

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

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March 22, 2024

Richard Mollica, Director  
Planning Department  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861

Dear Richard Mollica:

**RE: City of Malibu's 6<sup>th</sup> Cycle (2021-2029) Draft Housing Element**

Thank you for submitting the City of Malibu's draft housing element that was received for review on February 7, 2024, with revisions received March 21, 2024. Pursuant to Government Code section 65585, subdivision (b), the California Department of Housing and Community Development (HCD) is reporting the results of its review. Our review was facilitated by conversations on March 8th and 12 with you, Joyce Parker-Bozylinski, contract planner, and consultants Emily Green, Lilly Rudolph and Veronica Tam. The California Department of Housing and Community Development (HCD) considered comments from Anna S. Nicolas, DJ Dee, and Sebastian Rucci pursuant to Government Code section 65585, subdivision (c).

The adopted element addresses some statutory requirements described in HCD's March 22, 2022 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq). The enclosed Appendix describes the revisions needed to comply with State Housing Element Law.

As a reminder, the City's 6th cycle housing element was due October 15, 2021. As of today, the City has not completed the housing element process for the 6th cycle. The City's 5th cycle housing element no longer satisfies statutory requirements. HCD encourages the City to revise the element as described above, adopt, and submit to HCD to regain housing element compliance.

Pursuant to Assembly Bill 1398 (Chapter 358, Statutes of 2021), a jurisdiction that did not adopt a compliant housing element within one year from the statutory deadline cannot be found in compliance until rezones to make prior identified sites or accommodate a shortfall of sites are completed pursuant to Government Code sections 65583, subdivision (c)(1)(A) and section 65583.2, subdivision (c). For example, as this year has passed and Program 3.5 (By-Right Approvals) has not been completed, the housing element will remain out of compliance until the rezoning has been completed.

Public participation in the development, adoption, and implementation of the housing element is essential to effective housing planning. Throughout the housing element process, the City should continue to engage the community, including organizations that represent lower-income and special needs households, by making information regularly available and considering and incorporating comments where appropriate. Please be aware, any revisions to the element must be posted on the local government's website and emailed (via link) to all individuals and organizations that have previously requested notices relating to the local government's housing element at least seven days before submitting to HCD.

Several federal, state, and regional funding programs consider housing element compliance as an eligibility or ranking criteria. For example, the CalTrans Senate Bill (SB) 1 Sustainable Communities grant; the Strategic Growth Council and HCD's Affordable Housing and Sustainable Communities programs; and HCD's Permanent Local Housing Allocation consider housing element compliance and/or annual reporting requirements pursuant to Government Code section 65400. With a compliant housing element, the City will meet housing element requirements for these and other funding sources.

For your information, some general plan element updates are triggered by housing element adoption. HCD reminds the City to consider timing provisions and welcomes the opportunity to provide assistance. For information, please see the Technical Advisories issued by the Governor's Office of Planning and Research at: <https://www.opr.ca.gov/planning/general-plan/guidelines.html>.

HCD appreciates the cooperation of City staff during the housing element update. We are committed to assisting Malibu in addressing all statutory requirements of State Housing Element Law. If you have any questions or need additional technical assistance, please contact Sayed Murad at [sayed.murad@hcd.ca.gov](mailto:sayed.murad@hcd.ca.gov).

Sincerely,



Paul McDougall  
Senior Program Manager

Enclosure

## APPENDIX CITY OF MALIBU

The following changes are necessary to bring the City's housing element into compliance with Article 10.6 of the Government Code. Accompanying each recommended change, we cite the supporting section of the Government Code.

Housing element technical assistance information is available on HCD's website at <http://www.hcd.ca.gov/community-development/housing-element/housing-element-memos.shtml>. Among other resources, the housing element section contains HCD's latest technical assistance tool, Building Blocks for Effective Housing Elements (Building Blocks), available at <http://www.hcd.ca.gov/community-development/building-blocks/index.shtml> and includes the Government Code addressing State Housing Element Law and other resources.

### **A. Housing Needs, Resources, and Constraints**

1. *Affirmatively further[ing] fair housing in accordance with Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2...shall include an assessment of fair housing in the jurisdiction. (Gov. Code, § 65583, subd. (c)(10)(A).)*

Fair Housing Enforcement and Outreach: While the element includes a discussion of regional fair housing services, it still should discuss how the City complies with fair housing laws. For more information on how to address this requirement, please see HCD's guidance on affirmatively furthering fair housing (AFFH) (starting on p. 29) at <https://www.hcd.ca.gov/planning-and-community-development/affirmatively-furthering-fair-housing>.

