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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. \_\_\_\_\_

**VERIFIED PETITION FOR WRIT OF  
MANDATE (CCP § 1085), AND FOR  
WRIT OF ADMINISTRATIVE  
MANDAMUS (CCP § 1094.5), and  
COMPLAINT FOR DECLARATORY  
RELIEF (CCP § 1060)**

## INTRODUCTION

This petition asks the Court to enforce recent amendments to California’s housing laws that help reduce the state’s severe housing shortage by encouraging the creation of “accessory dwelling units” (commonly known as ADUs, in-law units, granny flats, or “second units”) on lots zoned for single-family use. *See, generally*, Gov’t Code §§ 65852.150 through 65852.22. With limited exception, these amendments protect the property rights of homeowners by requiring local governments to ministerially approve ADU permits, and they forbid local governments from adopting standards that conflict with State law. *See* Gov’t Code § 65852.2(a)(3), (e)(1).

Enforcement of State ADU laws are a matter of utmost public importance. As is widely recognized, California faces a severe shortage of lower-cost housing. *See* Gov’t Code § 65859.150. Yet year after year, too few homes are built to meet growing housing demands, and regulation makes the cost too high for the average family. This situation is nowhere more dire than in the State’s coastal communities like the City of Malibu. Despite having set specific affordable and middle-class housing objectives nearly a decade ago, Malibu has failed to add a single unit of affordable or middle-class housing since at least 2014. *See* City of Malibu (Draft) 2021–2029 Housing Element Appendix A, at A-6 (Aug. 2021) (reporting housing progress for the years 2014–2021). It is estimated that California’s housing deficit is projected to grow to 1,800,000 units across the state in the next decade unless more units are built. Manuela Tobias, *Victorious in Recall, Newsom Refocuses on California Housing Crisis*, CalMatters.org (Sept. 20, 2021).<sup>1</sup>

Responding to this crisis, the California Legislature recently declared that ADUs are an “essential component” of the housing supply. Senate Bill 1069 (2016), codified at Gov’t Code § 65852.150(a). The Legislature provided several reasons for elevating the status of these small units. Key to this case, the Legislature found that ADUs are inexpensive for homeowners to build, and that they provide much-needed housing for family members, the elderly, and the disabled—among others—at below-market prices within existing neighborhoods. Senate Bill 1069 (2016), codified at Gov’t Code § 65852.150(a).

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<sup>1</sup> Available at: <https://calmatters.org/housing/2021/09/california-housing-crisis-newsom-signs-bills/>.

This case exemplifies the Legislature’s hopes. Malibu homeowners Jason and Elizabeth Riddick applied for a permit to add a small ADU for Elizabeth’s elderly and disabled mother, Renee Sperling, which would allow her to age with dignity and with easy access to the care she requires. Under the State ADU law, the permit should have issued long ago and Ms. Sperling should have been secure in her home. But the City has resisted the Legislature’s will at every step, refusing to comply with the State’s streamlined ministerial approval process and refusing to follow California Coastal Commission guidance on the matter. Judicial intervention is therefore necessary to vindicate the Riddicks’ property rights to build their ADU and to give effect to an “essential component” of California’s housing policy.

## PARTIES

## Petitioners

1. Petitioners Jason and Elizabeth Riddick (the Riddicks) own residential property in Malibu, California, where they live with their children. In July 2020, they filed an application with the City of Malibu, seeking permission to construct a small accessory dwelling unit (ADU) attached to their residence for the benefit of Elizabeth's mother, Renee Sperling.

2. Petitioner Renee Sperling is an octogenarian who has lived in Southern California her entire life. In recent years, she has seen her health deteriorate. Her movement is hindered by psoriatic arthritis, as well as severe osteoarthritis in her knee and lumbar myelopathy. She is partially blind due to glaucoma. She also suffers from immunodeficiency; due to her weakened immune system, even the common cold can have a devastating effect on her health. As a result of her disabilities, Ms. Sperling needs to live near Elizabeth, who resigned from her full-time job to become Ms. Sperling's primary caretaker. However, due to her immunodeficiency, it is medically necessary that she reside in separate quarters and not be housed together with the rest of the family, including her grandchildren, some of whom were too young to obtain vaccination against COVID-19 until California made the vaccine available to children aged 5-11 on November 3, 2021. *See*

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1 Office of Governor Gavin Newsom, *California Launches Robust Vaccination Program for 5-11*  
2 *Age Group, Ready to Vaccinate Newly Eligible Californians*, CA.gov (Nov. 3, 2021).<sup>2</sup>

3 **Respondent**

4 3. Respondent City of Malibu is a political subdivision of the state of California located  
5 within Los Angeles County. It is the primary permitting authority for all land use developments  
6 within its jurisdiction. Under the Coastal Act, Respondent has had the primary permitting authority  
7 for all Coastal Development Permits since the California Coastal Commission certified the City's  
8 Local Coastal Program in 2002.

9 4. Respondent Malibu City Council is the governing body of the City. Pursuant to  
10 Malibu Muni. Code § 17.04.220, it is the body authorized to adjudicate appeals from decisions of  
11 the City's Planning Commission.

