

**MEMORANDUM**

July 1, 2022

To: Irene Borba, Director of Planning and Building

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

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

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

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

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

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

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

## **I. Background**

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

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

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

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<sup>1</sup> Further statutory citations are to the Government Code unless otherwise stated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The following zoning districts allow residential uses:

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

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

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

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

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

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

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

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

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

As explained, at the General Plan-specified density of 20 units per net acre, 48 total units may be built at the Project site. Yet after erroneously claiming that the unit count is actually 56,<sup>5</sup> the developer baldly asserts that "to even come close to reaching this unit count, some form of multifamily (i.e. apartment) housing would be required in order to fit the units on the site." (See Jan. 20, 2022 memo, **Attachment 1** p. 1.) Despite repeated requests to the City from BRIG that the developer be required to provide evidence and analysis to support this assertion, to our knowledge none has been forthcoming.

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

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

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

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

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

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

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

Because the Project includes 10% Low-income units, the Project is entitled to a density bonus of 20% beyond the maximum allowable density. The Project does not seek the additional density bonus units. However, waivers, concessions, reduced parking standards, and all other provisions of the State Density Bonus Law are benefits that apply to the project.

The Project seeks waivers for height, certain side setbacks, the lot area/unit requirements, lot coverage, the construction time limit, **and the prohibition on apartment courts and/or apartment houses in the R-2 zone**. Each of these requirements physically precludes the construction of the Project at the density permitted for the property. The Project seeks a concession for usable open space. (May 24, 2022 Project Narrative, **Attachment 6**, pp. 2-3; boldface added.)

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

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

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

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<sup>7</sup> The developer has stated that is not seeking entitlements for additional units under the Density Bonus Law.

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

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

#### **A. Waiver of “Development Standards” under the SDBL.**

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

The SDBL defines “development standard” as follows:

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

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

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

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

**19.28.030 Prohibited uses.**

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

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

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

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

**B. Cases interpreting the term “development standards” under the SDBL.**

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

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

The law states that a **“site development standard” includes setbacks, height limitations, and other requirements** imposed by “any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.” (*Id.* at subs. (k)(1), (o)(1).)

[A] city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density, or with the requested incentives, permitted by the Density Bonus Law. (§ 65915, subd. (e)(1).) For example, if a city ordinance imposes a **building height limitation**, a city must waive that limitation for a development that is eligible for a density bonus if imposing the height limit would physically preclude construction of the proposed building with the requested incentives and at the density allowed by the Density Bonus Law. There are no financial criteria for granting a waiver. (*Id.* at p. 770; boldface added.)

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

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

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

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

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

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

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

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

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

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

**VI. Conclusion**

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

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

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

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

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

MRW:sa

Attachments

**ATTACHMENT 1**



Ragghianti|Freitas LLP

MEMORANDUM

DATE: January 20, 2022  
FROM: Riley F. Hurd III  
RE: Housing Law Analysis for Mallard Pointe

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EXECUTIVE SUMMARY

1. The Mallard Pointe project proposes 39 new residential units and 3 ADUs in place of 22 dated market-rate residential units.
2. **The General Plan allows for 56 units at the property.** To ever come close to reaching this unit count, some form of multifamily (i.e. apartment) housing would be required in order to fit the units on the site.
3. The Housing Element, a part of the General Plan, states that multifamily housing is allowed in the R2 zone. In contrast, the older zoning code prohibits “apartment houses.”
4. It is well-settled law that general plans control when in conflict with a zoning ordinance, and that general plans are required to be internally consistent.
5. More importantly, state law is clear that if the density allowed under the zoning ordinance is inconsistent with the density allowed under the general plan, **the general plan density shall prevail.**
6. As a housing project providing a percentage of affordable units, Mallard Pointe is entitled to waivers of any local law, policy, or regulation that physically precludes development at the allowable density. This includes a purported ban on apartments, height limits, and any other standard that prevents the full project.

## **Introduction**

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

## **The Project**

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

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

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

## **General Plan and Zoning**

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

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

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

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

Table 36: Housing Types by Residential Zoning Districts

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

P=Permitted C=Conditionally Permitted

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

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

“The Zoning Ordinance provides for multi-family developments by-right in the R-2 and R-3 Zoning Districts, ....”

