



2008-2014 Housing Element Update

Frequently Asked Questions

(revised December 5, 2011)

Q 1: What is a Housing Element?

The Housing Element is part of the City's General Plan, which sets forth guiding policies for the future development. In addition to the Housing Element, the General Plan is comprised of six other elements: Land Use, Circulation and Infrastructure, Conservation, Open Space and Recreation, Safety and Health, and Noise. The requirement for each city to adopt a General Plan is contained in state law,¹ which also lays out specific requirements for each element. The Housing Element provides an overarching statement of City policies and programs to maintain and improve existing housing, and also accommodate the City's fair share of population growth needs. Among the requirements in state law² for Housing Elements are the following:

- *Ensure adequate sites for new housing for persons of all income levels;*
- *Encourage and facilitate the development of affordable housing;*
- *Conserve and improve the existing affordable housing stock;*
- *Analyze and remove governmental constraints on new housing development;*
- *Promote equal housing opportunities; and*
- *Preserve assisted housing.*

Q 2: What is "certification" of the Housing Element, and what are the consequences for failing to obtain certification?

State law³ gives the California Department of Housing and Community Development (HCD) the authority to review local Housing Elements and issue findings regarding the elements' compliance with the law. When HCD issues a letter stating that the Housing Element is "in compliance" it is referred to as "certification" of the Housing Element. Certification is important for several reasons:

- **Local control.** The General Plan and its various elements provide the foundation for the City's planning programs and land use regulations. If the City were challenged in court regarding the validity of the General Plan or zoning

¹ California Government Code Sec. 65300 *et seq.*

² California Government Code Sec. 65580 *et seq.*

³ California Government Code Sec. 65585.



regulations, and the General Plan were found to be invalid, a court could assume control over local land use decisions. HCD certification establishes a “rebuttable presumption of validity”⁴ that the Housing Element is adequate under state law, which would support the City’s legal defense.

- **RHNA carryover.** State law⁵ provides that if a city does not demonstrate the availability of adequate sites to accommodate its Regional Housing Needs Assessment (RHNA) allocation, the shortfall is carried over and added to the RHNA for the next planning period. The RHNA allocation for Malibu (see discussion below) is 441 housing units for the 2006-2014 planning period, of which 188 units are designated lower-income households. If the City does not achieve certification of the Housing Element, 188 additional lower-income units will be added to the RHNA for the next cycle, and rezoning to accommodate those units must occur within the first year of the new planning period.
- **More frequent Housing Element updates.** When a city does not achieve certification of its Housing Element within the established timeframe, subsequent updates must be completed on a 4-year schedule rather than an 8-year schedule.⁶ A 4-year update requirement would create an administrative and cost burden.
- **Grant funds.** Some state grant funds are contingent upon Housing Element certification, or give priority to those jurisdictions with a certified Housing Element.

Q 3: When was Malibu’s previous Housing Element prepared?

The City’s previous Housing Element was adopted by the Malibu City Council in 1995 and was last updated in 2001. The current Housing Element may be found on the City’s website at: <http://qcode.us/codes/malibu-general-plan/> or by clicking the link below.

[Chapter 7 – Housing Element](#)

- 7.1 Introduction
- 7.2 Housing Needs Assessment
- 7.3 General Plan Consistency
- 7.4 Evaluation of the Previous Housing Element
- 7.5 Efforts to Achieve Public Participation
- 7.6 Goals, Objectives, Policies, and Implementation Measures

Q 4: Why is Malibu updating the Housing Element now?

Periodic updates of the Housing Element are mandated by state law.⁷ Every city in Southern California is required to prepare an update to its Housing Element for the 2008-2014 planning period. Cities that do not prepare a timely update may be at risk of legal

⁴ California Government Code Sec. 65589.3.

⁵ California Government Code Sec. 65584.09.

⁶ California Government Code Sec. 65588(e)(4).

