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8 of California rel. Rob Bonta, and the California
Department of Housing and Community
9 Development*

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

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14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA; CALIFORNIA**
16 **DEPARTMENT OF HOUSING AND**
COMMUNITY DEVELOPMENT,

17 Petitioners and Plaintiffs,

18 v.

19 **CITY OF MALIBU; AND DOES 1-50,**

20 Respondents and
21 Defendants.
22

Case No.

**[PROPOSED] STIPULATED FINAL
JUDGMENT AND ORDER**

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Petitioners and Plaintiffs, PEOPLE OF THE STATE OF CALIFORNIA, acting by and through ROB BONTA, Attorney General of the State of California, and the CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, and Respondent and Defendant CITY OF MALIBU (individually “Party” and collectively, the “Parties”), having stipulated to the entry of this Final Judgment and Order (“Judgment”) without the taking of proof and without trial or adjudication of any fact or law herein, and with all Parties having waived the right to appeal; and the Court having considered the pleadings and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

PARTIES AND DESCRIPTION OF ACTION

1. Petitioners/Plaintiffs, the PEOPLE OF THE STATE OF CALIFORNIA, by and through its Attorney General, ROB BONTA, and the Department of Housing and Community Development (“HCD”) (collectively, “the State”) are charged with the enforcement of, among other things, the “Housing Element Law.”

2. Respondent/Defendant CITY OF MALIBU is a political subdivision of the State of California (“City”). The City is a local governmental agency charged with regulating and controlling land use and development within the City’s boundaries, including but not limited to complying with all applicable provisions of state law, such as the Housing Element Law.

3. The Housing Element Law required the City to adopt a housing element to the City’s General Plan that substantially complied with the Housing Element Law’s terms by October 15, 2021, for the 2021-2029 Planning Period (also known as the Sixth Cycle). (Gov. Code, § 65580 et seq.)¹

4. The City began work on its housing element in 2020 when it hired an environmental consultant to prepare the element. The City submitted a draft Housing Element to HCD on August 25, 2021, however HCD determined that the draft Housing Element did not substantially comply with Housing Element Law. The City submitted a second draft Housing Element to HCD on January 21, 2022. HCD once again determined that the second draft Housing Element did not

¹ All statutory references are to the Government Code unless otherwise specified.

1 substantially comply with Housing Element Law. In February 2023, the City’s environmental
2 consultant unilaterally terminated his contract with the City because of his pending retirement. As
3 of February 2023, the City’s consultant had not completed work on the City’s housing element.
4 The Parties agree that the City failed to adopt a substantially compliant Housing Element by the
5 October 15, 2021 deadline. While the City has not adopted a substantially compliant Housing
6 Element by the deadline, the City has been contending with multiple outside factors including
7 rebuilding housing stock following the Wolsey Fire and addressing staffing issues in the planning
8 department during COVID-19. In light of the circumstances the City has faced, the City has
9 worked diligently to get its housing element adopted and certified.

10 5. Any housing element adopted by the City must substantially comply with specific
11 statutory requirements, including ensuring that the City’s planning, programs, and ordinances do
12 not unduly constrain or impede its obligation to meet its Regional Housing Needs Allocation
13 (“RHNA”).

14 6. This Judgment is entered to fully resolve the claims and allegations brought by the
15 State. The State alleges that the City violated the Housing Element Law by failing to perform its
16 statutory duty to timely adopt a legally compliant housing element to its General Plan, in
17 substantial compliance with California laws governing a local jurisdiction’s obligations to do so,
18 for the 2021-2029 planning period. This Judgment is entered to fully resolve the claims and
19 allegations made by the State.

20 7. The Parties agree, solely for purposes of entry of this Judgment, that this Court has
21 jurisdiction of the subject matter hereof and over the Parties, venue is proper in this County, and
22 this Court has jurisdiction to enter this Judgment.

