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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

WEST JUDICIAL DISTRICT

JASON and ELIZABETH RIDDICK; and RENEE SPERLING,

Petitioners,

v.

CITY OF MALIBU; MALIBU CITY COUNCIL; and MALIBU PLANNING DEPARTMENT,

Respondents.

No. 21SMCP00655

PETITIONERS' OPENING BRIEF

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This petition arises from Jason and Elizabeth Riddick's application to build a small Accessory Dwelling Unit (ADU) designed to care for and accommodate Renee Sperling, Elizabeth's mother. The Riddicks and Renee challenge two decisions made by the City. First, on administrative mandamus, the Riddicks seek reversal of Malibu City Council Resolution No. 21-47, which unlawfully denied their original application to construct an ADU attached to their home. Second, on traditional mandamus, the Riddicks challenge the City's refusal to approve an updated ADU application on a ministerial basis as required by Gov. Code, § 65852.2, subd. (b).

The evidence in the Administrative Record is relevant to the petition for traditional mandamus, as are the allegations and documentary exhibits in the Verified Petition. However, only Tabs 1–189, 255–257, and 259–260 of the Administrative Record are to be considered in relation to the petition for administrative mandamus. That is because only the evidence in these tabs was available to the Malibu City Council when it adopted Resolution No. 21-47.

LEGAL BACKGROUND

To address California's "severe housing crisis," *see* Gov. Code, § 65852.150(a), the state legislature established a statewide framework for owners of existing residential properties to obtain by-right permits to create ADUs. *See id.* §§ 65852.150–65852.22. Among other things, the ADU laws prohibit local governments from imposing lot coverage limitations that would not permit at least an 800-square-foot ADU with four-foot side and rear yard setbacks. Gov. Code, § 65852.2(c)(2)(C). They also require that, for governments which have not adopted a local ordinance in accord with state ADU law, a permit application to create an ADU must be decided "ministerially without discretionary review." Gov. Code, § 65852.2(b). However, subdivision (l) of Section 65852.2 provides that "[n]othing in this section shall be construed to supersede or in any way alter or lessen the effect of application of the California Coastal Act of 1976[.]" Thus, a key dispute in this case focuses on whether or not the Riddicks' proposal is subject to Malibu's Local Coastal Program (LCP).

The Coastal Act, Pub. Res. Code, § 3000, *et seq.*, requires local governments with

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jurisdiction over Coastal Zone lands to adopt an LCP,[1] which must be certified by the California Coastal Commission. Pub. Res. Code, § 30500. Chapter 7 of the Coastal Act provides that, with certain express exemptions, any person seeking to perform development in the coastal zone "shall obtain a coastal development permit [(CDP)]." Pub. Res. Code, § 30600(a). Among the exemptions are "[i]mprovements to existing single-family residences," which typically do not require a CDP. This includes "[a]ll fixtures and other structures directly attached to a[n existing single-family] residence." Cal. Code Regs., tit. 14, § 13250(a)(1). Malibu's certified LCP provides for an identical exemption. Local Implementation Plan (LIP) § 13.4.1.

Between April 2017 to April 2020, the Coastal Commission issued three guidance memoranda intended to help local governments implement state ADU law in the coastal zone. With specific regard to the CDP exemptions, the memos state that "the construction or conversion of an [ADU] contained within or directly attached to an existing single-family residence" would generally be exempt as an improvement to a single-family residence. (AR 3553, 3560–61). By contrast, "[g]uest houses and 'self-contained residential units,' i.e. detached residential units" are not exempt (AR 3553, 3560–61).

In January 2022, five months after the City Council's decision and two months after the present action was filed, the Coastal Commission issued a fourth memorandum in which it changed its policy toward attached ADUs. It explains that "the Commission reevaluated its position" and determined that "the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement' to an existing" residence" and therefore should not qualify for an exemption to the CDP requirement. The Coastal Commission based its position on a finding that some ADUs "could have coastal resource impacts that make exemptions inappropriate[.]" (AR 3567).