⁷ California Government Code Sec. 65588.



challenge, are subject to additional “carryover” requirements to designate land for high-density housing,⁸ and must prepare future Housing Element updates more frequently.⁹

Q 5: In the Draft Housing Element, how were the rental market rates derived?

Typical rental rates were obtained through a small survey of advertised rental units. It was not intended to be a comprehensive scientific survey of rental rates. Also, it is important to note that current rental rates have no effect on the city's allocation of affordable housing units in the RHNA. The RHNA allocations are based on the regional growth forecast and the income characteristics of the city and county populations.

Q 6: What are Malibu’s major housing issues?

The Housing Element is required to consider needs related to preservation of the existing housing stock, new housing needs resulting from population growth, and housing affordability. Malibu lies within the Southern California region, which has experienced strong population growth for many decades. While the current recession has resulted in slower growth, forecasts predict that growth will pick up again when the economy recovers.

Under state law,¹⁰ all cities are required to plan for the housing needs of our growing population. State law recognizes that cities do not build housing, since that is the role of private and non-profit developers. However, cities must adopt policies, zoning regulations and development standards that allow construction of a full range of new dwellings, including affordable multi-family rental housing. The RHNA is the method by which each jurisdiction’s fair share of new housing needs is determined.

Under state law, cities must also accommodate housing for persons with “special needs”, including those with disabilities or in need of temporary shelter. The Housing Element contains a more thorough discussion of these special needs (Chapter II), along with programs and strategies to address them (Chapter V).

Q 7: What is “affordable” housing?

By definition, housing is considered “affordable” when total housing cost, including utilities, is no more than 30 percent of a family’s gross income. State law describes five income categories, which are based on a percentage of median county income, as shown in the following table.

⁸ California Government Code Sec. 65584.09.

⁹ California Government Code Sec. 65588(e)(4)(a).

¹⁰ California Government Code Sec. 65580(d).



**Table 1.
Income Categories and Affordable Housing Costs – Los Angeles County**

2007 County Median Income = \$62,100	Maximum Income	Affordable Rent	Affordable Price (est.)
Extremely Low	\$24,000	\$600	-
Very Low	\$40,000	\$1,000	-
Low	\$64,000	\$1,600	-
Moderate	\$75,000	\$1,900	\$300,000
Above moderate	\$75,000+	Over \$1,900	Over \$300,000

Assumptions:

- Based on a family of 4
- 30% of gross income for rent or PITI; -10% down payment, 5.5% interest, 1.25% taxes & insurance, \$200 HOA dues

Q 8: Why are beach cities like Malibu required to have affordable housing? Low cost housing doesn't seem possible here due to high land cost.

Cities are required to plan for their fair share of new housing needs. State housing policy is based on federal fair housing law and the premise that all local jurisdictions must share the responsibility for providing decent housing for residents at all economic levels.¹¹ Housing Element law¹² establishes the process by which a portion of the state's "fair share" housing needs is assigned to each city in California.

All cities, even those without a significant amount of commercial, office or industrial development, create the need for affordable housing for workers who serve residents of the community such as teachers, police and fire, retail clerks, medical office support staff, home and landscape construction and maintenance workers, public utilities maintenance personnel, etc. If a city does not provide opportunities for lower-cost housing, the housing needs of these workers are shifted to other jurisdictions.

State law recognizes that land and construction costs vary depending on location, and that subsidies are necessary in order to provide housing that is affordable to families in the lower economic tiers. Cities are held responsible only for the things they have control over, such as land use plans, zoning, development standards (allowable density, minimum lot sizes, maximum building height, parking requirements, yard setbacks, requirements for second units, permit review procedures, etc.). While state law recognizes the limitations and constraints on development of affordable housing and does not require cities to achieve their affordable housing needs,¹³ the law does not allow an exception to Housing Element requirements for high-cost areas.

¹¹ California Government Code Sec. 65580(c-d).

¹² California Government Code Sec. 65584.

¹³ California Government Code Sec. 65583(b)(2).



Q 9: How many affordable housing units have been built to date in Malibu?