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

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

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

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

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

### Density

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

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

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

The “Maximum allowable residential density” definition above confirms two things:

1. If there is a disparity between the density permitted under the General Plan, and that of the zoning, the General Plan prevails.
2. If there is a range of density set forth in the General Plan, the top end of the range is the applicable density.

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

#### State Density Bonus Law

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

Because the Project includes 5% Very Low income units, the Project is entitled to a density bonus of 20%. (Government Code 65915(f)(2).) Accordingly, **68 units are permitted on the Property** (56 + 20%). However, the applicant has elected not to seek the additional units, and is applying for 39 at this time.

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

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

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

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

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

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

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

### **SB 330 Preliminary Application**

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

## Project Processing

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

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

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

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

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

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

### Conclusion

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

**ATTACHMENT 2**

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

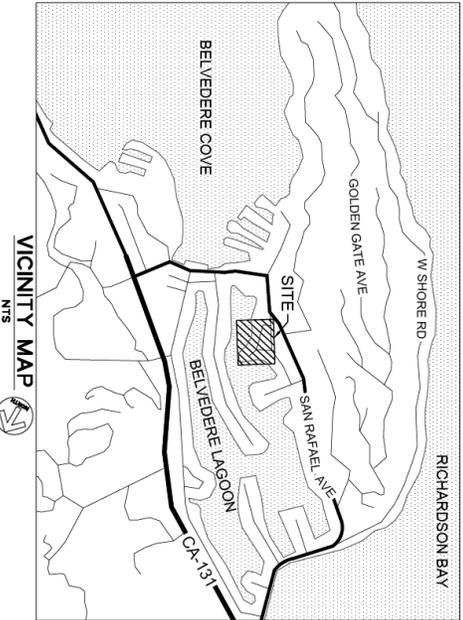
### PROJECT SUMMARY

- OWNER/SUBDIVIDER  
MALLARD POINTE 1951, LLC  
CONTACT: BRUCE DORFMAN  
39 FORREST STREET, SUITE 202  
MILL VALLEY, CA 94941  
PHONE NUMBER: 415-823-3001
- ENGINEER  
BKF ENGINEERS  
1646 N. CALIFORNIA BLVD., SUITE 400  
MILL VALLEY, CA 94941  
CONTACT: CHRIS MILLS
- UTILITIES:  
WATER SUPPLY:  
SEWERAGE TREATMENT:  
SEWAGE DISPOSAL:  
STORM DRAIN:  
GAS:  
TELEPHONE:  
CABLE TELEVISION:  
COMCAST
- PROJECT ADDRESS & ASSESSOR  
FARREL NUMBERS  
1 MALLARD RD. APN 089-072-27  
9 MALLARD RD. APN 089-072-28  
17 MALLARD RD. APN 089-072-18

**VERTICAL DATUM**  
VERTICAL DATUM IS NORTH AMERICAN VERTICAL DATUM OF 1988 (NAD83)

### LAND USE SUMMARY

GROSS AREA OF SITE: 120,079 SQUARE FEET, 2.8 ACRES  
NET AREA OF SITE: 108,334 SQUARE FEET, 2.4 ACRES  
FLOOR AREA RATIO (FAR): 1.25  
GENERAL PLAN: 16.25 UNITS/ACRE (EXCLUDES ADU UNITS)  
DENSITY CALCULATION: N/A (ZONING DENSITY IS NOT REQUIRED)  
ZONING DENSITY CALCULATION: N/A (ZONING DENSITY IS NOT REQUIRED)  
FLOOD ZONE: NONE  
ZONE OF ELEVATION (NO MAND88) BASED ON 100-YEAR FLOOD: NONE  
EFFECTIVE 3/16/16 AND MAP 060410527E EFFECTIVE 3/16/16.



