



# Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: August 26, 2020 Meeting date: September 14, 2020

Subject: Professional Services Agreement with JHD Planning, LLC

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**RECOMMENDED ACTION:** Authorize the City Manager to execute a professional services agreement with JHD Planning, LLC (Consultant) in the amount of \$94,990 for updating the 2021-2029 Housing and Safety and Health General Plan Elements as needed to address state requirements.

**FISCAL IMPACT:** Funding for this amendment is provided by Patriot Homes Settlement Agreement funds in Account No. 100-0000-2530.07 (Designated Housing Reserve Fund).

**WORK PLAN:** This task is included as item 4h in the Adopted Work Plan for Fiscal Year 2020-2021.

**DISCUSSION:** On June 19, 2020, the Planning Department solicited a Request for Proposals for consulting services for the preparation of the City's 2021-2029 General Plan Housing Element Update as well as the Safety and Health Element update. The scope of work also includes undertaking all steps necessary to prepare and process the Housing Element Update in conformance with HCD guidelines, requirements, and timelines. General assistance and California Environmental Quality Act (CEQA) compliance documentation required for the updated Housing and Safety and Health Elements will also be provided under this agreement.

Two proposals were received. Each proposal was reviewed for a clear understanding of the project and the work to be performed, the professional qualifications of the consulting team, as well as a reasonable cost proposal and timeline for completion. An emphasis was placed on previous experience in preparing and achieving certification of housing elements for coastal cities with similar demographics to Malibu.

Staff concluded that the proposal submitted by JHD Planning, LLC, the City's consultant for the 2008-2014 and 2013-2021 Housing Element Updates, provided a clear plan to achieve the goals for the General Plan Housing Element and Safety and Health Element updates. Furthermore, staff's decision was based on JHD Planning, LLC's demonstrated performance as an industry leader, with the extensive experience throughout the region; he has performed similar services for cities such as Manhattan Beach and Hermosa Beach. JHD Planning, LLC's direct experience preparing the City's last two Housing Elements and the 6th Cycle Regional Housing Needs Assessment (RHNA) provide critical background for the proposed scope of work. Furthermore, this project would build on the efforts of JHD Planning, LLC over the last two years during which time he provided expert technical and regulatory consultation; advice and other assistance associated with preparing the City's 6th Cycle RHNA; assisted City staff in working with the Southern California Association of Governments (SCAG) and preparing housing monitoring and annual progress reports; and provided updates and guidance related to changing housing laws, grant opportunities, and compliance requirements.

Staff recommends that the Council authorize the agreement in order for the update of the 2021-2029 Housing Element, as well as the Safety and Health Element, to move forward.

ATTACHMENT: Professional Services Agreement with JHD Planning, LLC

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of September 14, 2020 by and between the City of Malibu (hereinafter referred to as the "City"), and JHD Planning LLC (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### **RECITALS**

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating to the preparation of the 2021-2029 Housing Element Update and Safety and Health Element Update.

C. The Consultant warrants to the City that it has the qualifications, experience, and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

**1.0 SCOPE OF THE CONSULTANT'S SERVICES.** The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on September 14, 2020, and will remain in effect until services are completed as set forth in the Scope of Work unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or her designee, has the authority to provide that approval or authorization.

**4.0 COMPENSATION FOR SERVICES.** The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule. The cost of services shall be for a total amount not to exceed \$94,990. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law. The Consultant shall require all subcontractors similarly to provide such compensation insurance for their respective employees.

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Indemnification.** Consultant and City shall indemnify each other and their officials, officers, agents, employees, and representatives from any losses incurred as a result of negligent acts, omissions, or willful misconduct of the indemnifying party, its officials, officers, employees, agents, or subcontractors in connection with the performance of the scope of work of this Agreement. The parties acknowledge that neither party has an up-front obligation to provide a legal defense to the other party in connection with this indemnification obligation. In the event that either party incurs a loss resulting from the indemnifying party's negligent acts, omissions, or willful misconduct, the indemnifying party shall reimburse the indemnified party

for its reasonable defense costs proportionate to the finally determined percentage of liability based upon the comparative fault of the indemnifying party. Consultant's liability shall be limited to the amounts available under Consultant's professional liability insurance policy, which shall not be reduced without the written consent of the City.