No affordable housing units have been built in the City to date. The City did; however, enter into a Development Agreement associated with the Patriot Homes condominium project at 22065 Pacific Coast Highway which requires the developer to pay \$30,000 into an Affordable Housing Fund prior to the close of escrow on each unit. The Patriot Homes project is currently under construction and therefore no funds have been deposited with the City to date.

Q 10: If land is rezoned for affordable housing, can it be deed-restricted to limit prices?

Yes, cities have the authority to impose affordability requirements on land rezoned to higher density. This process is sometimes referred to as inclusionary housing.

Q 11: Aren't subsidies necessary to build affordable housing?

Yes, particularly in urban areas, significant subsidies are needed to make affordable housing feasible. The largest sources of funding for affordable housing are local redevelopment agencies and the federal Low Income Housing Tax Credit program. It is important to note that state law does not require cities to build affordable housing – rather the law focuses on the things cities have control over, such as land use plans, zoning, and permit procedures.

Q 12: What part does Malibu's natural and infrastructure constraints play in limiting our ability to build affordable housing?

Natural and infrastructure constraints are considered in the development of the regional growth forecast and affordable housing allocations. While constraints affect the total growth forecast, the proportion of new housing that is assigned to the lower income categories is based primarily on the income characteristics of the city and the county. Typically, about 40 percent of the total housing need is allocated to the lower-income categories, which generally require a density of at least 20 units/acre under state law.

Q 13: Wouldn't higher-density apartments hurt property values and cause more traffic and other problems?

Most cities encourage higher-density housing in selected locations where it will be compatible with surrounding uses and make efficient use of available infrastructure such as roads. There are also a few common misconceptions about affordable housing developments, such as the amount of traffic they generate and the benefits they bring to a community. For example:

- Residents of higher-density housing own fewer cars and make fewer trips than residents of single-family homes.
- Higher-density housing makes more efficient use of existing public facilities.



- New local residents support local businesses and help to generate local tax revenue.

Q 14: What are Malibu’s new housing needs, and how were they determined?

Cities are required to plan for their fair share of new housing needs. The RHNA is the process established in state law¹⁴ by which new housing needs are determined.

Prior to each planning “cycle”, the total new housing need for each region is determined by HCD. Total housing need is based on the latest forecast of economic and demographic trends. Los Angeles County is within the Southern California Association of Governments (SCAG) region. SCAG¹⁵ is a federally-designated regional planning agency with responsibility for preparing regional transportation and housing plans that span a 6-county area (Los Angeles, Ventura, Orange, Riverside, San Bernardino and Imperial counties). SCAG is governed by a Regional Council comprised of city and county elected officials.

Forecasts of future population, housing and employment are based on the best professional judgment of demographers and economists, and begin with the aggregate forecast for the nation as a whole. The national growth forecast is based on two major components – natural increase and migration. Natural increase is the net difference between births and deaths of U.S. residents, and migration is the net difference between national in-migration and out-migration. The forecast for California is based on historical trends and future projections of the share of national growth that the state will experience. California’s share of national growth may change over time due to changes in demographic characteristics (e.g., birth rates, mortality rates, average household size) and economic factors related to competition between states and regions. The total forecast for California is distributed to major regions (e.g. Southern California, the Central Valley, the San Francisco Bay area) in a similar fashion.

During 2006-2007, SCAG prepared the RHNA for the current planning period, which covers an 8½ year period, from January 2006 through June 2014. The following table shows the adopted RHNA allocations for Malibu, Los Angeles County, and the entire 6-county SCAG region. In allocating fair shares of the regional growth forecast to counties and individual jurisdictions, SCAG was required by state law to maintain the regional total of just under 700,000 housing units.

**Table 2.
New Housing Need - Malibu and Los Angeles County**

	City of Malibu	Los Angeles County	6-County SCAG Region
New housing need 2006-2014	441	283,927	699,368

Source: SCAG, 2007

¹⁴ California Government Code Sec. 65584 et seq.

