

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

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June 21, 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) Revised Draft Housing Element**

Thank you for submitting the City of Malibu's (City) revised draft housing element that was received for review on May 7, 2024. Pursuant to Government Code section 65585, the California Department of Housing and Community Development (HCD) is reporting the results of its review. The review was facilitated by a conversation on June 5, 2024 with you, Joyce Parker-Bozylinski and consultants Emily Green, Lilly Rudolph and Veronica Tam. HCD also considered comments from Sebastian Rucci pursuant to Government Code section 65585, subdivision (c).

The revised draft element addresses many statutory requirements described in HCD's March 22, 2024 review; however, revisions will be necessary to substantially comply with State Housing Element Law (Gov. Code, § 65580 et seq), as follows:

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).)*

*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).)*

Fair Housing Enforcement and Outreach: While the element lists various fair housing related laws and includes a general statement that the City complies with laws, it should also discuss how the City complies with the various fair housing related laws.

Disproportionate Housing Needs Including Displacement Risk: The housing element must include an assessment of disproportionate housing needs, including displacement risk and persons experiencing homelessness. 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 to better formulate an appropriate programmatic response. While the element includes a discussion of persons experiencing homelessness, it should still discuss impacts on protected characteristics. Further, the element mentions the City's efforts to assist persons experiencing homelessness in seeking services outside of the City, it should also examine the gaps in providing services locally, including potential resources to better formulate an appropriate programmatic response to address the needs in the City.

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

Programs: As noted above, the element requires a complete analysis of affirmatively furthering fair housing (AFFH). Depending upon the results of that analysis, the City may need to revise or add programs.

In addition, as noted in HCD's prior review, the City is wholly a highest resource, highest income, and racially concentrated area of affluence (RCAA). The element must include a significant suite of programs to facilitate housing mobility and promote housing choices and affordability throughout the City. These programs should not be limited to the Regional Housing Needs Allocation (RHNA) and, instead, target significant and meaningful change to promote housing choices and affordability throughout the City. Examples include promoting more housing choices and affordability in lower-density areas (e.g., missing middle housing types), identifying additional multifamily sites and increasing densities in multifamily zones, religious institutional sites, city-owned sites, enhancing accessory dwelling units (ADU), junior accessory dwelling units (JADU) or additional conversion of existing space, and home sharing strategies. Programs must have specific commitment, milestones, geographic targeting and metrics or numerical targets.

- 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).)*

*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... (Gov. Code, § 65583, subd. (c)(1).)*

Environmental Constraints: While the element includes an updated analysis of environmental constraints including whether any known conditions preclude development on identified sites, it must still address environmental constraints on affordable housing overlay (AHO) sites. Specifically, the element should include an analysis of the reduced buildable area of the AHO sites and any impacts on financial feasibility.

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.

Programs: As noted above, 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 should be revised, as follows:

- *Program 3.5 (By-Right Approval)*: As noted on page 7.4-8, affordability requirements for the affordable housing overlay are inconsistent with statutory requirements. 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. Further, the Program excludes projects with subdivisions from granting by-right approvals. While projects may be subject to a local ordinance implementing the Subdivision Map Act, projects should not be excluded from the by-right approvals. The Program should clarify these provisions consistent with Government Code section 65583.2, subdivision (i).
- *Program 3.1 (Facilitate Affordable Housing Development and Housing Assistance Opportunities)*: The Program should clarify that applying for funding includes infrastructure improvements or other strategies to assist with sewer improvements and facilitate multifamily development.

3. *An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including... ..land-use controls... ..and local processing and permit procedures. (Gov. Code, § 65583, subd. (a)(5).)*

*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... (Gov. Code, § 65583, subd. (c)(3).)*

Land Use Controls: While the element now generally discusses land-use controls, it must still analyze impacts on housing cost and supply (number of units) and ability to achieve maximum densities. The analysis must address heights, multifamily parking requirements, impermeable coverage, grading, multifamily beach front zones and story pole requirements. For example, the element explains multifamily heights and lot coverages but should examine cumulative impacts of the standards on the ability to achieve maximum densities. The element also discusses story pole requirements but should evaluate impacts on approval certainty and potential for alternatives in meeting scenic corridor objectives. Based on a complete analysis, the element must add or modify programs to address identified constraints. Please see HCD's March 22, 2024 review for additional information.

Processing and Permit Procedures: The element has been updated to list approval findings for typical developments that comply with the general plan and zoning. However, the element must still analyze approval findings for impacts on approval certainty, including findings related to neighborhood compatibility criteria in Site Plan Review. Additionally, the element must address the conditional use permit (CUP) for multifamily projects in multifamily zones as a constraint. The analysis should address impacts on timing, cost, supply, and approval certainty.

Additionally, the element now explains compliance with the Permit Streamlining Act but should clarify whether environmental determinations within 30 days of a complete application also include streamlining determinations. Based on the outcomes of a complete analysis, the element must add or modify programs to address identified constraints.

Programs: As noted above, 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, the element should be revised, as follows:

- *Program 2.4.b (Variety of Housing Types – Residential Care Facilities):* The Program now addresses the CUP as a constraint for licensed facilities. However, the Program must still 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.
- *Program 2.4.f (Variety of Housing Types – Parking):* As noted on page 7.4-16, multifamily parking enclosure requirements are a constraint. The Program should specifically commit to remove or modify multifamily parking enclosure requirements.

The element will meet the statutory requirements of State Housing Element Law once it has been revised, adopted, submitted to and reviewed by HCD to comply with the above requirements pursuant to Government Code section 65585.

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). While Program 3.5 (By-Right Approvals) proposes to comply with these requirements upon adoption of the housing element, the element will remain out of compliance until the proposed provisions are adopted, including modifying or replacing existing affordability requirements for the affordable housing overlay zone.

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>.

Please note that under the stipulated judgment between the City and HCD, the City is required to adopt a substantially compliant housing element and introduce zoning amendments no later than September 23, 2024; and to submit the adopted elements and zoning ordinance to HCD no later than October 4, 2024.

HCD appreciates the cooperation City staff provided 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