STATEMENT OF FACTS

Renee Sperling is an octogenarian who has lived in southern California her entire life. (AR 517, 3593) She has served the community as a schoolteacher, a college professor, and an attorney.

[1] An LCP is typically comprised of both a Land Use Plan (LUP), which sets forth general coastal policies, and a Local Implementation Plan (LIP), which provides the implementing ordinances to carry out the policies of the LUP. *See Security Nat'l Guaranty, Inc. v. Cal. Coastal Comm'n* (2008) 159 Cal. App. 4th 402, 408 n.2.

(AR 517). Renee once owned the subject house at 6255 Paseo Canyon Drive in Malibu, California. When her daughter Elizabeth married Jason Riddick, Renee deeded them the home to raise their three children, (AR 1969–70), and moved into a small apartment in Los Angeles. (AR 3594). Renee suffers from numerous ailments, including glaucoma, arthritis, asthma, and osteoporosis. (AR 551, 3593–94). She is disabled and severely immunocompromised. (AR 551). According to Renee's physician, even the common cold could have a devastating effect on her health. (*Id.*).

Given California's official policy of encouraging ADUs, the Riddicks determined that an ADU attached to their main residence was the ideal solution for providing Renee with safe housing in which she could age in place with the loving care of her family. Pet. ¶ 26. The Riddicks worked closely with their Homeowner's Association (HOA) and with their hired architect to create plans that suited their needs and those of Renee, their surrounding neighbors, and the HOA, and which met all of the requirements of the state's ADU law. Pet. ¶ 27. (AR 288–92, 1933–35). Because the project contemplated shifting some of the existing floor-space from the primary residence to the ADU, the plans included minor expansions of the primary residence as a compensatory measure—the proposed ADU would intrude on the existing master bath, necessitating the construction of a new bathroom in the primary structure. Pet. ¶ 28. (AR 1965) In total, this planned compensatory addition to the main residence constituted about 44–60 square feet of new floor space. *Id.*

On July 10, 2020, the Riddicks submitted their ADU application to the City. (AR 1966–68). Despite the LCP's exemption for attached structures, the City processed the application as one for a Coastal Development Permit. (AR 1967). On October 19, 2020, Assistant Planner David Eng sent the Riddicks a "letter of project incompleteness," (A.R. 2125–28), and explained that the project could not obtain a CDP because it did not comply with the LCP's "setbacks and maximum allowed Total Development Square Footage (TDSF) area" (Pet. Exh. D).

In response, Mr. Riddick penned a letter detailing his position that the project should not be required to obtain a CDP in the first place because it was exempt under the LCP. (AR 2135–39). Mr. Riddick also included a copy of the April 2020 Ainsworth memorandum, arguing that it bolstered his interpretation of the applicable law. (AR 2138–46).

Mr. Mollica replied over two months later, (AR 2247–51), insisting that their project was

subject to Malibu's LCP. (AR 2252–54), and failing to address the Riddicks' arguments and the substance of the Coastal Commission guidance. Faced with the City's reluctance to advance the ADU application as required by state law, the Riddicks submitted a letter formally requesting a reasonable disability accommodation (RRA) under Malibu LIP Section 13.30. (AR 2304).

At its hearing on June 7, the Planning Commission adopted Resolution No. 21-51, denying both the CDP and the RRA. (AR 2713). Despite finding that the project "will not adversely impact coastal resources," (AR 1476), the Commission's basis for denial was that project could not be configured to comply with the LCP's TDSF, setback, and total impermeable lot coverage (TILC) requirements. (AR 1475). Regarding the exception for attached structures, Mr. Rusin suggested at the hearing that the exemption provision did not apply because its terms exclude "accessory self-contained residential units" from the CDP exception. (AR 3649–50). No one from the City acknowledged the Coastal Commission guidance concluding that *attached* ADUs are to be distinguished from "guest houses or accessory self-contained residential units," which are detached structures.