¹⁵ More information about SCAG can be found at www.scag.ca.gov.



New housing need for each jurisdiction was determined based on growth trends, replacement need for housing lost to demolition or conversion to non-residential uses, and adjustments needed to maintain a desirable vacancy rate. The fair share allocation of need to cities amounts to a reconciliation of the "top-down" forecasting process used to prepare national, state and regional forecasts, and a "bottom-up" process whereby the growth capacity of each jurisdiction is estimated based on a variety of factors including physical constraints (e.g., water/wastewater capacity, floodplains, steep slopes, legally protected environmentally-sensitive areas, federal and state parkland, prime agricultural areas) and historical trends. SCAG is prohibited by law¹⁶ from considering local land use policies such as growth quotas and current zoning designations in allocating growth needs to individual cities. (For more information regarding SCAG's RHNA process, please refer to SCAG's website at: www.scag.ca.gov/Housing/rhna/index.htm.)

The RHNA also distributes total housing need to the income categories described in Table 1, above. For Malibu, the income distribution of new housing need was allocated as follows:

**Table 3.
Housing Need by Income Category - Malibu**

Very Low	Low	Mod	Above Mod	Total
115	73	79	175	441

Source: SCAG, 2007

Note: The sum of categories does not add to the total due to rounding error

Q 15: How many low-income units were assigned to Malibu in previous RHNA cycles?

There have been only two RHNA cycles since 1991 when Malibu was incorporated (1998 and 2006). The allocations in those RHNA cycles were as follows:

1998-2005:

Very Low - 2

Low - 2

Moderate - 2

Above Moderate - 8

Total = 14

2006-2014

Very Low - 115

Low - 73

Moderate - 79

Above Moderate - 174

Total = 441

¹⁶ California Government Code Sec. 65584.04(d)(2)(B) and 65584.04(f).



Q 16: What is the formula used to determine Malibu's affordable housing allotment?

The affordable housing allocations are based primarily on the regional growth forecast. The total number of new housing units needed to accommodate projected growth is the city's total RHNA number. This total is then distributed into the four income categories based on the income distribution of city residents compared to Los Angeles County as a whole. SCAG's methodology for allocating housing units to income categories was based on the principle that cities with higher concentrations of lower-income households should be allocated a smaller proportion of low-income RHNA units in order to reduce overconcentration. For more information regarding SCAG's growth forecasting process, please visit <http://www.scag.ca.gov/forecast/index.htm>.

Q 17: Do affordable housing allocations from past cycles that were not built count toward this cycle? (What is "RHNA carryover"?)

State law does not hold cities responsible for achieving affordable housing production targets. The legislature recognizes that cities only have control over some portions of the development process, primarily land use planning, zoning, and review of development applications. Actual construction occurs through the efforts of private and non-profit developers. However, cities are held responsible for establishing plans and regulations that allow affordable, high-density housing to be built commensurate with the RHNA allocation. If a city fails to adopt zoning regulations and permit procedures that allow all types of development, then the unmet need is carried over to the next cycle.

Q 18: Did Malibu participate in the RHNA process?

The last RHNA period (which set affordable housing allocations for the 2008-2014) was fast-tracked under Senate Bill (SB) 12 Urgency Legislation. SB 12 approved SCAG's request to coordinate the next RHNA with its 2007 Regional Transportation Plan forecasting and created a fast-track for housing allocation shares to be determined. On July 6, 2005, SCAG posted a letter on its website with key milestones and dates including:

- Duration of housing elements in the SCAG region will be 6 years;
- Consultation of the region's share of statewide housing need starts November 1, 2005;
- Determination of region's housing share occurs by May 1, 2006;
- Final determination of local housing allocation shares occurs by July 1, 2007; and
- Adopted housing elements due by July 1, 2008.