**6.6 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.7 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent contractor and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.8 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.9 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.10 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.11 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.12 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost thereof shall be charged to the Consultant. The cost shall not exceed the Consultant's hourly rate times a reasonable amount of time to correct the mistake.

**6.13 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.14 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.15 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.16 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.17 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled. For purposes of this Section, "prevailing party" shall be understood to be the party that is awarded at least \$75,000 in damages.

**6.18 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.19 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**CITY:** BONNIE BLUE  
Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 258  
FAX (310) 456-3356

**CONSULTANT:** JOHN H. DOUGLAS, AICP  
Principal  
JHD Planning LLC  
PO Box 474  
Shaver Lake, CA 93664  
TEL: (714) 803-2860  
john@jhdplanning.net

**6.20 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

## **7.0 GENERAL TERMS AND CONDITIONS.**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a "consultant" for the purposes of the California Political Reform Act because Consultant's duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission



Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City's Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City's Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant's disclosure obligations in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials JD

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a "consultant" for the purpose of the California Political Reform Act because Consultant's duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City's Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials \_\_\_\_\_

This Agreement is executed on \_\_\_\_\_, 2020, at Malibu, California,  
and effective as of September 14, 2020.

CITY OF MALIBU:

\_\_\_\_\_  
REVA FELDMAN, City Manager

ATTEST:

\_\_\_\_\_  
HEATHER GLASER, City Clerk  
(seal)

CONSULTANT:

JD  
By: JOHN H. DOUGLAS, AICP, Principal

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
CHRISTI HOGIN, City Attorney

# **Proposal to Assist in Preparing the 2021 Housing and Safety Element Updates**



Submitted to:

## **City of Malibu**

Bonnie Blue, Planning Director  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861

Submitted by:

## **JHD Planning LLC**

Contact: John Douglas, AICP, Principal  
John@JHDPlanning.net

July 13, 2020

**EXHIBIT A**

**JHD Planning, LLC**  
**Planning Consultants**

July 13, 2020

Bonnie Blue, Planning Director  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861

RE: 2021 Housing and Safety Element Updates

Dear Ms. Blue,

I appreciate the opportunity to submit this proposal to assist Malibu with its 2021 Housing and Safety Element updates. The Governor and State Legislature have declared a "housing crisis" in California, and in the past few years extensive changes to State law have been adopted to address the problems of housing cost and homelessness. In addition to new State laws, some officials and housing experts have called for an end to single-family zoning and financial penalties on local governments that do not achieve housing production targets.

The 6<sup>th</sup> cycle Housing Element update is expected to be a much more challenging process than the last cycle. Based on SCAG's methodology, the RHNA allocation for Malibu is expected to be approximately 78 units compared to just 2 units in the 5<sup>th</sup> cycle. While the 6<sup>th</sup> RHNA allocation is far higher than the 5<sup>th</sup> cycle, you will recall that in the 4<sup>th</sup> Housing Element cycle the RHNA allocation for Malibu was 441 units and the Affordable Housing Overlay was adopted to address a shortfall in potential sites for lower-income housing. Barring major changes to HCD criteria or the draft RHNA, the AHO should provide sufficient sites for the 6<sup>th</sup> Housing Element cycle.

It has been my privilege to work with Malibu on the City's two previous Housing Element updates, and I would appreciate having the opportunity to assist Hermosa Beach again on this important project.

As an indication my personal commitment to the communities where I work, it is my policy to donate 10% of my consulting fees to local charities of the City's choice.

Yours truly,

**JHD Planning, LLC**



John Douglas, AICP  
Principal



## Table of Contents

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1.	Organization, Credentials and Experience .....	2
2.	Project Understanding and Scope of Work .....	4
3.	Professional Services Agreement .....	13
4.	Compliance with Labor Standards .....	14
5.	Litigation .....	15
6.	Proposed Budget and Fee Schedule .....	Separate Attachment



## **1. Organization, Credentials and Experience**

JHD Planning, LLC is an urban and environmental planning consulting firm specializing in land use planning, housing policy, environmental analysis, public agency project management, public participation and conflict resolution. John Douglas, AICP is the owner and sole member of the firm. John has more than four decades of experience in the planning field, including 15 years in public planning agency management and more than 25 years in consulting. His previous public agency experience includes serving as Chief of Advance Planning and Chief of Environmental Planning for the County of Orange and Principal Planner for the City of Newport Beach. His consulting experience includes Director of Planning for Civic Solutions, Inc. and Senior Consultant with The Planning Center (now PlaceWorks).