12 5. Respondent Planning Department is an administrative body of the City. Among  
13 other things, and along with its Director, Richard Mollica, it is the board tasked with, processing  
14 applications for land use and development permits, Malibu Muni. Code § 17.62.030, and for  
15 requests for reasonable disability accommodations, Malibu Muni. Code § 17.63.030.

16 **JURISDICTION AND VENUE**

17 6. The Court has jurisdiction of this petition for writ of mandate pursuant to Code of  
18 Civil Procedure Section 1085.

19 7. The Court has jurisdiction of this petition for writ of administrative mandamus  
20 pursuant to Code of Civil Procedure Section 1094.6.

21 8. In an action against a city, venue is proper in the county in which the city is situated.  
22 Code of Civ. Proc. § 393(B).

23 **APPLICABLE LAW**

24 ***State ADU Law***

25 9. To address the state's "severe housing crisis," *see* Senate Bill 1069 (2016), *codified*  
26 *at* Gov't Code § 65852.150(a), the California Legislature established a mandatory statewide

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28 <sup>2</sup> Available at: <https://www.gov.ca.gov/2021/11/03/california-launches-robust-vaccination-program-for-5-11-age-group-ready-to-vaccinate-newly-eligible-californians/>.

1 framework for owners of existing residential properties to obtain by-right permits to create  
2 Accessory Dwelling Units (ADUs). To realize this essential component of the housing supply, the  
3 Legislature passed a series of bills in 2016 and again in 2019 aimed at simplifying and streamlining  
4 the design requirements and permitting process for ADUs. *See* Senate Bill 13 (2019); Assembly  
5 Bill 68 (2019); Assembly Bill 881 (2019); Senate Bill 1069 (2016); Assembly Bill 2299 (2016);  
6 Assembly Bill 2406 (2016). These statutes are generally codified at Government Code Sections  
7 65852.150 through 65852.22.

8 10. Together, these important state laws establish criteria under which permit  
9 applications to add an ADU must receive ministerial approval, *see* Gov't Code §§ 65852.2(a)(3),  
10 (e)(1), and require local governments either to adopt their own ordinances to achieve this result or  
11 else implement the statewide criteria. *Id.* § (a)–(b).

12 11. As relevant to this matter, these statewide criteria include a maximum floor space  
13 of 50% of the existing primary dwelling for attached units, *id.* § (a)(1)(D)(iv), and setback  
14 requirements of no more than four feet from the side and rear lot lines, *id.* § (a)(1)(D)(vii).

15 12. State law also prohibits local governments from imposing any limits on lot coverage  
16 that would not permit at least an 800-square-foot ADU with four-foot side and rear yard setbacks.  
17 *Id.* § (c)(2)(C). These criteria represent “the maximum standards that local agencies shall use to  
18 evaluate a proposed [ADU] on a lot zoned for residential use that contains an existing single-family  
19 dwelling.” *Id.* § (a)(6).

20 13. Subdivision (l) of Section 65852.2 provides: “Nothing in this section shall be  
21 construed to supersede or in any way alter or lessen the effect or application of the California  
22 Coastal Act of 1976 . . . except that the local government shall not be required to hold public  
23 hearings for coastal development permit applications for [ADUs].” Thus, the key question raised  
24 in the administrative proceedings below was whether the ADU application was subject to the  
25 State’s ADU law or to Malibu’s Local Coastal Program (LCP).

26 ***The California Coastal Act and Malibu’s Local Coastal Program***

27 14. The California Coastal Act, Pub. Res. Code § 30000, *et seq.*, requires local  
28 governments with jurisdiction over Coastal Zone lands to adopt a Local Coastal Program (LCP),

1 which in turn must be certified by the California Coastal Commission. Pub. Res. Code, § 30500.  
2 An LCP typically has two parts: a Land Use Plan (LUP), and a Local Implementation Plan (LIP).  
3 The LUP is a general policy document that sets forth policies for coastal development and has the  
4 force of law. The LIP is the collection of implementing ordinances that carry out LUP policies.  
5 Both the LUP and the LIP—together, the LCP—must be consistent with the Coastal Act.

6 15. Chapter 7 of the Coastal Act provides that, with certain exceptions, “any person . . .  
7 wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal  
8 development permit.” Pub. Res. Code § 30600(a).

9 16. However, Chapter 7 also provides that, “[n]otwithstanding any other provision of  
10 this division, no coastal development permit shall be required pursuant to this chapter for . . .  
11 [i]mprovements to existing single-family residences[.]” Pub. Res. Code § 30610(a).

12 17. Once an LCP for a given area has been certified, “the development review authority  
13 provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the  
14 commission over any new development proposed within the area to which the certified [LCP] . . .  
15 applies and shall at that time be delegated to the local government that is implementing the [LCP]  
16 . . . .” Pub. Res. Code § 30519(a).

17 18. In 2002, the California Coastal Commission certified the City of Malibu Local  
18 Coastal Program (LCP). All properties within the City of Malibu, including the Property that is the  
19 subject of these petitions, are located within the Coastal Zone, and are therefore subject to the LCP.