There was limited public outreach and very limited opportunity for cities to provide feedback to SCAG. It is important to note that only six months transpired between the time when SCAG started its consultation with City governments and the determination of what SCAG's regional share of housing should be. Since Malibu's RHNA allocation in the prior Housing Element cycle (1998-2005) was only 14 units, this issue was not prominent on the "radar screen" until the 2007 RHNA was adopted by SCAG.

Every city has a limited amount of staff and budget resources that may be allocated to the wide variety of planning issues that are active at any given time. The top priority for



most planning departments is processing planning and building permit applications submitted by property owners, which cities are required by law to complete in a timely fashion. The processing of planning permits, specifically coastal development permits has been a priority over long range planning for the last seven years.

In November 2004, the long-standing litigation over the California Coastal Commission's (CCC) adopted Local Coastal Program (LCP) was resolved and the City Planning Division began processing coastal development permits in lieu of these permits being processed by the CCC. During the two years of litigation, the CCC did not process any coastal development permits for the City of Malibu. As a result, there was a tremendous backlog of planning cases (approximately 200) that needed to be processed (by the City) as soon as the litigation concluded. In addition, those applicants who had been waiting for the litigation to be resolved also submitted their applications for processing at the end of 2004. As a result of this influx of coastal development permit applications, the Planning Division processed 467 coastal development permits during the last RHNA period.

The Planning Division's long-range planning projects, which included the Housing Element and Zoning Code Update, were placed on hold to process the enormous caseload of coastal development permit applications. In addition, the City Planning Division experienced a high rate of staff turnover during the last RHNA period; including four planners and four Planning Managers. The unfortunate reality is that at any given time, there are many important issues competing for attention and limited resources and the long-range regional planning issues are not always assigned as a top priority for the Planning Division.

Q 19: Can the RHNA allocation for Malibu be reduced for this Housing Element cycle?

No. The RHNA allocation was adopted in final form by SCAG in 2007. Some jurisdictions believed that their RHNA allocations were unfairly high, and one city filed a lawsuit against SCAG challenging its RHNA. In that case, California's Fourth District Court of Appeal ruled against the city on the grounds that the state legislature delegated final authority over the RHNA process to SCAG, with no opportunity for judicial review.¹⁷ Based on that case, City staff believes it is not likely that the RHNA for the current planning period can be changed.

Q 20: How do new state laws regarding global warming and greenhouse gasses affect RHNA allocations for Malibu?

In recent years the California legislature adopted new laws intended to address the issue of global warming. Assembly Bill 32 and SB 375 require regional and local governments to coordinate their land use, transportation and housing plans in a way that helps to reduce vehicle travel and greenhouse gas emissions. While these laws are expected to encourage new residential development in areas near major employment centers and

¹⁷ *City of Irvine v. S. California Ass'n of Governments* (2009) 175 Cal. App. 4th 506.



transportation routes, there is no precise formula to determine how they will affect the housing needs allocation for Malibu.

Q 21: Since SCAG overestimated growth in the past, why aren't the numbers being corrected?

The RHNA for the next planning cycle is currently under preparation by SCAG, with an expected adoption date in October 2012. City staff is working closely with SCAG to ensure that the new growth forecast is realistic given the city's land use and development constraints such as steep slopes, environmentally sensitive habitat areas, coastal regulations, and wastewater treatment issues. It should be noted that growth forecasts are "snapshots in time" based on best available information. Since they are updated every four years, efforts are focused on making the next forecast as realistic as possible rather than changing the old forecast. Each new forecast is, in essence, a revision of the prior forecast based on current information.

Q 22: What must cities do to comply with the RHNA?

As part of the Housing Element update, state law¹⁸ requires cities to prepare an inventory of land suitable for residential development, and then compare that inventory to the RHNA allocation. "Land suitable for residential development" can be vacant sites, or sites that are "underutilized" and have potential for additional residential development or redevelopment. "Adequate sites" means sufficient vacant or underutilized land, with appropriate zoning, to accommodate the City's share of regional need. "Appropriate zoning" means development standards and regulations that facilitate housing development for all income categories. If a city cannot demonstrate that it has adequate sites with appropriate zoning for new housing commensurate with its RHNA allocation, then a rezoning program is required to make adequate sites available during the planning period.¹⁹

Q 23: How are "adequate sites" determined?