23 8. This Judgment is made without trial or adjudication of any issue of fact or law. The
24 Parties voluntarily enter into this Judgment in order to avoid the time, expense, and uncertainty of
25 litigation.

26 9. The Parties agree to resolve all claims and allegations pertaining to this action
27 through this Judgment.

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1 **APPLICABILITY**

2 10. All provisions of this Judgment shall be binding upon, and apply to the Parties,
3 including their agents acting within the scope of their agency as well as its successors and assigns
4 with respect to the conduct described in this Judgment.

5 11. The City has and will maintain the full power and authority to undertake the duties
6 and obligations set forth in this Judgment.

7 12. The City shall use reasonable efforts to notify its City Councilmembers, elected
8 officials, officers, directors, employees, and agents responsible for carrying out and effecting the
9 terms of this Judgment and the requirements therein.

10 **DEFINITIONS**

11 The following definitions shall be used in construing the Judgment:

12 13. "Effective Date" means the date on which a copy of the Judgment, duly executed by
13 the Parties, is approved by and becomes a Judgment/Order of the Court. Should certain terms
14 below precede the Effective Date, the parties agree to be bound by those terms as conditions prior
15 to entry of this Judgment.

16 14. "Signatory Date" means the date on which the last Party signs this Judgment.

17 15. "Zoning Ordinance Amendments" means and refers to amendments to the City's
18 Zoning code that do not rezone any existing parcels and/or do not require the approval/certification
19 of the California Coastal Commission to be effective.

20 16. "Zoning Changes" means and refers to amendments to the City's Zoning Code that
21 rezone existing parcels, and/or changes that are required to be made to the City's Local Coastal
22 Program, that require the approval/certification of the California Coastal Commission to be
23 effective.

24 **THE CITY'S OBLIGATIONS**

25 17. Adoption of a Housing Element Revision Found to be Substantially Compliant by
26 HCD. In the event no Zoning Changes are required in order to bring the housing element into
27 substantial compliance with the Housing Element Law, the City shall adopt a Housing Element
28 Revision no later than September 23, 2024, for the Sixth Cycle 2021-2029 planning period that

1 substantially complies with Housing Element Law, as determined in good faith by HCD in
2 accordance with Section 65585. The City shall submit its adopted Housing Element to HCD for
3 HCD’s certification as set forth in Paragraph 19. The Parties acknowledge that HCD certification
4 will not be final until after the City adopts its Housing Element as well as any necessary Zoning
5 Ordinance Amendments and Zoning Changes; the City transmits the adopted documents to HCD
6 and the California Coastal Commission (if required by law); and HCD finds the adopted Housing
7 Element substantially compliant. The Parties will use best efforts to ensure that the City’s Local
8 Coastal Plan Amendments are expeditiously certified by the Coastal Commission. In the event that
9 the Coastal Commission fails to certify the City’s Local Coastal Plan Amendments consistent with
10 the adopted Housing Element, the Parties shall continue to use best efforts to obtain Coastal
11 Commission certification as expeditiously as possible, but the failure of the Coastal Commission
12 to timely certify the City’s Local Coastal Plan Amendments shall not be a basis to find either Party
13 in default under this Judgment.

14 18. Milestones Already Completed for Adoption of Housing Element: During the course
15 of the negotiation over this Judgment, the City has already completed the following milestones on
16 its way to adopting a housing element:

- 17 a. On or about January 8, 2024, the City published its revised Draft Housing
18 Element on the City’s website for public review and comment.
- 19 b. On or about January 24, 2024, the City conducted public outreach to publicize the
20 draft housing element soliciting written and verbal feedback from members of the
21 public, and holding “Housing Element Office Hours” at City Hall and via Zoom,
22 or other video conferencing software.
- 23 c. On or about January 24, 2024, the City Council held a duly noticed public
24 meeting to consider the revised Draft Housing Element and provide direction on
25 any changes to incorporate prior to submitting the revised Draft Housing Element
26 to HCD.
- 27 d. The City submitted a revised Draft Housing Element to HCD for review prior to
28 February 8, 2024.