20 19. Reflecting Chapter 7 of the Coastal Act, Malibu’s LIP § 13.4.1 provides that  
21 “[i]mprovements to existing single-family residences” are “exempt from the requirement to obtain  
22 a Coastal Development Permit.” This provision was the focus to the parties’ dispute below. If the  
23 exemption applies to the Riddick’s application, then the City was required to issue the permit  
24 pursuant to State ADU law.

### 25 *Administrative Guidance*

26 20. In April 2017, in November 2017, and again in April 2020, the California Coastal  
27 Commission, through Executive Director John Ainsworth, issued guidance memoranda intended to  
28 help local governments interpret and implement State ADU law in the coastal zone, and to

1 “harmonize the new ADU requirements with LCP and Coastal Act policies.” Each of the  
2 memoranda is specifically addressed to Planning Directors of Coastal Cities and Counties. True  
3 and correct copies of these guidance documents are attached as EXHIBITS A, B, and C, in  
4 chronological order of issuance.

5 21. The November 2017 memo notes that although the ADU laws do not supersede the  
6 Coastal Act, “it would be a mistake for local governments with certified LCPs to interpret this as a  
7 signal that they can simply disregard the new law in the coastal zone. The Commission interprets  
8 the effect of [subdivision (l)] as preserving the authority of local governments to protect coastal  
9 resources when regulating ADUs in the coastal zone, while also complying with the standards in  
10 Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent  
11 with the standards in Section 65852.2 should be approved administratively, provided they are also  
12 consistent with Chapter 3 of the Coastal Act as implemented in the LCP.” EXHIBIT B, p. 1.

13 22. Both the April 2017 and the April 2020 memos instruct planning departments  
14 processing ADU applications to check whether a proposed ADU qualifies as exempt from the  
15 requirement to obtain a CDP before reviewing it for compliance with local coastal policies.  
16 Interpreting Public Resources Code Section 30610(a), and its implementing regulations at  
17 California Code of Regulations Title 14, Section 13250, the April 2017 memo explains that  
18 “[i]mprovements such as additions to existing single-family dwellings are generally exempt from  
19 Coastal Act permitting requirement except when they involve a risk of adverse environmental  
20 effects[.]” It also distinguishes between ADUs that are “contained within or directly attached to  
21 the existing single-family structure,” which qualify for the exemption, and “[s]elf-contained  
22 residential units,’ i.e., detached residential units,” which do not qualify. EXHIBIT A, p. 3. The  
23 April 2020 memo notes to the same effect that “[t]ypically, the construction or conversion of an  
24 ADU/JADU contained within or directly attached to an existing single-family residence would  
25 qualify as an exempt improvement to a single-family residence.” EXHIBIT C, p. 4–5.

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1 **FACTUAL ALLEGATIONS**

2 ***The Riddicks' Application***

3 23. Jason and Elizabeth Riddick (the Riddicks) own residential property at 6255 Paseo  
4 Canyon Drive, situated in Malibu, California, where they live with their children.

5 24. The Riddicks sought realistic and affordable options to house Elizabeth's aging  
6 mother, Renee Sperling. Given Ms. Sperling's myriad ailments, she needs to live closer to her  
7 family so that Elizabeth could provide her with full-time care. Given Renee's immunodeficiency,  
8 and especially in light of the ongoing COVID-19 pandemic, she also requires, as a medical  
9 necessity, to live in a space that is separate from the family's main living quarters in order to protect  
10 her from ordinary illnesses that could be potentially deadly to her.

11 25. The Riddicks were thrilled to learn that then-recently adopted California legislation  
12 declared ADUs to be an "essential component" of California's housing supply, and that it expressed  
13 a legislative intent that owners of single family homes have a right to build an ADU on their  
14 property and that local laws not be "so arbitrary, excessive, or burdensome so as to unreasonably  
15 restrict the ability of homeowners to create accessory dwelling units" in appropriate zones.

16 26. Given California state law and policy, and the Riddicks' and Renee's particular  
17 needs, the Riddicks determined that an ADU attached to their main residence was the ideal solution  
18 for providing Renee safe housing in which she could age in place with the loving care of her family.

19 27. The Riddicks worked closely with their property's Homeowners' Association  
20 (HOA) and with their hired architect to create plans which suited the needs of Renee, the Riddicks,  
21 their surrounding neighbors, and the HOA.

22 28. Because the new ADU would take over some of the existing floor-space from the  
23 primary residence, the plans included minor expansions of the primary residence as a compensatory  
24 measure—the ADU, as proposed, would intrude on the existing master bath requiring the  
25 construction of a new bathroom in the primary structure. In total, this planned compensatory  
26 addition to the main residence constituted approximately 44-60 square feet of new floor space. That  
27 additional square footage posed no problem to the main structure's total square footage calculation

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1 because it could easily be offset by such measures as replacing the awning over the Riddicks' front  
2 porch with slatted beams.

3 29. On or about July 10, 2020, the Riddicks submitted to the City an application to  
4 proceed with the plans and construct their attached ADU.