**VICINITY MAP**  
NTS

**LOT SUMMARY TABLE No. 1 - STRUCTURE**

LOTS	LOT AREA (SQ FT)	NET LOT AREA (SQ FT)	LOT COVERAGE (%)	ALLOWABLE LOT COVERAGE (%)
LOT 1	7,232	7,232	33.1	42.8
LOT 2	7,232	7,232	34.5	42.8
LOT 3	5,271	5,271	21.25	36.1
LOT 4	10,073	10,073	6.79	36.1
LOT 5	6,500	6,013	21.79	36.2
LOT 6	7,232	7,011	20.55	42.3
LOT 7	8,287	7,291	30.45	42.6
LOT 8	6,500	6,148	13.70	32.0
LOT 9	3,927	3,933	6.61	40.9
LOT 10	32,166	26,351	16.905	42.3
LOT 11	250,079	106,351	46.936	42.3
TOTAL				

**LOT SUMMARY TABLE No. 2 - TOTAL COVERAGE**

LOTS	LOT AREA (SQ FT)	NET LOT AREA (SQ FT)	LOT COVERAGE (%)	ALLOWABLE LOT COVERAGE (%)
LOT 1	7,232	7,232	33.2	42.8
LOT 2	7,232	7,232	34.6	42.8
LOT 3	5,271	5,271	21.3	36.1
LOT 4	10,073	10,073	6.8	36.1
LOT 5	6,500	6,013	21.8	36.2
LOT 6	7,232	7,011	20.6	42.3
LOT 7	8,287	7,291	30.5	42.6
LOT 8	6,500	6,148	13.8	32.0
LOT 9	3,927	3,933	6.7	40.9
LOT 10	32,166	26,351	17.2	42.3
LOT 11	250,079	106,351	47.1	42.3
TOTAL				

- NOTES:**
1. LOT AREAS REPRESENT THE TOTAL AREA WITHIN THE PROPOSED LOT LINES SHOWN.
  2. NET LOT AREA THAT EXCLUDES THE PROPOSED BUILDING AREA BETWEEN CURBS.
  3. LOT COVERAGE AREA OF STRUCTURES EXCLUDING UNCOVERED DECKS AND/OR PATIOS.
  4. LOT AREA AND LOT COVERAGE ARE DETERMINED IN SECTION 22.06.030 & 22.06.031 OF THE BELVEDERE MUNICIPAL CODE.
  5. ALLOWABLE LOT COVERAGE IS SHOWN IN SECTION 19.20.010 OF THE BELVEDERE MUNICIPAL CODE.

### TITLE SHEET

**SHEET INDEX**

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



# MALLARD POINTE

*Belvedere, California*

MALLARD POINTE  
1951 LLC  
Project Sponsor



## **ATTACHMENT 3**

## Chapter 19.28

### R-2 ZONE

Sections:

- 19.28.010 Permitted uses.**
- 19.28.020 Uses permitted under permit.**
- 19.28.030 Prohibited uses.**
- 19.28.040 Development standards.**
- 19.28.050 Design review required.**

#### **19.28.010 Permitted uses.**

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

- A. All uses and accessory uses permitted in the R-1 zone and the R-15 zones, subject to the same requirements and regulations provided in Chapters [19.24](#) and [19.26](#) of this Title for the R-1 and R-15 zones;
- B. Two-family dwellings;
- C. Accessory uses necessary to any of the above uses, and accessory buildings located on the same lot;
- D. Structures, facilities and uses relating to or convenient or necessary for any function of municipal government;
- E. Transitional and supportive housing facilities. (Ord. 2014-3 § 8, 2014; Ord. 89-1 § 1, 1989.)

#### **19.28.020 Uses permitted under permit.**

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

- A. Public buildings, parks and playgrounds;
- B. Electric substations, and other public utility facilities.
- C. Large residential or community care facilities serving seven or more individuals;
- D. Large family day care. (Ord. 2011-4 § 17, 2011; Ord. 89-1 § 1, 1989.)