Mr. Douglas is one of the most experienced consultants in California in the preparation of housing elements. He has prepared approximately 100 housing element updates spanning all of the planning cycles since 1980 in a wide variety of jurisdictions ranging from rural counties to coastal cities. Every Housing Element he has prepared has been certified by HCD as compliant with State law.

John also teaches a graduate course on Housing Elements at the University of California, Irvine and has been a speaker at conferences of the League of California Cities, the City Attorneys Association of Los Angeles County and the American Planning Association.

Coastal communities present special challenges due to Coastal Commission requirements, and John has successfully assisted many coastal cities including Malibu, Manhattan Beach, Seal Beach, Laguna Beach, San Clemente, Santa Barbara, Carpinteria, Goleta, Pacific Grove, Carmel-by-the-Sea and Oceanside with their Housing Elements and related zoning ordinance updates. While serving as Principal Planner with the City of Newport Beach in the 1990s, John was the City's primary liaison with the Coastal Commission on LCP and permitting issues.

Mr. Douglas assisted the City of Malibu with its last two Housing Element updates for the 4<sup>th</sup> and 5<sup>th</sup> planning cycles, and also prepared zoning amendments necessary to ensure compliance with State housing law. In the 4<sup>th</sup> cycle, Malibu was required to rezone land for multi-family housing to accommodate its Regional Housing Needs Assessment (RHNA) allocation of 441 units. John's experience in conflict resolution and facilitation contributed to the successful completion of the Housing Element and related zoning amendments, including the Affordable Housing Overlay (AHO).

While Mr. Douglas is a recognized authority on housing elements, his knowledge and experience includes a broad range of planning issues. As an example, he recently completed a comprehensive General Plan update and EIR for the City of Santa Paula in Ventura County. John was the principal author of both the General Plan and the EIR.

In addition to completing Santa Paula's new Safety Element as part of the General Plan update, John also recently prepared a Safety Element update for the City of Villa Park in Orange County. During both Safety Element updates John worked closely with CalFire staff to address their concerns and ensure compliance with current requirements. As with



Malibu, Santa Paula is surrounded by wildland areas within the designated *Very High Fire Hazard Severity Zone*.

State law contains increasingly complex requirements involving land use policies, plans, regulations, and procedures. John's exceptional breadth of planning experience on "both sides of the counter" together with his thorough understanding of the political dynamics of local government planning enable him to help cities effectively integrate the Housing and Safety Elements with the other elements of the General Plan, zoning regulations and development review procedures.

His combination and depth of expertise in housing, land use planning and CEQA is one of the most important characteristics that distinguishes him from other consultants. John approaches every Housing Element update with the goal of obtaining State certification in a manner that is consistent with City policy to the greatest extent feasible.

Unlike most planning consulting firms, we do not delegate work to junior staff. All of the work described in this proposal will be completed personally by Mr. Douglas.

### **Relevant Projects and References**

Listed below are examples of projects completed personally by Mr. Douglas that are representative of the services to be provided for this project. All of the Housing Elements were certified by HCD as fully compliant with State law. It is expected that all of the work described in this proposal, other than some document formatting and graphics, will be completed personally by Mr. Douglas.

#### **City of Malibu**

4<sup>th</sup> & 5<sup>th</sup> cycle Housing Element updates, Code amendments & zone changes (2007-present)  
Joyce Parker-Bozylinski, AICP, Planning Director (retired)  
805-368-7236 [jparkerbozylinski@gmail.com](mailto:jparkerbozylinski@gmail.com)

#### **City of Goleta**

5<sup>th</sup> cycle Housing Element update and related Code amendments (2013-present)  
Anne Wells, Advance Planning Manager  
805-961-7557 [awells@cityofgoleta.org](mailto:awells@cityofgoleta.org)

#### **City of Hermosa Beach**

4<sup>th</sup> & 5<sup>th</sup> cycle Housing Element updates, Code amendments & zone changes (2007-present)  
Ken Robertson, AICP, Community Development Director  
(310) 318-0242 [krobertson@hermosabeach.gov](mailto:krobertson@hermosabeach.gov)