1 19. Milestones and/or Conditions to Ensure Adoption by September 23, 2024. The Parties
2 agree that the City shall take the following required actions to complete and adopt its Sixth Cycle
3 Housing Element Revision:

- 4 a. HCD shall return its formal written findings to the City no later than March 22,
5 2024. No later than March 29, 2024, City staff and HCD representatives will
6 meet by video conference for at least one hour to review HCD's comments.
- 7 b. No later than April 29, 2024, the City will release a second revised Draft Housing
8 Element for a 7-day public review. The City shall concurrently provide a
9 courtesy copy of the second revised Draft Housing Element to HCD.
- 10 c. No later than May 20, 2024, the City will submit the second revised Draft
11 Housing Element to HCD.
- 12 d. During HCD's review of the revised Draft Housing Element, City staff will
13 commence work on implementing actions needed to effectuate the Housing
14 Element, including General Plan Amendments, Zoning Ordinance Amendments
15 and Zoning Changes.
- 16 e. HCD shall return its formal written findings to the City no later than July 5, 2024.
17 No later than July 12, 2024, City staff and HCD representatives will meet by
18 video conference for at least one hour to review HCD's comments. No later than
19 July 19, 2024, City staff and HCD representatives will meet by video conference
20 for at least one hour to review working drafts of the City's response to HCD's
21 comments.
- 22 f. Throughout the process the City will comply with all applicable environmental
23 laws.
- 24 g. No later than August 19, 2024, the City's Planning Commission will hold a duly
25 noticed public hearing to consider the Sixth Cycle Housing Element.
- 26 h. No later than September 23, 2024, the City Council will hold a duly noticed
27 public hearing to readopt the Sixth Cycle Housing Element and any associated
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1 General Plan Amendments and to introduce the Zoning Ordinance Amendments
2 Zoning Changes for their first reading.

- 3 i. No later than October 4, 2024, the City will submit the adopted Housing Element
4 and copies of the to be adopted ordinances introducing the Zoning Ordinance
5 Amendments and Local Coastal Plan Amendments to HCD.
- 6 j. No later than October 14, 2024, the City will conduct the second reading of, and
7 adopt, the Zoning Ordinance Amendments and Zoning Changes.
- 8 k. No later than October 18, 2024, and consistent with Government Code section
9 65588(e)(4)(C)(iii) (which prohibits any finding of substantial compliance with
10 Housing Element Law until the City completes all required rezoning), the City
11 shall submit to HCD its adopted Zoning Ordinance Amendments and its adopted
12 Zoning Changes with evidence that any required LCP Amendments were
13 transmitted to the California Coastal Commission for its review and certification.
- 14 l. Each deadline in Paragraph 17 and this Paragraph 19 shall be extended pursuant
15 to the terms of Paragraphs 21 & 22, below.

16 20. Sixth Cycle Housing Element Revision and the City's Public Participation

17 Requirements. The City shall comply with all statutory requirements with regard to its public
18 participation efforts including provisions to make a diligent effort to reach all economic segments
19 of the community pursuant to Government Code section 65583(c)(9) and public noticing pursuant
20 to Government Code section 65585(b)(1). The Parties agree that the public participation efforts
21 described in Paragraphs 18 and 19 satisfy the City's statutory requirements regarding public
22 participation. Nothing in this section precludes HCD from receiving and/or considering public
23 comments as required pursuant to Government Code section 65585(c).

24 **ADDITIONAL PROVISIONS**

25 21. Technical Assistance from HCD. HCD shall provide the City with technical
26 assistance with its Sixth Cycle Housing Element Revision as follows:

- 27 a. HCD staff will commit to at least 2.5 hours per month in technical assistance
28 telephone calls with the City, with additional time provided as capacity permits.

1 In connection with these technical assistance telephone calls, the City agrees to
2 make good faith, reasonable progress on the housing element revision process
3 between these calls.