The Riddicks appealed Planning Commission Resolution No. 21-51 to the Malibu City Council, (AR 2715–18, 1205), which denied the appeal in Resolution No. 21-47. (AR 11). At least two Councilmembers suggested that the true reason for denial was not the ADU but the compensatory additions to the primary residence. (AR 3598–3600).[2]

Following the City Council decision, the Riddicks submitted an updated application with modified plans. The new plans were substantially identical to those in the original application, except that all proposed additional square footage was designated as part of the ADU; no additional square footage would be added to the main residence. (AR 3148, 3153). The Riddicks requested ministerial review of this new application per state law. (AR 3312, 3325). On October 25, 2021, City Attorney John Cotti stated that the City would still require a CDP and would not review the application a ministerial basis. (AR 3455). This action followed.

[2] For example, Mayor Grissanti stated that "if all the area that's the master bath was designated as part of the ADU, I would find no way not to vote for this." (AR 3599).

STANDARD OF REVIEW

In determining whether an agency has failed to proceed according to law, the Court exercises its independent judgment and gives no deference to the agency's interpretation of the law. *McAllister v. Cal. Coastal Comm'n* (2009) 169 Cal. App. 4th 912, 921. To the extent that an agency has acted within its jurisdiction and according to law, a reviewing court still "must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision," resolving doubts in favor of the agency. *Topanga Ass'n for a Scenic Cmty. v. Cty. of L.A.* (1974) 11 Cal. 3d 506, 514. In its review, the Court must consider the whole "record of the proceeding before the administrative agency." *Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal. App. 3d 872, 881. Regardless of the claim at issue, a court always reviews questions of law *de novo*. *Duncan v. Dep't of Pers. Admin.,* (2000) 77 Cal. App. 4th 1166, 1174.

ARGUMENT

I. MALIBU MUST APPROVE THE ADU ON A MINISTERIAL BASIS

A writ of traditional mandamus is warranted because the Riddicks' project is exempt from the requirement to obtain a CDP. This conclusion is compelled by Malibu's LCP, by Coastal Act regulations, and by the Coastal Act itself. And because it is exempt, the project is governed by statewide ADU law, under which it must be approved on a ministerial basis.

A. The Riddicks' proposal is exempt from the requirement to obtain a CDP

The LCP provides that improvements to existing single-family residences are exempt from the CDP requirement. LIP § 13.4.1. This exemption is mandated by the Coastal Act, which provides that "[n]otwithstanding any other provision of [this Act], no coastal development permit shall be required" for "[i]mprovements to existing single-family residences." Pub. Res. Code, § 30610(a). This exemption covers "[a]ll fixtures and other structures directly attached to a residence[.]" Cal. Code Regs., tit. 14, § 13250(a)(1). The LCP contains nearly identical provisions. LIP § 13.4.1.

The authorities, therefore, provide that "all fixtures and other structures directly attached" to a single-family residence are exempt from the CDP requirement, and the Riddicks' project contemplates an ADU that is directly attached to their single-family home. Yet Respondents rely

on other language from the LCP which they argue takes the ADU out of the exemption. Specifically, the City highlights a clause in Section 13.4.1 excluding "guest houses or accessory self-contained units" from exemption, and suggests that the Riddicks' project falls under this category. This argument suffers from two fundamental flaws. First, the Riddicks' ADU is not a "guest house," and it is probably not an "accessory self-contained unit" either. Second, even if it were, such structures are only disqualified from the CDP exemption when they are detached from the main residence.

The Riddicks' proposed ADU is not a "guest house." That term is defined in Malibu's LCP and it does not apply. For example, a "guest house" under the LCP's definition contains no kitchen. But the Riddicks' proposed ADU does contain a kitchen. *See* Gov't Code, § 65852.2(j)(1) (defining ADUs as including "permanent provisions for . . . cooking[.]"). Similarly, the LCP's definition provides that a "guest house" is "not rented or otherwise used as a separate dwelling," while the Riddicks' ADU is to be utilized as a separate dwelling for Renee.