#### **City of Santa Paula**

4<sup>th</sup> & 5<sup>th</sup> cycle Housing Element updates, Code amendments & zone changes (2007-2014)  
Comprehensive General Plan update and Program EIR (2017-2020)  
Jeff Mitchem, Planning Manager  
805-933-4214 x284 [jmitchem@spcity.org](mailto:jmitchem@spcity.org)  
Janna Minsk, AICP, Planning Director (retired)  
805-644-2925 [morandmi@aol.com](mailto:morandmi@aol.com)



## **2. Project Understanding and Scope of Work**

### **Project Understanding**

The Governor and State Legislature have declared a “housing crisis” in California, and in the past few years extensive changes have been made in State law to address this crisis. In adopting SB 330 (the “Housing Crisis Act of 2019”) and other recent laws the Legislature has clearly indicated that cities are expected to play a major role in addressing housing problems.

The Regional Housing Needs Assessment (RHNA) is the process by which housing production targets are assigned to cities and counties. In the RHNA for the 6th planning cycle (2021-2029) HCD assigned a total housing need of more than 1.3 million housing units to the SCAG region – more than three times the RHNA for the previous cycle. Under SCAG’s draft RHNA methodology, the preliminary RHNA allocation for Malibu is 78 units compared to just 2 units in the 5th cycle.

The unprecedented RHNA allocation for the SCAG region combined with new laws restricting “RHNA credit” for potential housing development sites and State threats of legal action for non-compliance will make the upcoming Housing Element process even more challenging than previous planning cycles.

Typically, the most critical aspect of a Housing Element update is demonstrating adequate housing development capacity to accommodate the RHNA allocation in all income categories, and this is expected to be the focus of the 6th cycle Hermosa Beach Housing Element update.

Although Malibu’s draft RHNA allocation of 78 units is significantly higher than the 5th cycle allocation of 2 units, the Affordable Housing Overlay that was adopted in the 4th cycle should fully satisfy the 6th cycle RHNA based on current State policy.

In addition, the State Department of Housing and Community Development (HCD) has indicated that cities may qualify for more “RHNA credit” for potential accessory dwelling units (ADUs) than in prior cycles due to recent changes in State law limiting cities’ ability to regulate ADU construction. HCD is currently working with SCAG and local governments to analyze ADU development trends and determine an appropriate methodology to be used in establishing ADU RHNA credit, both for the number of potential ADUs and their expected affordability levels.

State law requires cities to update the Safety Element concurrent with each Housing Element update. Malibu’s Safety and Health Element has not been updated since the adoption of the City’s General Plan; therefore, it is expected that substantial revisions will be required. The City is already working on two important studies that directly relate to the Safety and Health Element – the Community Wildfire Protection Plan and the Coastal Vulnerability Assessment. It is expected that the updated Safety and Health Element will build upon these studies.



## Proposed Scope of Work

Described below are the tasks and work products we propose for this assignment.

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### *Task 1* *Housing Element* *Update*

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This task includes the research and analysis needed to prepare the 2021 Housing Element document for review by interested stakeholders, HCD, the Planning Commission and City Council. The following sub-tasks are proposed:

**1.1 Evaluation of the Current Housing Element.** We will conduct an evaluation of the current Housing Element including the following:

- Progress in implementing current housing programs and policies
- Comparison of projected results from the adopted Housing Element to actual accomplishments
- Evaluation of the existing Housing Element in comparison to current State Housing Law

It is assumed that the City's annual progress reports will provide a substantial portion of the information needed for this task.

**1.2 Needs Assessment.** We will complete the housing needs assessment pursuant to State requirements and coordinate with City staff to evaluate housing conditions using State-approved criteria. Where necessary to complete this task, we will analyze recent demographic and housing data. This data will be used to prepare the housing needs chapter of the Housing Element including the following information:

- Population, household and employment trends
- Special housing needs (e.g. large families, seniors, persons with disabilities, homeless, etc.)
- Housing stock characteristics, including at-risk units, housing conditions and vacancy rates
- Residential building permit activity
- Housing cost and affordability
- Projected housing needs as assigned in the RHNA

The budget assumes that all information required for the needs analysis will be available from published sources or internal City data, and that no field work or original research will be necessary. SCAG is currently preparing a "Pre-approved Housing Element Data Package" that is expected to include much of this information.





**1.3 Housing Resources and Opportunities.** We will prepare an evaluation of housing resources, focusing on potential sites for housing development and current City housing programs. Information provided by City staff regarding current housing programs will be an important component of this analysis.