The focus of the adequate sites analysis is on the lower-income portions of the RHNA (i.e., the very-low and low income categories). Density is one of the most important factors that affect the feasibility of affordable housing. Higher density reduces the land cost for each housing unit, thereby reducing total development cost. In 2004, state law²⁰ was amended to establish "default" densities that are presumed to be suitable for lower-income housing. For small cities such as Malibu, the default density is 20 housing units per acre. Under state law, a vacant parcel in Malibu zoned to allow multi-family housing at 20 units/acre is considered a suitable "low-income housing site" regardless of whether low-income housing development is financially feasible on that site. Therefore, in order to determine whether a city has adequate sites, a parcel-level inventory of residential land must be prepared and the development capacity is estimated for each parcel, by income level. Sites meeting the 20 units/acre density standard are deemed to be suitable lower-income sites, which are compared against the RHNA total for very-low

¹⁸ California Government Code Sec. 65583.2

¹⁹ California Government Code Sec. 65583(c)(1)(a)

²⁰ California Government Code Sec. 65583.2(c)



and low-income units.²¹ For underutilized sites, HCD requires additional analysis to demonstrate the suitability of sites for lower-income housing, including those that allow a density of 20 units/acre.

Q 24: Does Malibu have adequate sites to accommodate its RHNA?

A preliminary assessment of the City's land inventory has been prepared and it appears that there are not adequate sites to accommodate the RHNA for this planning period. The preliminary assessment indicates that the lower-income shortfall could be approximately 188 units depending on how much credit HCD will allow for second units. The final determination of site capacity will be made by HCD in its review of the Housing Element. At a density of 20 units/acre, approximately 9 acres of land would need to be rezoned to accommodate a 188 unit shortfall. As part of the Housing Element update process, the City will continue to investigate all possible options for reducing the amount of land that must be rezoned. However, since the City does not have a redevelopment agency or other significant source of affordable housing funds, some options that could offset the rezoning requirement (e.g., preservation or conversion of existing units) are probably not feasible.

Q 25: Are there any ways for Malibu to demonstrate adequate sites other than land zoned for 20 units/acre?

State law allows a variety of ways to demonstrate adequate sites to accommodate the RHNA. These options include the following:

- **Second units.** Under state law²² HCD may allow cities to take credit for second units ("granny flats") based on the number of units developed during the prior planning period. In order to qualify, second units must be available for permanent occupancy, and have kitchen and bathroom facilities, as opposed to temporary guest quarters without these features. HCD will typically examine the City's assumptions regarding the income level of second units for purposes of satisfying a portion of the RHNA. City staff is analyzing historical data for second units and intends to take lower-income RHNA credit to the greatest extent allowed by law. For the 2008-2014 RHNA cycle, a total of 34 second units were constructed in Malibu.
- **Units Built or Approved.** All housing units built or approved after January 1, 2006 are credited toward the RHNA for this planning period based on the actual income category of the units.
- **Units Rehabilitated, Converted or Preserved.** State law²³ allows cities to take credit for up to 25 percent of the RHNA for existing housing units that are substantially rehabilitated, converted from non-affordable to affordable status, or affordable units with deed restrictions that are at risk of expiring. There are detailed requirements associated with each of these three options, and very few

²¹ The very-low-income category and the low-income category together are referred to as "lower-income" and the 20 units/acre default density applies to both categories.

²² California Government Code Sec. 65583.1(a).

²³ California Government Code Sec. 65583.1(c).



jurisdictions have been able to meet the requirements. City staff does not believe this option is feasible to satisfy any portion of the lower-income RHNA for the current planning period.