It is also doubtful whether the ADU is an "accessory self-contained residential unit." While that term is not defined in the LCP, the plain meaning of the phrase "self-contained" does not apply to the Riddicks' proposed ADU, which shares walls and utility connections with the main residence. In ordinary use, the term "self-contained" means "complete in itself" or "independent."[3] The proposed ADU could not stand or operate free from the primary residence and is therefore not "self-contained" in the ordinary sense. Respondents have offered no interpretation of this provision which gives effect to the term "self-contained." (*Compare* AR 16 *with* AR 540); *see Delaney v. Superior Court* (1990) 50 Cal. 3d 785, 798–99 ("Significance should be given, if possible, to every word of an act.") (internal citations omitted).

Regardless, even if the Riddicks' ADU were a guest house or a self-contained unit, it would still be exempt from the CDP requirement because it is a structure directly attached to their residence. The disqualification of guest houses and self-contained units from the exemption applies

[3] *See self-contained*, Merriam-Webster.Com Dictionary, https://www.merriam-webster.com/dictionary/self-contained (last accessed April 24, 2022); *see also Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988) ("Words used in a statute . . . should be given the meaning they bear in ordinary use.").

only to units which are detached. LIP Section 13.4.1 creates two broad categories of exempted development: first, "all fixtures and structures directly attached to the residence," and second, "those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping[.]" It is this second category, and not the first, which is written to exclude guest houses and self-contained units. And it is plain that this second category contemplates only *detached* structures. After all, structures like garages, storage sheds, and even guest houses may be attached or detached. *See, e.g.,* LIP § 2.1 (Guest houses may be "attached or detached living quarters[.]"). An attached garage, for example, would fall under the first category as an attached structure, even though garages in general would otherwise fall under the second category as structures normally associated with a single-family residence. By the same token, an attached ADU also falls under the first category, even if a detached ADU might fall under the second and be subject to the limiting language. *See Kaatz v. City of Seaside* (2006) 143 Cal. App. 4th 13, 36.

This conclusion becomes even more certain when viewed in the context of the Coastal Act regulations, from which the LCP's exemption language is taken nearly verbatim. While the LCP exemption is written as a single paragraph, its source is divided into separately enumerated subdivisions. *See* Cal. Code Regs., tit. 14, § 13250(a)(1)–(2). The first category—for all attached fixtures and structures—is set forth in subdivision (a)(1). The second category—for structures normally associated with a single-family residence—is contained in subdivision (a)(2). The language about guest homes and self-contained units is found in subdivision (a)(2), but not in subdivision (a)(1). Thus, that exclusion applies only to the second category. *See Kaatz*, 43 Cal. App. 4th at 40 (applying *noscitur a sociis*). It does not apply to attached structures.

Finally, and not to overlook the obvious, both the LCP and the Coastal Act regulations exempt "*all* fixtures and other structures directly attached to a residence." (emph. added). *See Delaney*, 50 Cal. 3d at 798–99 ("Significance should be given, if possible, to every word of an act.").

Because the Riddicks' proposed ADU is attached to their main residence, it is exempt from the CDP requirement. *See Venice Coalition to Preserve Unique Cmty. Char. v. Cty. of L.A.* (2019)

31 Cal. App. 5th 42, 53 (Coastal Act's CDP exemption for improvements includes additions). The limiting language about guest houses and self-contained units does not apply.

B. <u>The Coastal Commission's January 2022 memo does not change this</u>

In January, 2022, two months after the instant action was filed, the Coastal Commission "reevaluated its position" on CDP exemptions,[4] and "found that the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement to an existing [single-family residence]. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing [residence] or is in a detached structure on the same property." (AR 3567). Moreover, "based on the finding that a variety of types of [ADUs]—including both attached and detached [ADUs]—could have coastal resource impacts that make exemptions inappropriate," the Coastal Commission no longer considers attached ADUs to be exempt. (AR 3567).