### 19.28.030 Prohibited uses.

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

### 19.28.040 Development standards.

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

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

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

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

### **19.28.050 Design review required.**

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

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

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

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

[City Website: www.cityofbelvedere.org](http://www.cityofbelvedere.org)

[Code Publishing Company](#)

**ATTACHMENT 4**

# Initial Study

For the

## The City of Belvedere General Plan Housing Element Update

City of Belvedere

March 2015

*PREPARED BY*

City of Belvedere Planning Department

## C. EVALUATION OF ENVIRONMENTAL IMPACTS

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

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

### **Discussion:**

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

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

**Mitigation Measures.** None Required.

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

d) Result in the loss of forestland or conversion of forestland to non-forest use? (Sources: 1, 2, 10, 12)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? (Sources: 1, 2, 9, 10, 11, 12)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Discussion:**

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

**Mitigation Measures.** None Required.

<b>3. Air Quality</b>				
Would the project:				
	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a) Conflict with or obstruct implementation of the applicable air quality plan? (Sources: 1, 2, 3, 10, 12, 13, 17)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? (Sources: 1, 2, 3, 10, 12, 13, 17)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

**Discussion:**

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

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

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

**Mitigation Measures.** None Required.

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

**Discussion:**

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

**Mitigation Measures.** None Required.

<b>5. Cultural Resources</b>				
Would the project:				
	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a) Cause a substantial adverse change in the significance of a historical resource as defined in CEQA Guidelines Section 15064.5? (Sources: 1, 2, 3, 9, 10)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines Section 15064.5? (Sources: 1, 2, 3, 9, 10, 11, 12)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (Sources: 1, 2, 3, 9, 10, 11)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Disturb any human remains, including those interred outside of formal cemeteries? (Sources: 1, 2, 3, 9, 10, 11, 12)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Discussion**

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

**Mitigation Measures.** None Required.

<b>6. Geology And Soils</b>				
Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

**Discussion:**

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

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

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

**Mitigation Measures.** None Required.

<b>7. Greenhouse Gas Emissions</b>				
Would the project:				
	<b>Potentially Significant Impact</b>	<b>Less Than Significant with Mitigation Incorporated</b>	<b>Less Than Significant Impact</b>	<b>No Impact</b>
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? (Sources: 1, 2, 10, 12, 17, 21)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**ATTACHMENT 5**