5 30. Under the Coastal Act and Malibu's LCP, as interpreted by the California Coastal  
6 Commission, an attached ADU is exempt from the requirement to obtain a Coastal Development  
7 Permit (CDP) because it is an improvement to a single-family residence, and because it is a structure  
8 directly attached to the main residence.

9 31. Nevertheless, the City insisted on processing the application as a non-exempt project  
10 requiring a CDP, and titled the application as "CDP 20-034."

11 32. The application obtained requisite approvals from the Los Angeles County Fire  
12 Department, the City Geotechnical staff, and the City Department of Public Works.

13 33. On October 9, 2020, more than 90 days after their application was submitted,  
14 Assistant Planner David Eng sent the Riddicks an email with an attached "letter of project  
15 incompleteness" on behalf of the City Planning Department. The email states that the Riddicks'  
16 "project is temporarily halted from further review." A true and correct copy of the email is attached  
17 as EXHIBIT D. A copy of the "letter of project incompleteness" is attached as EXHIBIT E.

18 34. According to the email, the most significant issues with the Riddicks' application  
19 were "its non-compliance with setbacks and maximum allowed Total Development Square Footage  
20 (TDSF) area." Such requirements are precluded by State ADU law, except to the extent they apply  
21 by operation of the Coastal Act.

22 35. The setback and TDSF requirements referred to are codified in Malibu's LCP but  
23 do not appear in the Coastal Act—indeed, on information and belief, the TDSF requirement is  
24 unique to Malibu. Given the preemptive effect of California state law on ADU development, such  
25 requirements are only applicable to a given ADU project if that project is required to obtain a CDP  
26 under the Coastal Act or under a certified LCP.

27 36. The "letter of project incompleteness" states that "[l]ocal jurisdictions are required  
28 to comply with state provisions allowing and permitting of accessory dwelling units (ADU)." It

1 further states: “Government Code section 65852.2 does not supersede currently certified provisions  
2 of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the  
3 provisions of the LCP will continue to apply to Coastal Development permit applications for  
4 ADU’s. The subject application for a new attached ADU does not comply with the City’s LCP  
5 regulations pertaining to setbacks and maximum allowed total development square footage.”

6 37. On December 7, 2020, the Riddicks sent a letter to City officials disputing the  
7 contention that the Riddicks’ project required a CDP. A true and correct copy of that letter is  
8 attached as Exhibit F.

9 38. In particular, the Riddicks observed that Malibu’s LIP at Section 13.4.1 specifically  
10 exempts “structures attached directly to the residence” which do not “involve a risk of adverse  
11 environmental impact[.]” They further observed that administrative guidance from the Coastal  
12 Commission supported this understanding.

13 39. On February 24, 2021, the City’s planning director, Richard Mollica, responded to  
14 the Riddicks’ December 7, 2020, letter. A true and correct copy of that response is attached as  
15 Exhibit G. The letter reiterates the City’s position that the Riddicks’ project required a CDP, but it  
16 did not address the Riddicks’ arguments regarding the language of Malibu LIP Section 13.4.1 nor  
17 the Coastal Commission guidance.

18 40. Faced with the City’s reluctance to follow Coastal Commission guidance and  
19 advance the ADU application under State law, on April 13, 2021, the Riddicks submitted a letter  
20 formally requesting a reasonable disability accommodation (RRA) under Malibu LIP Section  
21 13.30. In the same letter, they reiterated their argument, which remained unaddressed by the City,  
22 that the project was exempt from the CDP requirement under Malibu’s LCP. A true and correct  
23 copy of this letter is attached as Exhibit H.

24 **The Planning Commission’s Hearing and Adoption of Resolution No. 21-51**

25 41. The Riddicks did not receive any further communication or information from the  
26 City regarding their application or RRA until June 4, 2021, just three days before the date set for  
27 the Malibu Planning Commissions’ hearing on the Riddicks’ application. At this time, the Planning

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1 Department staff issued its report recommending that the Commission deny both the CDP and the  
2 request for accommodation.

3 42. At its June 7, 2021, meeting, the Planning Commission took staff's recommendation  
4 and adopted Resolution No. 21-51 by a 3-2 vote, denying both the CDP and the request for  
5 reasonable accommodation.

6 43. Among other things, the Resolution included official findings that the project "will  
7 not adversely impact coastal resources other than by setting a precedent of allowing greater  
8 development in the coastal zone," and that "the proposed project, as designed and conditioned, is  
9 the least environmentally damaging alternative."

10 44. Regarding the CDP, the Planning Commission found that that project could not be  
11 configured to comply with the LCP's TDSF, setback, and Total Impermeable Lot Coverage (TILC)  
12 requirements.

13 45. Like the TDSF and setback requirements, the TILC requirement is precluded by  
14 State ADU law except to the extent that it applies by operation of the Coastal Act.

15 46. Regarding the Riddicks' argument that their project was exempt from the  
16 requirement to obtain a CDP, Assistant City Attorney Trevor Rusin suggested at the hearing that  
17 the exemption provision in LIP § 13.4.1 did not apply because by its terms it does not apply to  
18 "guest houses or accessory self-contained residential units." In making this argument, Rusin did  
19 not acknowledge Coastal Commission guidance concluding that attached ADUs are to be  
20 distinguished from "guest houses or accessory self-contained residential units," which are by their  
21 nature detached.