At the outset, it must be noted that at all times relevant to this dispute, the Coastal Commission's position was that attached ADUs are exempt from the CDP requirement. *Cf. City of Grass Valley v. Cohen* (2017) 17 Cal. App. 5th 567, 580 (mandamus court applies the law in effect at the time the administrative decision was made). Even so, it must also be noted that the Coastal Commission's guidance on this issue is just that—guidance, not law. *See Yamaha Corp. of Am. v. State Bd. of Equalization* (1999) 19 Cal. 4th 1, 11; *id.* at 11 n.4 (*see also* AR 1888 (Coastal Commission "guidance does not automatically rewrite the city's certified LCP.")). The meaning and effect of the exemption provisions at issue, like all questions of law, must be reviewed *de novo*. *See Duncan*, 77 Cal. App. 4th at 1174.

There are several flaws with the Coastal Commission's latest interpretation. First, the memorandum does not address the plain language of the exemption, which refers to *all* attached structures. Instead, it asserts that an ADU application should be subject to a CDP because it involves "the creation of a new residence." That conclusion is dubious and finds no traction in the text of the exemption. The Government Code provides that—for utility connection purposes, at least—an

[4] Petitioners concede that this guidance may potentially be relevant to their traditional petition for writ of mandate. However, it was not released until long after the City Council's denial of the Riddicks' appeal below, and thus could not have been a part of the Council's decisionmaking process. It therefore has no relevance to the petition for administrative mandate.

ADU constructed on a lot with an existing residence "shall *not* be considered . . . to be a new residential use[.]" Gov. Code, § 65852.2(f)(2) (emph. added). Regardless, neither the LCP nor the Coastal Act regulations, both of which exempt *all* attached structures, makes any distinction between attached structures which do not constitute a new residence and those which do.

Moreover, the Coastal Commission's finding that even attached ADUs could impact coastal resources ignores the fact that the agency has, consistent with Coastal Act requirements, already codified specific categories of otherwise-exempt development that nevertheless require a CDP based on their risk of environmental impact.[5] In doing so, it did not include attached ADUs, nor did it include "new residences." If the Coastal Commission now considers attached ADUs in non-sensitive areas to carry an unacceptable risk of environmental impact, it may amend its regulations through notice and comment. Until then, the law remains that "no coastal development permit shall be required" for "improvements to existing single-family residences," including "all fixtures and structures directly attached" to the primary residence. *See* Gov. Code, § 30610(a); Cal. Code Regs., tit. 14, § 13250(a)(1); Malibu LIP § 13.4.1.

C. State law compels the approval of the Riddicks' second application

Because the Riddicks' project is exempt from the CDP requirement, the project need not conform with the restrictive setback and lot coverage requirements in Malibu's LCP. Instead, state ADU law controls.[6] Gov. Code, § 65852.2(b). Under those standards, the Riddicks are entitled to approval of their project.

Section 65852.2 sets out the "maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed[.]" Gov. Code § 65852.2(a)(6). Two of those design standards

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[5] The Coastal Act authorizes the Coastal Commission to "specify, *by regulation*, those classes of development which involve a risk of adverse environmental effect" and which are therefore ineligible for exemption. Pub. Res. Code § 30610(a) (emph. added).

[6] Where a local agency has not adopted an ordinance pursuant to state ADU law, as Malibu has not, then an ADU application is governed directly by design standards provided in state law. *Id*. Where this is the case, the Government Code has preemptive effect, and any local regulations to the contrary are unenforceable. *Id.* §§ (a)(4), (b).

are directly at issue in this case. First, if there is an existing primary dwelling, the total floor area of an attached ADU shall not exceed 50 percent of the existing primary dwelling. *Id.* § (a)(1)(D)(iv). Second, a setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is not converted from an existing structure. *Id.* § (a)(1)(D)(vii). The law also specifically prohibits the City from establishing a maximum square footage requirement that is less than 850 square feet, *id.* § (c)(2)(B)(i)-(ii), and from imposing any other size requirement—including those based on lot coverage—which would not permit at least an 800 square-foot ADU with four-foot side and rear yard setbacks. *Id.* § (c)(2)(C).