- 4 b. In order to ensure efficiency in the technical assistance provided by HCD during
5 the housing element review process, the City agrees to make all revisions and
6 edits to its housing element in track changes, or to devise some other method of
7 highlighting all revisions and edits to the housing element, such that HCD can
8 quickly identify and review the City's revisions and edits.
- 9 c. In order to allow the City to make timely and efficient revisions to its housing
10 element in response to HCD comments, HCD agrees to provide its formal written
11 findings in response to the City's revised and second revised draft Housing
12 Element by March 22, 2024, and July 5, 2024, respectively. Each formal written
13 findings letter will consist of a single set of consolidated comments that identify
14 specific deficiencies in the City's draft housing element and that explains why
15 these sections are deficient and what specific analysis or text HCD expects the
16 City to provide to remedy the deficiency. HCD will provide the City with
17 informal technical assistance, including sample language from other certified
18 housing elements, as applicable, under separate cover from its formal written
19 findings letters. Moreover, HCD agrees that each written findings letter shall be
20 exhaustive at the time of their submission, meaning that it will not identify
21 comments for the first time in subsequent reviews that it could have raised in
22 earlier reviews but did not identify, for whatever reason. This provision does not
23 preclude HCD from identifying new comments on subsequent reviews based on
24 information not previously available to HCD in its prior review.
- 25 d. To the extent that HCD is unable to meet its specific deadlines set forth in
26 Paragraphs 19 or 21, the deadlines for the City's performance in Paragraphs 17
27 and 19 shall be extended to account for delays attributable to HCD's failure to
28 meet a specific deadline.

1 22. Agreed Upon Extension to Housing Element Timeline. In the event that HCD’s
2 formal findings as called for by Paragraph 19, subdivision (e) request that the City make further
3 changes to the housing element before it can be certified by HCD and if the City has complied
4 with all deadlines in Paragraph 19 prior to the deadline in subdivision (e), then the Parties may
5 execute an amendment to this judgment extending the deadlines in Paragraph 19 subdivisions (g)
6 thru (k) by 60 days.

7 23. Compliance with No Net Loss. The City shall maintain sites sufficient to
8 accommodate its RHNA throughout the Sixth Cycle planning period consistent with Government
9 Code section 65863.

10 24. Compliance with the Housing Accountability Act (HAA). The City shall comply
11 with all provisions of the HAA, including but not limited to Government Code section 65589.5(d).
12 The City acknowledges, for the benefit of third parties, that until it has adopted a housing element
13 that is in substantial compliance with the Housing Element Law as set forth in Paragraphs 17 and
14 19, or upon a court’s determination that the City is in substantial compliance, the City cannot make
15 findings under Government Code section 65589.5(d)(1) or (d)(5), and it shall not deny a housing
16 development project for very low-, low-, or moderate-income households, as defined under
17 Government Code section 65589.5(h)(3), on the basis that the project is inconsistent with the
18 City’s zoning ordinance and general plan land use designation.

19 25. Compliance with Duty to Affirmatively Further Fair Housing. The City shall
20 administer its programs and activities relating to housing and community development in a manner
21 to affirmatively further fair housing, and to take no action that is materially inconsistent with its
22 obligation to affirmatively further fair housing, consistent with Government Code section 8899.50.

23 26. Compliance with Government Code section 65759. The Judgment will require the
24 City to bring its Housing Element (a mandatory element of its general plan) into compliance with a
25 court order under Article 14 of Chapter 3 of Division 1 of Title 7 of the California Government
26 Code. Accordingly, as provided in Government Code Section 65759, CEQA shall not apply to the
27 City’s adoption of the Housing Element or any implementing actions (including, without
28 limitation, amendments to other General Plan elements, amendments to the City’s LCP and

1 certification of the same by the Coastal Commission, and amendments to the City's Zoning
2 Ordinance or other Municipal Code provisions identified in the Housing Element); however, the
3 City shall comply with the provisions of Government Code Section 65759.