Disproportionate Housing Needs Including Displacement Risk: The housing element must include an assessment of disproportionate housing needs, including displacement risk, on people with protected characteristics and households with lower incomes. This analysis is important to understand how some groups of persons experience severe housing needs when compared to other populations within a local level and when compared to a region. In addition, the analysis should discuss patterns and disproportionate impacts on persons experiencing homelessness. For example, the element should discuss any geographic concentrations of persons experiencing homelessness and access to opportunities such as transportation, services, and programs.

Sites Inventory: While the element notes the City is entirely an area of higher resource, it should still evaluate the number of units by income group, location, magnitude of impact on existing patterns, any isolation of the regional housing needs allocation (RHNA) by income group and conclude whether the inventory is improving or exacerbating patterns of segregation or integration. For example, 100 percent of the lower-income RHNA is in one census tract and 100 percent of the above-moderate RHNA is in other census tracts. This analysis should address all components of the assessment of fair housing (e.g., segregation and integration, access to opportunity, disproportionate housing need).

Local Data and Knowledge, and Other Relevant Factors: The element does not address these requirements. The element must include local data, knowledge, and other relevant factors to discuss and analyze any unique attributes about the City related to fair housing issues. The element should complement federal, state, and regional data with local data and knowledge where appropriate to capture emerging trends and issues, including utilizing knowledge from local and regional advocates and service providers. While the element includes some discussion on redlining and racially restrictive covenants, this analysis is general and should be related to local and regional patterns, especially what relevant factors have contributed to how the City compares to the rest of the region. For instance, the element should analyze historical land use, zoning, governmental and nongovernmental spending including transportation investments, demographic trends, historical patterns of segregation, or other information that may have impeded housing choices and mobility.

Contributing Factors to Fair Housing Issues: The element should re-assess and prioritize contributing factors upon completion of analysis and make revisions as appropriate.

2. *An inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level, and an analysis of the relationship of zoning and public facilities and services to these sites. (Gov. Code, § 65583, subd. (a)(3).)*

Progress toward the RHNA: The element (Table B-2) now lists approved and pending (pipeline) units but should also demonstrate their availability or likelihood of being built in the planning period. Specifically, the element lists the status of the units, but many are pending or have been approved for a significant length of time but should also discuss remaining steps, any known barriers to development in the planning period and other relevant factors. For example, the element could discuss past rates of units moving from pending to constructed status and assume that rate in aggregate for pipeline units.

Environmental Constraints: While the element states all properties face development challenges due to environmental constraints, it should address whether any of these environmental or other known conditions preclude housing development on identified sites. Other known conditions may include shape, access, easements, title conditions, environmental overlays and airport or other compatibility. In addition, the element should specifically address the environmental constraints on affordable housing overlay (AHO) sites and how those constraints or conditions affect buildable area, achievable densities and feasibility.

Infrastructure: While the element now generally discusses capacity, it should clarify whether sufficient total water capacity is existing or planned to accommodate the RHNA. In addition, based on the outcomes of this analysis and given challenges related to infrastructure capacity, the element should add or modify programs to address infrastructure challenges and facilitate development.

Electronic Site Inventory: Pursuant to Government Code section 65583.3, subdivision (b), the City must utilize standards, forms, and definitions adopted by HCD when preparing the sites inventory and submit an electronic version of the sites inventory. While the City has submitted an electronic version of the sites inventory, if changes occur, any future re-adopted versions of the element must also submit the electronic version of the sites inventory.

Zoning for a Variety of Housing Types (Emergency Shelters): The element describes available acreage for emergency shelters and lists development standards but should evaluate these standards and their impact on available capacity. For example, the element should discuss how transit proximity and water and sewer capacity standards impact available capacity and add or modify programs as appropriate.

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land-use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. (Gov. Code, § 65583, subd. (a)(5).)*

Land Use Controls: While the element now clarifies how development can occur given minimum lot sizes, it must still analyze all relevant land-use controls impacts for impacts on housing cost and supply (number of units) and ability to achieve maximum densities. Specifically, the analysis must address heights, multifamily parking requirements, the AHO and multifamily beach front zones. For example, the element should discuss the levels of affordability in the AHO zone and impacts on cost and feasibility of development. Also, the element indicated that multifamily projects are required to provide three spaces for one-bedroom units. For your information, requiring smaller bedroom types (e.g., studio and one-bedrooms) to provide more than one space per unit is generally considered a constraint. Based on a complete analysis, the element must add or modify programs to address identified constraints.

On-Off-Site Improvements: The element was not revised to address this finding. Please see HCD's prior review for additional information.

Processing and Permit Procedures: Per HCD's prior review, the element should list and analyze approval findings for typical developments that comply with the general plan and zoning. The analysis should address impacts on timing, cost, supply, and approval certainty. Additionally, the element should address public comments and discuss compliance with the Permit Streamlining Act and intersections with California Environmental Quality Act (CEQA) and timing requirements, including streamlining determinations. Based on the outcomes of a complete analysis, the element must add or modify programs to address identified constraints.