The sites analysis will address current State requirements and will include a land inventory showing the relationship between the RHNA allocation and the realistic capacity for additional housing at a parcel-specific level based on current General Plan and zoning designations and existing conditions.

It should be noted that significant changes to State requirements for the sites analysis have occurred since the preparation of the 5<sup>th</sup> cycle Housing Element update. Among the most significant changes are:

- Site size - Sites smaller than 1/2 acre or larger than 10 acres are assumed to be unsuitable for lower-income housing absent evidence such as previous examples of affordable housing development on similar-sized parcels.
- Sites listed in prior Housing Elements - Vacant sites identified in two prior housing elements, and non-vacant sites identified in the prior housing element may not be used to satisfy lower-income RHNA needs unless the site satisfies the minimum "default density" for lower-income housing and zoning allows by-right residential development if at least 20% of units will be reserved for lower-income households.
- Substantial evidence for underutilized sites - If non-vacant sites comprise 50% or more of the lower-income inventory, the existing use shall be presumed to impede additional residential development absent findings based on substantial evidence that the existing use is likely to be discontinued during the planning period. Based upon the vacant properties within the Affordable Housing Overlay, Malibu should not be affected by this new requirement.
- No net loss - Changes to *no net loss* rules require that adequate sites be maintained throughout the planning period. Under State default density rules for small cities, any qualifying site with an allowable density of 20+ units/acre may be counted for 100% lower-income RHNA credit. However, since few housing developments are 100% affordable, it is possible that over the course of the 8-year planning period, more lower-income sites



may be needed than indicated by the initial RHNA to offset sites that are developed during the planning period.

The first step in preparing the sites inventory will be to update the 5<sup>th</sup> cycle inventory to reflect development activity, pending applications and any changes to land use or zoning designations since the prior Housing Element was adopted. The updated inventory will then be refined based upon the new criteria described above. We will coordinate with City staff to evaluate whether the updated sites inventory is sufficient to accommodate the 6<sup>th</sup> cycle RHNA.

The budget for this task assumes that City staff will assist by providing the raw data necessary to update the sites inventory, including City zoning and General Plan designations, infrastructure availability, planning and building permit data, assessor parcel data, and other information requested by HCD. If additional land use surveys are needed to satisfy HCD requirements, such work can be provided as an optional task on a time-and-materials basis.

Based upon recent changes to State law, we anticipate that potential ADUs could satisfy a larger portion of the 6<sup>th</sup> cycle Housing Element sites inventory compared to prior cycles. One of the first tasks will be a conversation with City staff regarding ADU regulations and development trends, and ensuring that a monitoring mechanism is in place to support Housing Element assumptions regarding future ADU development.

If necessary, we will work with staff to identify potential zoning and development strategies to address any shortfall of housing capacity compared to the RHNA allocation (see also the optional tasks below).

**1.4 Housing Constraints.** We will update the analysis of governmental and nongovernmental constraints based upon any changes to land use and zoning designations, development review procedures, fees and infrastructure availability. If constraints are identified, we will recommend strategies to mitigate them, where feasible.

**1.5 Goals, Policies, Programs and Quantified Objectives.** Based upon the current Housing Element, the analyses described above, and input from City staff, decision-makers, stakeholders and HCD, we will recommend appropriate revisions to goals, policies, programs and quantified objectives.

**1.6 Administrative Draft Housing Element.** We will prepare an Administrative Draft Housing Element for internal Staff review based upon the analyses described above. The budget



assumes that the substance, level of detail, and format of the new Housing Element will be similar to the current element. In addition, a summary memo will be prepared describing recommended changes to the current Housing Element.

**1.7 Public Review Draft Housing Element.** Based upon Staff comments, we will prepare a Public Review Draft Housing Element for City distribution to interested stakeholders. The Draft Housing Element must be submitted to HCD for review prior to adoption. As described in Task 1.9 below, we will assist Staff in coordinating with HCD and responding to questions and comments on the Draft Housing Element.

**1.8 Public Outreach and Meetings.** Upon project initiation we will prepare a *Housing Element FAQ* for posting on the City website. It is assumed that Mr. Douglas will participate in one public workshop, one study session with the Planning Commission and/or City Council, one Planning Commission public hearing and one City Council hearing (total of four public meetings). Mr. Douglas will provide a presentation at each meeting in collaboration with the City's Project Manager. We will also assist City staff in preparing public meeting notices for publication by the City and prepare a draft staff report and supporting materials for each meeting. The budget assumes that City staff will be responsible for distribution of public notices and Native American consultation.