4 **ENFORCEMENT OF JUDGMENT AND REMEDIES**

5 27. Remedies Upon Violation. Immediately upon the City's failure to comply with any
6 of the terms of the Judgment, following notice and an opportunity to cure as provided in Paragraph
7 28, the State may file an order to show cause on an ex parte basis with the Court. Following a
8 hearing on the matter and upon a finding by the Court that the City failed to comply with any of
9 the terms in the Judgment, the Court shall elect any or all provision(s) set forth under Government
10 Code section 65755, subdivision (a), as remedies for the City's violation(s). The Court's elected
11 remedy may modify the remedies in Government Code section 65755 so as to ensure compliance
12 with housing element law and to maximize the City's ability to meet its RHNA for the current
13 cycle, with a particular emphasis on meeting its low- and very low-income RHNA. Should the
14 City continue to fail to comply with any of the terms of the executed Agreement within a
15 reasonable period following a court order pursuant to this paragraph, the State may then file a
16 renewed order to show cause seeking any additional remedy under Government Code section
17 65755, and any other remedy available at law.

18 28. Statutory Penalty Pursuant to Government Code section 65585. In the event that the
19 City does not adopt a Sixth Cycle Housing Element that HCD or the Court finds substantially
20 complies with the law within 12 months of the Effective Date of this Judgment, the State may file
21 an order to show cause on an ex parte basis with Court. After a status conference and upon a
22 finding that the City failed to comply with this Judgment, the statutory penalties under
23 Government Code section 65585(l)(1) shall apply. The parties agree that the terms of Government
24 Code section 65585(m) shall apply here. The City agrees that nothing that has occurred before the
25 Signatory Date shall constitute the sole basis for any claim for mitigation under subdivision (m) of
26 Section 65585. Continued failure by the City to bring its Sixth Cycle Housing Element into
27 substantial compliance with the Housing Element Law will entitle the State to pursue further
28 penalties in accordance with subdivision (l) of Section 65585.

1 42. The Judgment may be modified by a stipulation of the Parties as approved by the
2 Court, or by court proceedings resulting in a modified judgment of the Court.

3 43. Any failure by any party to this Judgment to insist upon the strict performance by any
4 other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the
5 provisions of this Judgment, and such party, notwithstanding such failure, shall have the right
6 thereafter to insist upon the specific performance of any and all of the provisions of this Judgment.

7 44. The use of headings in this Judgment is only for ease of reference, and the headings
8 have no legal effect and are not to be considered part of this Judgment.

9 45. Jurisdiction is retained by the Court, under Code of Civil Procedure section 664.6, for
10 the purpose of enabling any party to the Judgment to apply to the Court at any time for such
11 further orders and directions as may be necessary or appropriate for the construction or carrying
12 out of this Judgment for enforcement of compliance herewith, and for the punishment of violations
13 hereof, if any.

14 46. The Parties agree and represent that any persons signing a stipulation for entry of this
15 Judgment are authorized by proper authorities to execute such stipulation on their behalf.

16 47. This Judgment may be executed in counterparts, and a facsimile or digital signature in
17 pdf format shall be deemed to be, and shall have the same force and effect as, an original
18 signature.

19 48. All notices shall be provided in writing to the following via email and overnight mail.
20 For the City:

21 Trevor Rusin
22 Todd Leishman
23 Alexander M. Brand
24 Best Best & Krieger LLP
25 300 S. Grand Ave., 25th Floor
26 Los Angeles, CA 90071

27 For the State:

28 David Pai
29 California Department of Justice, Office of the Attorney General
30 1515 Clay Street, Fl. 20
31 Oakland, CA 94612

1 Any Party may update its designee or address by sending written notice to the other Party
2 informing them of the change.

3 49. The Clerk is ordered to enter this Judgment forthwith.
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APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this _____ day of _____,
2023.

Judge of the Superior Court