Geotechnical report is dated October 2020. It does not address the developer's current submitted plans to replace all existing single story small duplexes with all new construction of 2+ story tall, larger scale, and higher density buildings across the entire property. Developer's October 2020 memo appears to be focused on short term repair to support the existing single-story duplexes. It does not consider the total demolition of those structures, the impact of heavy equipment

and construction activity impacting soil stability over multiple years, and replacement of the existing structures with FEMA compliant two+ story buildings with their additional weight.

3. The geotechnical report submitted by the developers appears to be shallow, incomplete and inadequate. As an example, it assumes the new construction would be slab on grade. However, the FEMA compliant structures being proposed in the project area are not and could not be slab on grade. Also, the evaluation of seismic densification risk (rated as low), completely misses the negative impact of demolition and construction activities on neighboring properties and surrounding fill, which historically has caused damage due to the high carrying capacity of vibrations in fill material like the bay mud. Another example is Section 4.9 "Slope stability/land sliding", which assumes that since the project lot is flat, there is no stability or slide risk. This completely ignores the fact that all lots on the Lagoon sharply drop off at the edge of the Lagoon and out into the BLPOA property. Thus, stability and land sliding is a high risk to BLPOA property as a result of the demolition and construction activities proposed, especially when there is no plan for an engineered bulkhead to be installed as part of site preparation prior to commencing building construction. Finally, although the multi-unit apartment building does not border the Lagoon itself, the weight and also impact of construction of this large-scale construction (such pile-driving to sink multiple support pilings) should be addressed as it will cause outward vibration and soil impacts to neighboring properties and BLPOA property. All of these issues and others should be included in a comprehensive and complete geotechnical report performed to address the impacts of the project as currently proposed.
4. Additionally, we recommend that the city hire a geotechnical expert to review the developer's geotechnical report submission. Given the complexity of the project and potential impacts and the technical expertise involved in evaluating and mitigating any and all impacts, the City needs expert assistance to understand and evaluate the developer's report and any proposed resolution. This is similar to when the City uses outside plan checkers and special inspection services to review and respond to proposed plans requiring special expertise.
5. The Developer should confirm that the project will not cause or require any addition of landfill into Lagoon water. Adding fill to the Lagoon would be a violation of longstanding BLPOA policy, and it would raise additional issues that go beyond City jurisdiction issues involving state water quality laws that prohibit discharges and landfill into protected waters. New bulkheads should be constructed prior to demolition to prevent soil movement into BLPOA property as a result of large heavy equipment used for the leveling of the existing housing or any fill of or impact to Lagoon waters as part of the new construction.
6. The Acoustic Report appears incomplete because it underestimates the impact of demolition and construction equipment impacts due to vibration waves based on the assumption "typical soil conditions". Clearly the project site is not

composed of typical soil as the Geotechnical report makes clear. There is no consideration of vibrations during demolition nor the potential impact on bulkheads. The last bullet point on page 12 before the summary should be adopted as a condition of approval.

7. The naming of the garage as "subterranean" appears to have been removed from prior versions of the developers' presentations and is now called "semi-subterranean." Does the proposed garage or any of the rest of the proposed project, whatever it is called, require FEMA compliance or review?
8. There appears to be a downslope from 6.3 ft on the street to about 5 ft at the entrance of the garage, which would potentially result in drainage of water into the garage. Elsewhere there is mention of "ejectors" (pumps?) for water from the garage to drain into the Belvedere lagoon for water "treatment". The BLPOA strongly objects to this item because any discharge of water from the project would violate California state law and regulations implementing the Federal Clean Water Act, which prohibit discharges into protected waters or storm drains. The Lagoon is a protected water and operates under a Regional Water Quality Control Board permit that limits any discharges into the Lagoon to those specifically approved in the permit. Any "eject" or pumping or release of anything from the developer's project into the Lagoon would violate applicable state laws and the terms of the permit, and be a reportable offense to the state board. This would include any pumping or discharge of any type of material into the Lagoon during demolition, construction or after occupancy. The Lagoon cannot be used for treatment or management of water or drainage from developer's project.
9. Are there any new storm drains that empty into the lagoon planned? Are the existing storm drains to remain in their present placement? All storm drains, both new or existing, must be shown on the drawing. New storm drains into the Lagoon are subject to California state as well as Marin County water quality review and regulations.
10. The proposed plans state that the developer will build and manage its own sewage system. What does this mean and how would this be managed, monitored and controlled? What is the connection to SAN 5, which is the governing agency responsible for all sewage and storm drain systems in the City? The proposed project will create substantial and concerning potential adverse impacts on the sewer system and new risks for unsafe storm water runoff into the Lagoon that developer must identify and establish plans to manage as required by law and in collaboration with SAN 5 as the governing agency.
11. Since all existing housing units are being removed it appears this project falls under the City codes applicable for residences that will be demolished. If so, we believe that any existing non-conformities must be corrected and any new residences must meet all applicable current City codes. In particular, there are structures (Docks) and landfill located on BLPOA property that are non-

conformities. The BLPOA respectfully requests the City require correcting these non-conformities as a condition for the approval of the project.

12. It is not possible for the BLPOA to determine the placement of the proposed new docks shown on the plans relative to the existing docks. From the BLPOA perspective this renders the project application incomplete. Developer also must mark on the plans which docks are "existing", which docks are "removed" and which docks are "new" in order to be clear that no scope of work will involve adding new fill or construction into the Lagoon. Per #5 above, no landfill in the Lagoon may be permitted as part of the project.
13. From the BLPOA perspective the plans are not complete because the issue of whether the developers intend to create a Homeowners Association has not been stated. This important item was previously addressed in the BLPOA correspondence as the developer must ensure that the residents of its property that have access to the Lagoon follow all rules and requirements of the BLPOA.
14. Is this application considered a "sub-division?" Will each private residence and duplex and ADU be individually reviewed for compliance with City codes? What is the scope of approval and review being granted to developer's project? Will the proposed private homes have approved plans that the developer plans to sell with the land?
15. The amount and size of windows on the properties adjacent to the lagoon appear to be excessive and creating a glaring affect on other lagoon properties. More information is necessary to determine if this element meets State requirements. The height of the new residences must meet FEMA requirements and as such will be higher than the majority of properties that directly face the new residences. The lighting elements are extremely important to avoid direct lightings and reflections into neighboring properties. Photos will be delivered to City and developers to demonstrate what should not occur as a result of a recent remodel completion.

Per our comments above, the BLPOA also strongly suggests that the City hire outside consultants, at applicant's expense, to assist City staff in reviewing this application. Specifically, a geotechnical engineer to review the proposed project, the bulkhead designs, and also consider assisting our building inspectors during the time of construction for the following reasons.

- Review and construction oversight of this project requires significant technical expertise. Members have expressed to the BLPOA that when they were remodeling or building their new homes the city required that they pay for such outside consultations, for projects with nowhere near the scale or complexity of this project.

- Potential adverse impacts on other projects requiring review and oversight. Given the size of our City staff, it appears the workload required for this project will result in other citizens of Belvedere being delayed in their construction plans.
- Lack of proper oversight creates significant liability risks for city, BLPOA and citizens. Many members remember the fiasco created in Tiburon when Point Tiburon was approved and constructed, and the subsequent major engineering problems that went unnoticed during review and during construction resulted in all property owners having to vacate their homes for major structural and drainage corrections.

Respectfully submitted,



Kenneth Johnson, President

On behalf of the Board of Directors