22 47. Regarding the RRA, the Planning Commission accepted staff's determination that  
23 the accommodation was not necessary because the Riddicks had "reasonable alternatives" for  
24 housing Ms. Sperling, including speculation that the Riddicks could reconfigure existing floor  
25 space of their small home to create an ADU for Ms. Sperling without adding any additional square  
26 footage. This speculation failed to address the fact that Ms. Sperling's immunodeficiency precludes  
27 her from sharing a small home with five other people—one of the primary stated bases supporting  
28 the need for a separate, safe living space.

1           48.     The Planning Commission also accepted staff's determination that, despite its  
2 conclusion that the Riddicks' proposed ADU would have no adverse impact on Coastal Resources,  
3 granting a variance of the TDSF and setback requirements to comply with housing disability law  
4 would effect a fundamental alteration in the nature of their LCP, and that granting the RRA could  
5 adversely impact coastal resources by setting a precedent for other applicants to assert their rights  
6 under housing disability law.

7           49.     Nothing in the record reveals any factual basis for the conclusion that RRAs threaten  
8 to fundamentally alter the nature of Malibu's LCP. To the contrary, the record establishes that the  
9 Riddicks' request was not only the first ADU application, but was also the first-ever request for an  
10 RRA considered by Malibu.

11           50.     Specifically, Assistant Planner David Eng stated: "While we don't believe that the  
12 project will impact things like public access or environmental resources, again, the approval of the  
13 request . . . would allow for higher amounts of development in this neighborhood, and also set a  
14 precedent for pursuing requests for reasonable accommodation to achieve higher levels of  
15 development in the city."

16           51.     Furthermore, the Planning Commission accepted staff's determination that the RRA  
17 would impose an undue burden on the City because approval of the ADU "would require  
18 monitoring by the Planning Director and periodic confirmation that a person with a disability is a  
19 resident at that ADU."

20           52.     Nothing in the record reveals any legal basis for this monitoring claim, nor  
21 demonstrates what such a monitoring requirement would entail nor what it would cost the City in  
22 terms of monetary or labor costs.

23           53.     In any event, the RRA should not have been necessary because the City should have  
24 correctly applied State ADU law.

25     **Appeal to the City Council**

26           54.     The Riddicks filed a timely appeal of Planning Commission Resolution No. 21-51  
27 to the Malibu City Council.

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1           55.     The Riddicks again raised their argument that the project was exempt from the  
2 requirement to obtain CDP under LIP § 13.4.1.

3           56.     Responding to the City’s suggestion—raised for the first time by Assistant City  
4 Attorney Trevor Rusin at the Planning Commission hearing—that the project constitutes a “guest  
5 house or accessory self-contained residential unit” and therefore does not qualify as exempt, the  
6 Riddicks again cited Coastal Commission guidance interpreting those terms to refer exclusively to  
7 detached ADUs, and confirming that attached ADUs, like the Riddicks’ project, do qualify as  
8 exempt.

9           57.     Planning staff issued a report recommending denial of the appeal.

10          58.     On August 19th, the City Council held a public hearing at which it adopted  
11 Resolution No. 21-47. A true and correct copy of the resolution is attached as Exhibit I.

12          59.     Among its findings for denying the appeal, Resolution No. 21-47 avers that the  
13 “proposal for an attached ADU does not qualify for an exemption from the requirement of a CDP.”  
14 The Resolution, again, did not address the Coastal Commission memorandum adopting a contrary  
15 interpretation of the exemption language.

16          60.     The resolution also states that “The Planning Department, City Public Works  
17 Department, and City geotechnical staff have reviewed the project and found that it will not  
18 adversely impact coastal resources other than by setting a precedent of allowing greater  
19 development in the coastal zone.”

20          61.     Despite the resolution’s finding that the ADU does not qualify for an exemption  
21 from the requirement to obtain a CDP, Councilman Mayor Paul Grisanti and Councilwoman Karen  
22 Farrer suggested at the hearing that the true reason for denial concerned not the ADU but the  
23 compensatory additions to the primary residence described in Paragraph 28.

24          62.     For example, Mayor Grisanti stated that “if all of the area that’s the master bath was  
25 designated as part of the ADU, I would find no way to not vote for this. And that’s because that is  
26 exempt, according to what the legislature says, from our setbacks.”

27          63.     Similarly, Councilwoman Farrer stated: “I’ll tell you where I have a problem. It’s  
28 with the primary residence—with the master suite, in that corner. I would really hope that there

1 would be a way to redesign this plan. The master suite—the bathroom/bedroom—is that back  
2 corner that’s encroaching into the setback and exceeding TDSF. It’s not the ADU.”

3 64. Councilman Uhring and Councilwoman Farrer expressed their reliance on the  
4 assumption that the Riddicks had been given opportunities to revise the plans to ensure that the  
5 main residence fully complied with TDSF and setbacks.

6 65. For example, Councilman Steve Uhring stated: “Typically, what the planning  
7 commission, before they vote something down, they say ‘would you like to go back, make some  
8 modifications and bring it back and we’ll take a look at it.’ I would assume they made the same  
9 offer to these folks and they decided not to do that.”