Housing for Persons with Disabilities (Reasonable Accommodation): The element now lists and discusses approval findings for granting reasonable accommodation in zoning and land use. However, the element should particularly discuss the relationship to the local coastal plan, including how exception is provided in the local coastal plan to promote access to housing for persons with disabilities.

4. *Analyze any special housing needs such as elderly; persons with disabilities, including a developmental disability; large families; farmworkers; families with female heads of households; and families and persons in need of emergency shelter. (Gov. Code, § 65583, subd. (a)(7).)*

Special Housing Needs: While the element was updated to include demographic data of various special needs groups, it must still include a complete analysis of special housing needs. As noted on the previous review, for a complete analysis of each population group, the element should discuss characteristics and challenges faced by the population, the existing resources to meet those needs (availability of senior housing units, number of large units, number of deed restricted units, etc.), an assessment of any gaps in resources, and proposed policies, programs, and funding to help address those gaps.

## **B. Housing Programs**

1. *Identify actions that will be taken to make sites available during the planning period with appropriate zoning and development standards and with services and facilities to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory completed pursuant to paragraph (3) of subdivision (a) without rezoning, and to comply with the requirements of Government Code section 65584.09. Sites shall be identified as needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing mobilehomes, housing for agricultural employees, supportive housing, single-room occupancy units, emergency shelters, and transitional housing. (Gov. Code, § 65583, subd. (c)(1).)*

As noted in Finding A2, the element does not contain a complete sites inventory and analysis. Based on the results of a complete sites inventory and analysis, the City may need to add or revise programs to address a shortfall of sites or zoning available to encourage a variety of housing types.

In addition, the element now includes Program 3.5 (By-Right Approval) to make prior identified sites available by permitting developments with 20 percent affordability without discretionary action. HCD understands this action will become effective upon adoption of the housing element. However, the Program should clarify that affordability requirements will be limited to 20 percent affordability to lower-income households and other affordability requirements of the AHO zone (e.g., moderate-income and lower-income more than 20 percent) will not be applied.

2. *Address and, where appropriate and legally possible, remove governmental and nongovernmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, and provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities. (Gov. Code, § 65583, subd. (c)(3).)*

As noted in Finding A3, the element requires a complete analysis of potential governmental and nongovernmental constraints. Depending upon the results of that analysis, the City may need to revise or add programs to address and remove or mitigate any identified constraints.

In addition, Program 2.4.b (Variety of Housing Types) should address the conditional use permit (CUP) as a constraint on housing for persons with disabilities. For example, the Program could commit to replace or modify the CUP. In addition, the Program should commit (regardless of licensing) to permit group homes for seven or more persons in all zones allowing residential uses similar to other residential uses of the same type in the same zone.

3. *Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action. (Gov. Code, § 65583, subd. (c)(4).)*

Program 1.2.a (Rebuilding Assistance): The Program should commit to proactive and frequent outreach to lower-income and special needs households and developers.

4. *Promote AFFH opportunities and promote housing throughout the community or communities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability, and other characteristics... (Gov. Code, § 65583, subd. (c)(5).)*

As noted in Finding A1, the element requires a complete AFFH analysis. Depending upon the results of that analysis, the City may need to revise or add programs. Goals and actions must specifically respond to the analysis and to the identified and prioritized contributing factors to fair housing issues and must be significant and meaningful enough to overcome identified patterns and trends. Actions must have specific commitment, milestones, geographic targeting and metrics or numerical targets and, as appropriate, address housing mobility enhancement (housing choices and affordability across geographies), new housing choices and affordability in relatively higher opportunity or income areas (throughout the City), place-based strategies for community preservation and revitalization, and displacement protection.

In addition, promoting housing mobility removes barriers to higher opportunity and higher income areas and enhances access to housing choices and affordability to promote more inclusive neighborhoods, cities, and regions. Among other factors, the City is predominantly a highest resource and median income jurisdiction and is wholly a racially concentrated area of affluence (RCAA) in contrast to the rest of the region.

Further, the City geographically isolates the lower-income and above moderate-income RHNA. As a result, the element should include a significant and robust suite of actions (not limited to the RHNA) to promote housing mobility and increase housing choices and affordability throughout the City. Examples of housing mobility programs include promoting more housing choices and affordability in lower-density areas, religious institutional sites, city-owned sites, and enhancing accessory dwelling units (ADU), junior accessory dwelling units (JADU) or additional conversion of existing space, and home sharing strategies.

### **C. Public Participation**

*Include a diligent effort by the local government to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort. (Gov. Code, § 65583, subd. (c)(9).)*

While the element was updated to describe and incorporate comments, as noted on the previous review, moving forward, the City should employ additional methods for public outreach efforts, particularly to include lower-income and special needs households and neighborhoods with higher concentrations of lower-income households. Please see HCD's prior review for examples and additional information.