The Riddicks' modest proposal fits well within the applicable criteria. At 469 square feet (AR 1900) it measures less than 20 percent of the floor area of the main residence—far less than the 50 percent maximum imposed by state law. It also enjoys setbacks greater than four feet on both the side and rear yards. And the City is prohibited from imposing its more restrictive TDSF, TILC, and setback standards.

Furthermore, the Riddicks' second application must be approved on a ministerial basis. Gov. Code, § 65852.2(b) (City must "approve or disapprove the application ministerially without discretionary review" pursuant to the statewide design standards). And the City must decide the application within 60 days from the date it receives a completed application. *Id.* That decision is long overdue. The City's refusal to process the Riddicks' second application in this manner therefore constitutes a failure to perform a non-discretionary act with the law specifically enjoins. *See* Code Civ. Proc. § 1085.

II. THE CITY COUNCIL'S DECISION IS NOT SUPPORTED BY EVIDENCE

As explained above, the Riddicks are entitled to a traditional writ of mandate compelling Respondents to approve their ADU project. Separately, the Riddicks also seek a writ of administrative mandate overturning the City Council decision which denied their initial application.

In evaluating a petition for administrative mandate, the reviewing court must determine "both whether substantial evidence supports the administrative agency's findings and whether the findings support the agency's decision." *Topanga Ass'n for a Scenic Community v. Cty. of L.A.*, (1974) 11 Cal. 3d 506, 514-15; *see* Code Civ. Proc. § 1094.5(b). The court should not "speculate

as to the . . . basis for decision," but instead must determine whether the agency has demonstrated that its decision "bridge[d] the analytic gap between the raw evidence and ultimate decision[.]" *Topanga*, 11 Cal. 3d at 515. Mandamus is also appropriate where the agency failed to provide a fair hearing. *Guilbert v. Regents of Univ. of Cal.* (1979) 93 Cal. App. 3d 233, 241.

Resolution No. 21-47 presents a host of analytical errors, making numerous findings which cannot be supported by the evidence, and entering numerous conclusions which cannot be supported by its findings.

1. Coastal Commission guidance

Time and again throughout the permit process, the Riddicks raised then-effective Coastal Commission guidance confirming their position that an attached ADU is exempt from the CDP requirement, and specifically interpreting the terms "guest house or accessory self-contained unit" as referring only to detached structures. (AR 1111, 1213–14, 1624, 1496, 2163–64, 2306). The substance of this guidance was not addressed by any City staff or officials at any point in the record. (*See* AR 1624, in which Mr. Riddick asks Mr. Rusin "why haven't you addressed the only argument we made in my December 7, 2020 memorandum, which is that our attached ADU falls within the exception enumerated by Section 13.4.1 of Malibu's existing LCP? Your response does not even mention the exception, which is the only argument we made. Are you planning on completely ignoring what we wrote?").

For example, in response to the Riddicks' point that the Coastal Commission interpreted the exemption language to attached ADUs, Planning Director Mr. Mollica responded only that the Coastal Commission's guidance "does not automatically rewrite the city's certified LCP." (AR 1888). Similarly, the staff report to the City Council observed that "currently certified provisions of LCPs are not superseded by" ADU law. (AR 22; *see also* AR 3579). These protestations utterly fail to address the fact that the in-effect guidance directly interpreted the exemption language in a manner directly contrary to the City's interpretation. Thus, Resolution No. 21-47 failed to adequately address the determinative legal question presented below.

Instead, the substance of the Coastal Commission's guidance was left unaddressed by the City until after the adoption of Resolution No. 21-47. At a meeting to discuss the Riddicks' second

application, Mr. Mollica expressed, for the first time, that the City had received a previously undisclosed communication from the Coastal Commission indicating that it had modified the position represented in the April 2021 Ainsworth Memo. (AR 3302–03, 3323). According to Mr. Mollica, the Coastal Commission stated that the exemption for attached ADUs was actually meant to refer only to ADUs created by converting existing space, or to JADUs,[7] or to projects less than 500 sq. ft., or to some combination of these categories (*see* AR 3323)—a position that finds absolutely no support in the record. The Riddicks requested additional information about this undisclosed communication, which the City treated as a public records request. (AR 3302–03, 3323). The City responded with several documents, (AR 3404), none of which contained any suggestion that the Coastal Commission had in fact modified its position regarding the exemption for attached ADUs while either of the Riddicks' applications were under review.