10 66. Councilwoman Farrer stated: “We’ve heard that there has not been an alternative  
11 plan submitted.” She further stated: “I really feel like there is an alternative solution that hasn’t  
12 been explored, and I feel bad that we’re not able to get there, but it looks like there was ample  
13 opportunity for that and it did not come through, for whatever reason.”

14 67. In fact, no such opportunities to adjust the proposal were presented to the Riddicks,  
15 because the entire process was focused on the Planning Department’s position, adopted by the  
16 Planning Commission, that the ADU itself could not proceed because it was subject to the  
17 requirement to obtain a CDP. Therefore, the minor adjustments needed to bring the main residence  
18 in line with the LCP—such as replacing the awning over the front porch—would ostensibly have  
19 been irrelevant.

## 20 **Reapplication**

21 68. On September 2, 2021, the Riddicks, acting on the City Council’s opinion that they  
22 should have been provided an opportunity to modify the proposal, sent an email to City officials  
23 requesting that their application be re-opened with slightly modified plans.

24 69. The new plans were substantially identical with those originally considered by the  
25 City. The only difference is that all proposed additional square footage was designated as part of  
26 the ADU; no additional square footage would be added to the main residence.

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1           70.     Given Mayor Grisanti's comments described in Paragraph 56, the Riddicks had  
2 reason to believe this new application would be supported by the City Council and by planning  
3 staff.

4           71.     At a meeting with Planning Director Richard Mollica and Assistant Planning  
5 Director Adrien Fernandez on September 23, 2021, Mr. Fernandez indicated that it was "critical  
6 that we find out if there is a different way to process this application. However, if it's the same way  
7 to process this, then everything we said is still applicable. If it's the same application, it will still  
8 go through the planning commission and still face a similar decision."

9           72.     Given the Riddicks' understanding that the ADU was exempt from the requirement  
10 to obtain a CDP, and was therefore subject to state law requiring ministerial review for applications  
11 to create ADUs, the Riddicks inquired whether the City would provide ministerial review of their  
12 application without applying the design standards in the LCP.

13          73.     Mr. Mollica suggested that they meet with City Attorney John Cotti, who could  
14 conclusively answer whether ministerial review was available.

15          74.     The Riddicks met with Mr. Cotti on October 6, 2021. Planning Director Mr. Mollica,  
16 Assistant City Attorney Mr. Rusin, and counsel for the Riddicks were also present.

17          75.     At the meeting, Mr. Mollica indicated, for the first time, that Malibu planning staff  
18 had received communications from the Coastal Commission concerning the administrative  
19 guidance on which the Riddicks relied throughout the permitting process. Regarding the guidance  
20 that attached ADUs qualify as exempt from the CDP requirement, Mr. Mollica indicated that  
21 someone from the Coastal Commission had suggested to City staff that the language was meant to  
22 refer only to ADUs created by conversion of existing space, or to Junior ADUs, or to projects less  
23 than 500 sq. ft., or to some combination of these categories, but to no other ADU projects.

24          76.     Although the Riddicks raised the Coastal Commission's guidance throughout the  
25 permit application process, this was the first time it had ever been suggested to them that a  
26 representative or representatives from the Coastal Commission had qualified the language from its  
27 published guidance in private communications with the City or its staff.

28     ///

1           77. In an email on October 8, 2021, the Riddicks through their council requested that  
2 Mr. Mollica send them copies of any correspondence between the Coastal Commission and the  
3 Planning Department containing any indication to the effect that the language from the  
4 administrative guidance was so limited.

5           78. Mr. Mollica referred the email to Patricia Salazar, an administrative staffer at the  
6 Planning Department, and asked her to treat it as a public records request.

7           79. Ms. Salazar filled the request on October 20, 2021. None of the corresponding  
8 documents contained any indication that anyone from the Coastal Commission had ever suggested  
9 to the Malibu Planning Department, or to any other entity, that the language in the Coastal  
10 Commission's guidance relating to CDP exemptions for attached ADUs should in any way be  
11 modified, limited, or otherwise narrowly read.

12           80. On October 25, 2021, City Attorney John Cotti communicated the City's conclusive  
13 determination that the Riddicks' project could not be processed ministerially and that it "is not  
14 exempt from the requirement to obtain a coastal development permit."

15           **FIRST CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDAMUS**

16                           **—Error of Law**

17   (Code Civ. Proc. § 1094.5; 1094.6)

18           81. All of the allegations set forth by paragraph 1 through paragraph 67 are realleged  
19 and incorporated as if set forth fully herein.

20           82. Chapter 7 of the Coastal Act provides that, with limited exceptions, "any person . . .  
21 wishing to perform or undertake any development in the coastal zone . . . shall obtain a coastal  
22 development permit." Pub. Res. Code § 30600(a).

23           83. However, Chapter 7 also provides that, "[n]otwithstanding any other provision of  
24 [the Coastal Act], no coastal development permit shall be required pursuant to this chapter for,"  
25 *inter alia*, "improvements to existing single-family residences[.]" Pub. Res. Code § 30610(a).