**1.9 HCD Review.** In consultation with City staff, we will facilitate HCD review of the Housing Element. Two rounds of HCD review are required by State law – first for the draft element and then for the adopted element. Mr. Douglas will prepare a summary of HCD comments on the draft Housing Element and work with City Staff to prepare appropriate revisions to address those comments. If HCD has additional comments on the adopted element, we will work with City staff to resolve those issues. It must be noted that the Housing Element is a policy document and we will advise City staff and decision-makers regarding certification requirements. However, since the Housing Element is ultimately subject to approval by the City Council, certification will be contingent on City acceptance of any policy changes required by HCD.

**1.10 Final Housing Element.** We will prepare a proposed final Housing Element, including any changes to the draft Element required by HCD, for Planning Commission review and City Council adoption. At this time, the due date for Housing Element adoption is expected to be October 15, 2021 and we will work closely with Staff to ensure that applicable deadlines and requirements are met. Following adoption the Housing



Element will be submitted to HCD for final review and certification.

#### Work Products

- Housing Element FAQ
- Administrative Draft Housing Element for review by City staff, including summary memo describing proposed changes to the current Housing Element
- Public Review Draft Housing Element incorporating staff comments for review by the community, stakeholders, the Planning Commission, the City Council and HCD
- HCD coordination
- Final Housing Element
- Participation in four public meetings

(All documents provided as digital files)

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#### **Task 2** **Safety and Health** **Element Update**

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State law requires that the Safety Element be updated concurrently with each Housing Element update. We will review the current Safety and Health Element to identify revisions needed to address State requirements.

The City is currently in the process of developing a citywide Community Wildfire Protection Plan (CWPP), a community-based plan focused on identifying and addressing local hazards, risks, and vulnerabilities from wildfire.

In addition, the City is completing a Coastal Vulnerability Assessment to determine the vulnerability and the projected impacts of sea-level rise in Malibu for the short-term, mid-term, and long-term. Developing a better understanding of what is at risk and identifying potential solutions represents a proactive approach that will help the City and community plan for coastal impacts from sea level rise.

Information and policies developed in the CWPP and the Coastal Vulnerability Assessment will be integrated into the Safety and Health Element update as appropriate to ensure consistency among these documents.

We will prepare an Administrative Draft Safety and Health Element document for review by City staff, in consultation with the County Fire Department and CalFire. The budget assumes the document format will be similar to the City's current General Plan. We will then prepare a Public Review Draft Safety and Health Element incorporating staff comments for



review by the Planning Commission and the general public. Following public review a Proposed Final Safety and Health Element will be prepared for review and adoption by the City Council.

To minimize City time and cost, the budget assumes that public hearings for the Safety and Health Element will be held concurrently with hearings for the Housing Element if possible. Mr. Douglas will prepare draft staff reports and presentations for each public meeting. Because of the prior public engagement efforts for the CWPP and the Coastal Vulnerability Assessment, the budget assumes that only one hearing each with the Planning Commission and City Council will be required. However, if desired, Mr. Douglas will attend additional meetings on a time-and-materials basis. As with the Housing Element documents, the budget assumes that digital files will be provided for each work product.

### Work Products

- Summary memo identifying recommended changes to the current Safety and Health Element
- Administrative Draft Safety and Health Element
- Public Review Draft Safety and Health Element
- Proposed Final Safety and Health Element
- Adopted Safety and Health Element

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### **Task 3** **CEQA Compliance**

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We will conduct an environmental review for the Housing and Safety Element updates in compliance with CEQA. The budget assumes that either an Initial Study/Negative Declaration (IS/ND) or an addendum to a prior CEQA document, such as the EIR prepared for the 4<sup>th</sup> cycle Housing Element, will be appropriate. The analysis will be programmatic in nature, and if the Housing Element identifies a need for land use and zoning amendments to provide adequate sites, potential impacts related to those amendments and future housing developments will be addressed at a conceptual level of detail. No technical studies are anticipated.

If it is determined that land use changes are necessary to demonstrate adequate sites to accommodate the RHNA, we will work with staff to determine the appropriate CEQA documentation, and assistance with those amendments, as well as any required housing-related Code amendments, can be provided as optional tasks (see below). Based on the nature



of any required land use amendments, it is possible that more extensive analysis such as technical studies or an EIR may be necessary, and a revised scope of work would be prepared.