The effect of the exemption language in LCP 13.4.1, on which the Coastal Commission guidance spoke directly, was the central argument raised by the Riddicks throughout the application process. Assuming that the Coastal Commission really had informed Malibu of its intention to modify its guidance, the City's decision to withhold that crucial information from the proceedings constitutes a denial of a fair hearing warranting reversal. *See Pinheiro v. Civil Service Com. for Cty. of Fresno* (2016) 245 Cal. App. 4th 1458, 1467(the "right to a hearing is violated if an administrative tribunal relies on evidence outside the record in reaching its decision.").[8]

Regardless, the complete failure, if not the willful refusal, of the City to engage with the substance of the in-effect Coastal Commission guidance represents a severe gap in their decisionmaking process. Mandamus is therefore appropriate.

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[7] Junior Accessory Dwelling Units, or JADUs, are a subset of ADUs which are no more than 500 square feet and are contained entirely within a single-family residence. Gov. Code, § 65852.22(h)(1).

[8] *See also Dep't of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.,* (2006) 40 Cal. 4th 1, 11 ("The decision of the agency [] should be based on the record and not on off-the-record discussions from which the parties are excluded); *English v. City of Long Beach* (1950) 35 Cal. 2d 155, 158-59 ("[T]he right of a hearing before an administrative tribunal would be meaningless of the tribunal were permitted to base its determination upon information received without the knowledge of the parties.").

2. Other analytical errors

Several other flaws with the administrative decisionmaking process below call for mandamus as well. First, councilmembers relied on an assumption that the Riddicks had been given opportunities to revise the minimal alterations to their primary residence for compliance with Malibu's LCP. (AR 3607). That assumption is not only unsupported by the record; it is patently false. (AR 1112, 3633). City permitting staff did not raise any issues with the proposed alterations to the primary structure, (AR 3633), and the Riddicks had no reason to address any issues with the main residence—even eliminating those additions would not help, since the City maintained that the proposed ADU by itself brought the project out of compliance with the LCP.[9]

Next, the Resolution erroneously found that the Riddicks presented no evidence why it was medically necessary for Renee to live in a separated unit and not in the main house with the Riddicks, their children, and pets. (AR 3–4). Wrong. The Riddicks presented a note from Renee's physician addressing this need. (AR 665; *see also* AR 1752). Besides, it strains credulity to imagine that City officials and staff were unaware of the importance of social distancing for *any* senior citizen, let alone one with pre-existing immunodeficiency. (AR 3592).

Finally, the Resolution improperly denied the RRA upon the unsubstantiated finding that approving the accommodation would "undoubtedly have cumulative impacts on coastal resources as other property owners will undoubtedly seek similar reasonable disability accommodations." (AR 4–5). But in the very same paragraph, it explained that every interested City department had "reviewed the project and found that it will *not* adversely impact coastal resources." (AR 4) (emph. added); (*see also* AR 3622). Renee is either entitled to an RRA under the specifics of her application, the LCP, and related state and federal housing laws, or she is not. The City cannot base its denial of a non-hazardous disability accommodation on the fear that granting it would encourage other people to apply for hazardous accommodations.

III. MALIBU VOLATED THE HOUSING ACCOUNTABILITY ACT

[9] Of course, the Riddicks did indicate their willingness to adjust the proposal to address any issues with the compensatory expansion to the primary residence. (*see* AR 1493, 2067, 3163, 3600–01, 3603, 3635–36).

The Housing Accountability Act (HAA) provides that when a local agency seeks to disapprove a housing development project that complies with all applicable law, it must base its decision on written findings that the project will have a specific, adverse impact upon the public health or safety. Gov. Code, § 65589.5(j)(1)(A)–(B). If the agency considers a proposal to be inconsistent with applicable law, it must provide written documentation explaining that conclusion. Gov. Code, § 65589.5(j)(2)(A).