26           84. Coastal Commission regulations provide that "[f]or purposes of Public Resources  
27 Code Section 30610(a) where there is an existing single-family residential building, the following

28    ///



1 shall be considered a part of that structure: (1) All fixtures and other structures directly attached to  
2 a residence[.]”

3 85. Similarly, Malibu LIP Section 13.14.1 provides that “[i]mprovements to existing  
4 single-family residences” are “exempt from the requirement to obtain a Coastal Development  
5 Permit.” It further provides that “the terms ‘Improvements to existing single-family residences’  
6 includes all fixtures and structures directly attached to the residence[.]”

7 86. Administrative guidance from the Coastal Commission explains that ADUs which  
8 are directly attached to an existing single-family structure qualify as exempt improvements to  
9 single-family dwellings.

10 87. Because the Riddicks’ project is exempt from the requirement to obtain a CDP, state  
11 ADU law controls.

12 88. Because the Riddicks’ project is fully consistent with the design standards outlined  
13 in State ADU law, the City was legally obligated to ministerially approve the project within 60 days  
14 of receiving a completed application.

15 89. By subjecting the Riddicks’ project to the requirement to obtain a CDP, and by not  
16 ministerially approving the project according to State ADU law, the City failed to proceed in the  
17 manner required by law.

18 90. The Riddicks are entitled to an order remanding the application to the Planning  
19 Commission with direction to review it consistent with State ADU law.

20 91. Pursuant to Government Code Section 1094.6(c), Respondents shall prepare the  
21 complete record of the proceedings culminating with City Council Resolution No. 21-47.

22 **SECOND CAUSE OF ACTION FOR WRIT OF ADMINISTRATIVE MANDAMUS**

23 **—Findings not supported by evidence**

24 (Code Civ. Proc., § 1094.5)

25 92. All of the allegations set forth by paragraph 1 through paragraph 67, as well as the  
26 allegations set forth by paragraph 74 through paragraph 79 are realleged and incorporated as if set  
27 forth fully herein.

28 ///

1           93.     Even if the Riddicks’ attached ADU project were subject to the requirement to  
2 obtain a CDP, mandamus is appropriate.

3           94.     Resolution No. 21-47 incorporates by reference the relevant analysis, findings of  
4 fact, and conclusions set forth by Malibu planning staff in the attached Council Agenda Report and  
5 the Planning Commission Agenda Report, as well as the testimony and materials considered by the  
6 Planning Commission and City Council.

7           95.     Statements made by councilmembers at the appeal hearing revealed their erroneous  
8 reliance on the assumption that the Riddicks had been provided an opportunity to revise their plans  
9 to ensure that the main residence complied with design standards in the LCP. In reality, the Riddicks  
10 were never presented such an opportunity because the entire process was focused on staff’s  
11 determination that, irrespective of the main residence, there was no way for the ADU to be approved  
12 as proposed.

13          96.     Statements made by councilmembers at the appeal hearing also revealed their  
14 fundamental disagreement with the Resolution’s conclusion that the proposed ADU was not exempt  
15 from the LCP’s TDSF and setback requirements.

16          97.     Resolution No. 21-47 states that “[t]he proposal for an attached ADU does not  
17 qualify for an exemption from the requirement of a CDP,” and cites Coastal Commission guidance  
18 to the effect that “currently certified provisions of LCPs are not superseded by Government Code  
19 Section 65852.2 and continue to apply to the requirements of the Certified for ADUs until an LCP  
20 amendment is adopted [sic].”

21          98.     For the reasons stated in the First Cause of Action, this finding is not supported by  
22 evidence.

23          99.     Although the Riddicks consistently raised the Coastal Commission guidance  
24 throughout the application process, they were never given any suggestion that a representative or  
25 representatives from the Coastal Commission had qualified the language from its published  
26 guidance in private communications with the City until Richard Mollica averred as such at their  
27 meeting on October 6, 2021.

28     ///

1           100. Assuming, without alleging, that Mr. Mollica’s statement is true, the Coastal  
2 Commission’s communication with the City in this regard constitutes evidence that was improperly  
3 excluded at the hearing.

4           101. Resolution No. 21-47 erroneously states that an ADU could be created by converting  
5 the existing garage. In reality, the Malibu LCP requires the Riddicks to maintain at least two  
6 covered parking spaces on their property at 180 square feet each. LIP § 3.14.3; Malibu General  
7 Plan § 7.4.1.

8           102. Resolution No. 21-47 erroneously states that approving the request for reasonable  
9 disability accommodation would “undoubtedly have cumulative impacts on coastal resources as  
10 other property owners will undoubtedly seek similar reasonable disability accommodations[.]” In  
11 reality, substantial evidence supports the conclusion—reached by the Planning Department, City  
12 Public Works Department, and City geotechnical staff—that the project would not adversely impact  
13 coastal resources. Concerns about future applicants seeking to vindicate their own rights under  
14 local, state, or federal housing law do not transform a project with no adverse impacts on coastal  
15 resources into a project that does adversely impact coastal resources.