- **Residential/Commercial Mixed Use.** Sites that are zoned for mixed use can provide RHNA credit depending on the applicable regulations and development standards. The 20 units/acre default density also applies to mixed use, however. In order to accommodate a density of 20 units/acre, a typical mixed-use project would be at least three stories with two residential floors above ground floor commercial use. Although both the General Plan and the LCP include references to mixed-use development, as being a conditionally permitted use on parcels in the Commercial General zoning district (parcels located primarily in the Civic Center area), there are currently no development standards for mixed-use zoning set forth in the Malibu Municipal Code (M.M.C.). State law also provides that if rezoning is required to make up a shortfall of sites vis-à-vis the RHNA, at least half of the land rezoned must allow only residential use.²⁴
- **Conversion of existing commercial buildings to residential use.** New housing units created by converting non-residential space can provide lower-income RHNA credit if the density standard is met (i.e., 20 units/acre), although HCD often does not allow credit for small projects (less than one acre).

Q 26: Can Malibu accommodate its low-income RHNA with facilities like assisted living or convalescent care for senior citizens?

RHNA credit is only possible for “housing units” – some types of senior facilities are considered “group quarters” rather than housing units. In order to qualify as a housing unit, it must be designed as a separate living space with direct access to the outside, or through a common hallway. Convalescent homes and assisted living facilities generally do not qualify as housing units since the residents share some support functions.

Q 27: Can Malibu accommodate its low-income RHNA through amnesty for existing illegal units, or refurbishing rundown properties?

The City will attempt to obtain RHNA credit for these options to the greatest extent possible. However, rehabilitation or upgrading of existing properties is subject to strict requirements in order to qualify for RHNA credit, and it is unlikely that Malibu will be able to use this option for the current Housing Element cycle.

Q 28: Can Malibu accommodate its low-income RHNA by purchasing small properties with a non-profit developer?

Land purchased by the City to be used for affordable housing could satisfy a portion of the RHNA requirement, although the same zoning and density criteria would apply as for other privately-owned properties (i.e. 20 units/acre) unless the City could demonstrate the financial feasibility of lower-income housing at a lower density.

²⁴ California Government Code Sec. 65583.2(h).



Q 29: Can Malibu accommodate its low-income RHNA by allowing single-family houses to be converted to duplexes or triplexes?

In order to receive low-income RHNA credit, the density must be at least 20 units/acre. It is unlikely that a single-family home converted to a duplex or triplex would satisfy this requirement.

Q 30: What are the requirements regarding other types of housing, such as group homes and emergency shelters?

State law²⁵ contains specific requirements for cities to provide housing opportunities for persons with “special needs”. Special needs include the elderly, persons with disabilities, large families, farmworkers, families with female heads of household, and persons in need of emergency shelter. Chapter II of the Draft Housing Element contains an analysis of these needs in Malibu.

Amendments to state law adopted in 2007 provide specific requirements regarding zoning for emergency shelters.²⁶ An emergency shelter is defined as a permanent facility that provides temporary shelter for persons with no other place to stay. Temporary facilities, such as those established after a fire or other natural disaster, are not included within this definition. Cities must designate at least one zoning district where emergency shelters may be established through a simple permit procedure, subject to standards and requirements such as on-site management, parking, landscaping, and maximum number of beds.

Transitional and supportive housing is intended for longer-term occupancy, typically six months or more, and must be treated the same as other residential uses of the same type in the same zone.

State law also establishes limitations on cities’ regulation of group homes.²⁷ A state-licensed care facility for up to 6 persons is considered to be a single-family residence under local zoning laws. The LCP and M.M.C. also conditionally permit large family day care facilities for up to 12 persons.

Q 31: Why has Malibu begun preparing an EIR for rezoning before we know how much RHNA credit we can get from second units and other options?

Experience has shown that cities with circumstances similar to Malibu are not able to fully satisfy their lower-income RHNA allocations without rezoning. Under state law, cities must make adequate sites available during the planning period, which ends in 2014. In order to provide timely information to City policy-makers and help protect the City from legal challenge, staff has begun the process of identifying potential sites for affordable housing. The EIR process typically takes at least a year to complete, and the zone

²⁵ California Government Code Sec. 65583(a)(7).