For a housing proposal with fewer than 150 units, such documentation must be provided within 30 days of the date that the application was "determined to be complete." Gov. Code, § 65589.5(j)(2)(A)(i). Otherwise, "the housing development project shall be deemed consistent applicable law. Gov. Code, § 65589.5(j)(2)(B). The phrase "determined to be complete" is defined as meaning that "the applicant has submitted a complete application pursuant to [Government Code] Section 65943." Gov. Code § 65589.5(h)(9). That section, part of the Permit Streamlining Act (PSA), provides that an agency must make a written determination of completeness within 30 calendar days after receiving an application. Gov. Code, § 65943(a). If a written determination is not made within 30 days, the application shall be "deemed complete." Gov. Code, § 65943(a).

The Riddicks' application was processed as one for a coastal development permit. The PSA required Respondents to provide a written determination of completeness or incompleteness within 30 days. Yet the Planning Department did not make this determination until October 9, 2020—91 days after the Riddicks' application was submitted on July 10 of that year. (AR 2125). As a result, the application was "deemed complete" by operation of Section 65943(a) on August 10, 2020, the 31st day after the application was filed, and was "determined to be complete" under the HAA on that same day. Gov. Code, § 65859.5(h)(9). Therefore, if Respondents considered the project to be inconsistent with applicable law, the HAA required them to issue written documentation explaining the reasons for that conclusion by September 9th (*i.e.*, 30 days after the application was determined to be complete). Yet the City did not provide any written explanation of the project's alleged inconsistency with law until October 9, far exceeding that statutory deadline.

By operation of law, the project was "deemed consistent, compliant, and in conformity" with all applicable provisions of law. Gov. Code, § 65589.5(j)(2)(B). And because the project was

deemed consistent with law, Respondents were prohibited from disapproving the project without making the findings required by the HAA. *See* Gov. Code, § 65589.5(j)(1)(A)–(B). The record is devoid of any such written findings because Respondents never made them. The City's denial of the Riddicks' project therefore violated the HAA and the Riddicks are entitled to an order compelling compliance with the HAA. Gov. Code, § 65589.5(k)(1)(A)(i)(II), (k)(1)(A)(ii).

Moreover, if the Court finds that Respondents acted in bad faith, it may bypass remand and direct them to approve the project. Gov. Code, § 65589.5(k)(1)(A)(ii). Here, although the Riddicks consistently raised the then-effective Coastal Commission guidance memoranda throughout the application process, they were never given any suggestion that Coastal Commission representatives had qualified the language from its published guidance in private communications with the City until Mr. Mollica averred as such at a meeting on October 6, 2021, after the City's initial permit denial. As described above, if this statement is true, then the ex-parte communication between the Coastal Commission and the City was vital evidence improperly withheld from the hearing. If, however, the statement was false, then it is evidence that Respondents denied the Riddicks' project in bad faith. That conclusion is compounded by the fact that the City entirely failed to engage with the substance of the Coastal Commission guidance and its interpretation of the exemption provision in the LCP which conformed precisely to the Riddicks' theory.

CONCLUSION

For the reasons stated above, this Court should grant Petitioners' requests for traditional and administrative mandamus and should enter an order directing compliance with the Housing Accountability Act, including an order that Respondents approve the Riddicks' project.

DATED: May 10, 2022.

Respectfully submitted,

BRIAN T. HODGES
DAVID J. DEERSON
Pacific Legal Foundation

By s/ David J. Deerson
DAVID J. DEERSON
Attorney for Petitioners

DECLARATION OF SERVICE

I, Kiren Mathews, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 555 Capitol Mall, Suite 1290, Sacramento, California 95814.

I hereby certify that on May 10, 2022, I served the attached **PETITIONERS' OPENING BRIEF** in self- addressed envelopes deposited with the U.S. Postal Service to:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 10th day of May, 2022, at Sacramento, California.

/s/ Kiren Mathews
KIREN MATHEWS

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