After the close of the public comment period we will prepare draft responses to any comments received as well as revisions to the CEQA analysis (if necessary) and appropriate CEQA findings for review by the City.

We will also prepare draft CEQA notices for filing by the City. The budget assumes that the City will be responsible for Native American consultation and payment of all filing fees, and that digital files will be provided for each work product.

### Work Products

- Administrative draft IS/ND or Addendum for city review
- Public review draft IS/ND or Addendum incorporating staff comments
- Preparation of draft CEQA notices for distribution by the City
- Final IS/ND or Addendum

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### ***Optional Tasks***

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Since the last Housing Element was prepared the State Legislature has adopted several significant changes to housing law, and additional changes continue to be introduced this year in Sacramento. The analysis of housing constraints will identify any City housing regulations that do not comply with current State requirements. As an optional task we can assist the City in drafting housing-related ordinances (such as ADU standards and accommodations for persons with disabilities or other special needs) that may be required based on current State law.

It is possible that amendments to General Plan land use designations and/or zoning regulations could be required to demonstrate adequate sites to accommodate the new RHNA allocation and to comply with current State housing law. If desired, we will work with the City to prepare a detailed scope of work to address these additional topics.



## Proposed Schedule

Under State law the due date for adoption of 6<sup>th</sup> cycle Housing Elements in the SCAG region is expected to be October 15, 2021. *(Note: as of this writing, SCAG has submitted a request to the Governor and State Legislature to delay the Housing Element due date April 2022, but no response has been announced.)* We will work closely with City staff to monitor any changes to the Housing Element schedule and ensure timely completion of the project. The following preliminary milestone schedule would achieve the current State Housing Element deadline; however, this schedule will be subject to refinement during the course of the project in consultation with City staff.

Timeframe	Milestone
September 2020	Authorization to proceed
Sept – December 2020	Review current Housing Element Monitor SCAG RHNA process Housing & Safety Element analysis Prepare Administrative Draft Housing & Safety Elements Public outreach & workshop
January 2021	Staff review of Administrative Draft Housing Element
February 2021	Prepare Public Review Draft Housing Element
March - May 2021	HCD review & consultation
June - July 2021	Public workshop, Planning Commission hearing & City Council hearing
July 2021	Submit adopted Housing Element to HCD (90-day review)



### ***3. Professional Services Agreement***

We will request modifications to the terms and conditions of the City's standard Professional Services Agreement consistent with our current professional services agreement with the City.





#### ***4. Compliance with Labor Standards***

We agree to comply with the California Labor Code, pursuant to said regulations entitled: Federal Labor Standards provisions; Federal Prevailing Wage Decision; and State of California Prevailing Wage Rates, respectively.



## **5. *Litigation***

JHD Planning LLC has no past, current, or pending litigation or arbitration resulting from professional services rendered over the past five years.



## 6. Proposed Budget and Fee Schedule

Our proposed budget for the Housing Element update is shown below. Additional tasks can be provided on a time-and-materials basis. Reimbursable expenses are billed at actual cost with no surcharge. We do not charge for travel expenses, and travel time to/from meetings is included in the budget for each meeting.

We commit to donating 10% of our consulting fees to charities of the City's choice that serve the communities where we work.

Task	Description	JD	WP	Total Hours	Cost
1	Housing Element Update	260	12	272	\$39,780
2	Safety & Health Element Update	140	8	148	\$21,520
	Public Participation (4 meetings)	64		64	\$9,600
3	CEQA Compliance	100		100	\$15,000
Total Labor		564	20	584	\$85,900
Hourly Rate		\$150	\$65		
Contingency (10%)					\$8,590
Reimbursable Expenses		(See table below)			\$500
Total Labor + Expenses					\$94,990

JD = John Douglas, AICP, Principal

WP = Graphics/word processing

### Reimbursable Expenses

Travel/mileage	No charge
Postage/deliveries/printing/supplies	\$500
<b>Total</b>	<b>\$500</b>

#### Notes:

- 1) For each work product, we will provide electronic copies (Word/PDF) and if printed copies are required, they will be provided on a time-and-materials basis with no markup.
- 2) Travel time and expenses are included in the budget for each task.
- 3) Contingency funds will not be used without prior City authorization