²⁶ California Government Code Sec. 65583(a)(4) – Senate Bill 2 of 2007.

²⁷ California Health and Safety Code Secs. 1267.8 and 1566.3.



change/LCP amendment process also requires a significant amount of time. Because of these time constraints, staff felt it was prudent to move forward with the site evaluation process. The Planning Commission and City Council have the ultimate authority to make decisions on the appropriate course of action, and it is staff's intent to provide the best available information to decision-makers regarding the City's options.

Q 32: How were the potential rezoning sites selected?

In February 2010, a Housing Element study session was held by the City Council and in July 2010, the City held a community workshop. At that workshop, a presentation was given regarding Housing Element requirements and attendees were asked to identify areas in the city where multi-family housing might be suitable (see Candidate Parcel Map Depicting Workshop Input - July 2010 which may be found on the Special Projects – Housing Element page on the City website www.malibucity.org). Based on this community input at the workshop and subsequent staff analysis, a tentative list of sites with characteristics most conducive to multi-family housing was prepared. The staff analysis considered factors such as infrastructure, access, environmental constraints, parcel size, and surrounding uses. The intent of the EIR scoping process is to provide an opportunity for interested stakeholders to review the proposed EIR scope and the list of sites to be evaluated. Based on input provided during scoping, the list of sites to be studied could be modified.

Q 33: Does Malibu's Civic Center Septic Prohibition make the selection of parcels in that area for rezoning infeasible?

The Los Angeles Regional Water Quality Control Board adopted a resolution in November 2009 that prohibits discharges from existing and new onsite wastewater treatment systems (OWTS) (also referred to as septic systems) in a large area around Malibu's Civic Center. The State Board confirmed the prohibition at a September 2010 hearing.

In response to the prohibition, the City is moving forward to implement an inclusive alternative wastewater treatment solution which offers:

- Phase 1: Installation of a centralized wastewater treatment plant for the commercial properties in the Civic Center area, inclusive of properties on the west side of the Malibu Creek and Lagoon contribution area. This phase requires that all properties identified be connected to the centralized wastewater treatment facility (CWWTF) by November 2015.
- Phase 2: Expansion of the centralized wastewater treatment plant for Serra Canyon, Malibu Colony, the condominium complexes along Civic Center Way, the Adamson House, Surfrider Beach restrooms, the Malibu Racquet Club and Webster Elementary School. This phase requires that all additional properties be connected to the CWWTF by November 2019.
- Phase 3: Expansion of the centralized wastewater treatment plant for properties along Malibu Road, the Malibu Knolls neighborhood, Hughes Research Laboratory (HRL), Bluffs Park, Our Lady of Malibu Church and School, Malibu Presbyterian Church and several additional residential and commercial properties on the east side of Sweetwater Mesa. This phase



requires that all additional properties be connected to the CWWTF by 2025 as long as bacteria and nitrogen levels are reduced.

If the total capacity of the treatment plant to be constructed as part of Phase 1 is not utilized by commercial development, there is the potential to reallocate capacity for another site in the Civic Center, such as one of the selected potential candidate parcels for rezoning to allow multi-family development. The Housing Element EIR must discuss options and constraints for affordable housing. Wastewater is a constraint for the Civic Center sites, but that is true for all sites in Malibu. The City cannot reject any site out of hand just because it would be required to be served by a package treatment plant.

Q 34: What would happen if Malibu does not allow higher density housing?

Every city is required by law to accommodate a share of new growth, including housing at affordable prices or rents. If Malibu does not adopt a Housing Element that demonstrates adequate sites to accommodate its RHNA, the City could be subject to lawsuits and loss of its land use authority. The potential consequences that could result from a successful court challenge include mandatory rezoning, court approval of high-density residential projects, or a moratorium on land use approvals or building permits until the Housing Element is found in compliance with state law. Cities may also be ordered to pay substantial attorneys fees to a successful party challenging the Housing Element.

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