**R2 ZONING**

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

\*MAXIMUM 25' HEIGHT FOR 10' SIDEYARD SETBACK

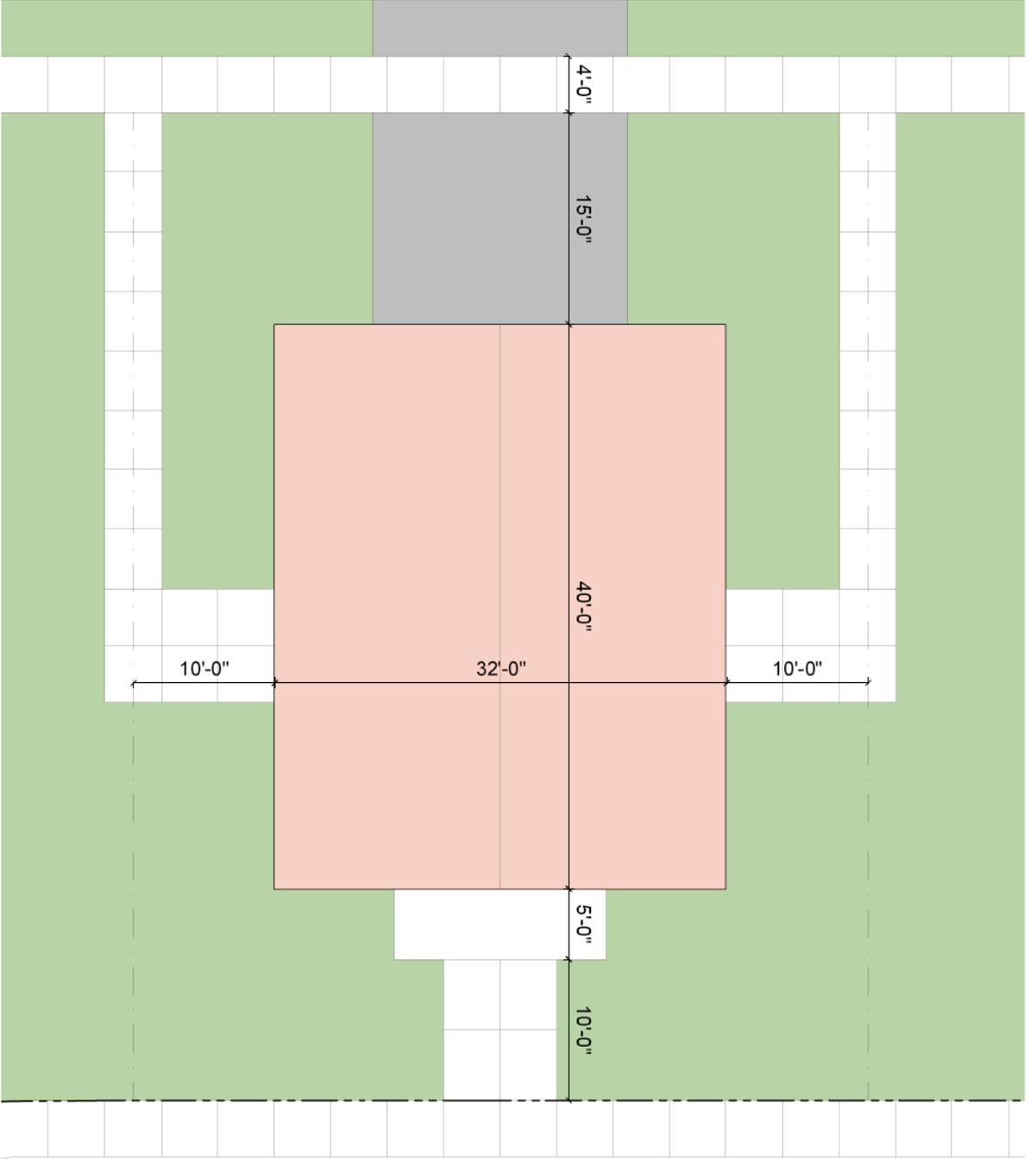
**PROJECT TABULATION**

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

**COMMUNITY ROAD, BELVEDERE**

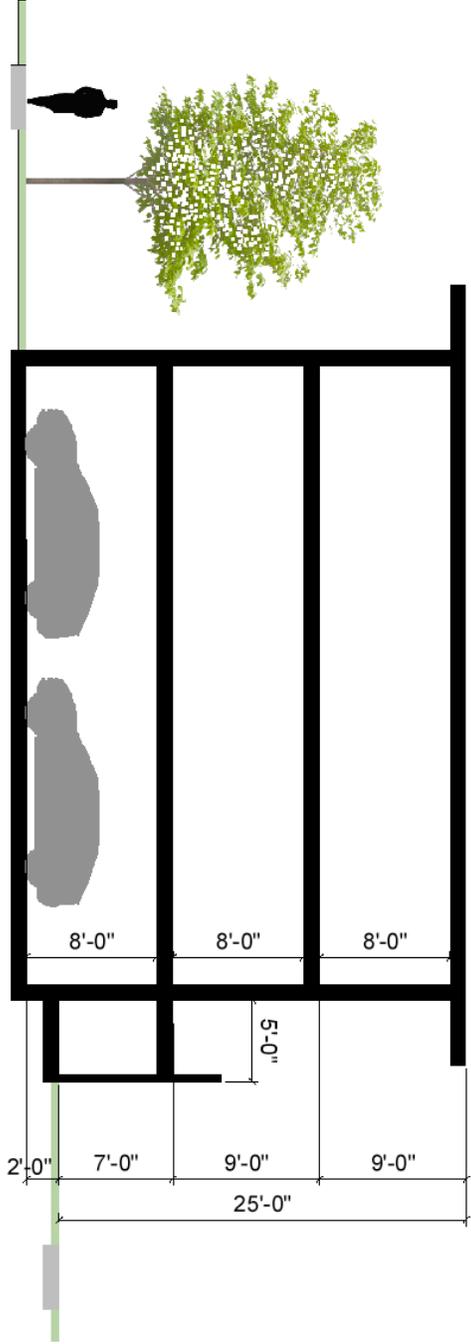
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1 UNIT PLAN  
 1/4" = 1'-0"

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SECTION  
 1/4" = 1'-0"

COMMUNITY ROAD, BELVEDERE

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**LEGEND**

USABLE OPEN SPACE	62289 SF
ROAD AREA	20229 SF
NET SITE AREA	2.33 ACRE

**COMMUNITY ROAD, BELVEDERE**

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## MALLARD POINTE – PROJECT NARRATIVE

### Project Description

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

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

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

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

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

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

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

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

**Affordable Housing Data/Density Bonus**

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

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

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

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

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

### **Project Timing**

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

1. **Design Review** – BMC Section 20.04.060(A) states that design review applications shall be valid for one year, but that, “the Planning Commission may designate a later expiration date if it determines that the criteria of this Chapter would still be served.” It is hereby requested that any design review approval for this project be valid for **2 years**. The complexity of developing the construction drawings for a project of this scope necessitates such a timeframe and there is no detriment if the existing housing remains slightly longer.
2. **Demolition** – BMC Section 20.04.060(C) states, “when demolition or removal of any existing structure is a part of design review approval, said demolition or removal shall be completed, and all debris removed from the site, within ninety days of design review approval **or such other date as the Planning Commission or the Director of Planning and Building determines to be in furtherance of the criteria of this Chapter.**” Here, there are multiple reasons why the demolition of the existing buildings on the property should not occur within 90 days of design review approval, including tenant occupancy, erosion control, and aesthetics. Demolition is best accomplished as part of the building project, therefore this application seeks a demolition requirement **within 6 months of the issuance of the building permit for the project.**
3. **Construction time limit** - BMC Section 20.04.035(C)(1) sets an initial construction time limit for a project of this value of 18 months. BMC Section 20.04.035(D)(2) states that “the Planning Commission has the authority to grant, conditionally grant, or deny a time limit

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

### **Replacement Housing Data**

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

### **Environmental Data**

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

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

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<sup>1</sup> It should be noted that Belvedere’s CTL ordinance is clearly designed for individual single family home construction and not multifamily housing projects of this type.

SUBMITTAL DATE: 01/26/2022



# DENSITY BONUS APPLICATION

CITY OF BELVEDERE • PLANNING COMMISSION  
450 SAN RAFAEL AVE • BELVEDERE, CA 94920-2336  
PH. 415-435-3838 • FAX 415-435-0430 • [WWW.CITYOFBELVEDERE.ORG](http://WWW.CITYOFBELVEDERE.ORG)

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

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

**PROJECT DESCRIPTION:**

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

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

A. SIZE OF LAND TO BE DONATED TO THE CITY? \_\_\_\_\_

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

A. SIZE OF PROPOSED CHILD CARE FACILITY: \_\_\_\_\_

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

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

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

**CONCESSIONS/INCENTIVES:**

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

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

**WAIVER OF REDUCTION OF DEVELOPMENT STANDARDS:**

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

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

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

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

**OWNER ACKNOWLEDGEMENTS**

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

PROPERTY OWNER SIGNATURE(S) \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_ DATE: \_\_\_\_\_

**APPLICANT ACKNOWLEDGEMENTS**

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

APPLICANT SIGNATURE(S) \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_ DATE: \_\_\_\_\_

**PARTNERSHIPS AND CORPORATIONS**

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

NAME	ADDRESS	SIGNATURE	DATE
Bruce Dorfman	39 Forrest St. Suite 202 Mill Valley, CA 94941		08/26/2022
		Mallard Pointe 1951, LLC By: TDP-Belvedere-2020, LLC, its Managing Member By: Bruce Dorfman, Manager	

**APPLICANT INDEMNIFICATION AGREEMENT**

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

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

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

I HAVE READ AND AGREE WITH ALL OF THE ABOVE.

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

APPLICANTS SIGNATURE:  DATE: 01/26/2022

**ATTACHMENT 7**



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# CITY OF BELVEDERE

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

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June 23, 2022

SENT VIA EMAIL

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

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

Dear Mr. Dorfman:

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

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

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

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

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

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

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

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

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

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

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

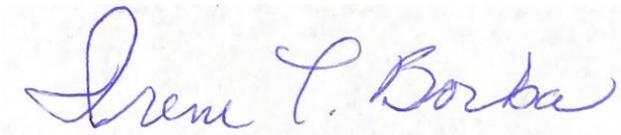
**Marin Municipal Water District (MMWD).** Please see attached comments from Marin Water with comments related to the merits and adequacy of submitted plans.

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

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

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

Sincerely,



Irene Borba  
Director of Planning and Building  
City of Belvedere

Cc: File  
Robert Zadnik, City Manager

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