16           103. Resolution No. 21-47 erroneously states that the Riddicks presented no reason why  
17 Ms. Sperling required separate living quarters and could not safely reside in the existing structure.  
18 In reality, the Riddicks provided a note from Ms. Sperling’s physician explaining precisely this  
19 requirement.

20           104. Resolution No. 21-47 erroneously finds that approval of the RRA would impose an  
21 undue financial or administrative burden on the City. On this point, Assistant Planner David Eng  
22 stated at the Planning Commission hearing that the accommodation would impose an undue burden  
23 because it “would require monitoring by the Planning Director and periodic confirmation that a  
24 person with a disability is a resident at that ADU.” In reality, the record contains no factual basis  
25 to support this conclusion. No evidence was presented of monetary, time, or labor cost to the City  
26 that would result from the supposed “monitoring” requirement. Neither was any legal basis  
27 suggested for imposing such a requirement in the first place.

28    ///

1           105. The Riddicks are entitled to an order invalidating the City Council's adoption of  
2 Resolution No. 21-47 and remanding the application to the Planning Commission for review  
3 consistent with state ADU law.

4           106. Pursuant to Government Code Section 1094.6(c), Respondents shall prepare the  
5 complete record of the proceedings which culminated in City Council Resolution No. 21-47.

6           **THIRD CAUSE OF ACTION FOR TRADITIONAL WRIT OF MANDATE—Refusal to**  
7                                   **ministerially approve the revised ADU proposal**

8                                   (Code Civ. Proc., § 1085)

9           107. All of the allegations set forth by the preceding paragraphs are realleged and  
10 incorporated as if set forth fully herein.

11           108. The City, and its Planning Department, has conclusively established its position that  
12 the revised ADU proposal requires a Coastal Development Permit and cannot be reviewed on a  
13 ministerial basis.

14           109. For the reasons stated in the First Cause of Action, the design standards of the  
15 Malibu LCP do not apply to the revised ADU proposal because it is exempt from the requirement  
16 to obtain a coastal development permit under the LCP and under the Coastal Act.

17           110. Under California state law, the City must ministerially consider a permit application  
18 to create an ADU.

19           111. The City of Malibu has not adopted an ordinance in compliance with Government  
20 Code Section 65852.2(a). Therefore, when reviewing applications to create ADUs, the City is  
21 limited to the design standards set out in Government Code Section 65852.2(a)(1)(D).

22           112. The Riddicks' revised ADU proposal is fully compliant with the design standards in  
23 Government Code Section 65852.2(a)(1)(D) because, among other reasons, it is attached to the  
24 primary dwelling; its floor area does not exceed 50% of the floor area of the primary dwelling; and  
25 it is set back at least four feet from the side and rear lot lines.

26           113. The City therefore had a clear, present, and ministerial duty under California law to  
27 ministerially review and approve the revised ADU proposal.

28           ///

114. Petitioners have a clear, present, and beneficial right to ministerial review and approval of their revised ADU proposal.

115. The Riddicks are entitled to an order directing the City to accept the revised ADU proposal for ministerial review and to approve the same within the time limit mandated by State law.

#### **FOURTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

**(Code Civ. Proc., § 1060)**

116. All of the allegations set forth by the preceding paragraphs are alleged and incorporated as if set forth fully herein.

117. If the project is not required to obtain a coastal development permit, then the City must ministerially approve the Riddicks' project under California's ADU law.

118. For the reasons outlined in the First Cause of Action, the Riddicks' project is exempt from the requirement to obtain a coastal development permit under both state and local law.

119. There is an actual and justiciable controversy in this case as to whether the Riddicks are required by law to obtain a coastal development permit for their attached ADU. The Riddicks allege that their project is exempt from such a requirement. The City has made a final determination that the project is subject to such a requirement.

120. Thus, a declaratory judgment as to whether the Riddicks' proposal for an attached ADU is exempt from the requirement to obtain a coastal development permit because it is an "improvement to a single-family dwelling," and in particular, is a "structure[] directly attached to the residence," will resolve the controversy among the parties.

#### **FIFTH CAUSE OF ACTION FOR VIOLATION OF THE HOUSING**

##### **ACCOUNTABILITY ACT**

**(Gov. Code, § 65589.5)**

121. All of the allegations set forth by paragraph 1 through paragraph 67 as well as paragraph 74 through paragraph 79, are alleged and incorporated as if set forth fully herein. In addition, the Riddicks add the following allegations pertaining to their claim for relief under the Housing Accountability Act.

1           122. The Housing Accountability Act (HAA) provides that when a local agency seeks to  
2 disapprove a housing development project that complies with all applicable, objective general plan,  
3 zoning, and subdivision standards and criteria, the local agency must base its decision on written  
4 findings, supported by a preponderance of the evidence, that the project will have a specific, adverse  
5 impact upon the public health or safety, and that this impact cannot feasibly be mitigated by any  
6 other means than denial of the project. Gov't Code § 65589.5(j)(1)(A)–(B).

7           123. Under the HAA, if the local agency considers a proposed housing development to  
8 be inconsistent with applicable provisions of law, it must provide written documentation identifying  
9 the provisions and explaining the reason why it considers the housing development to be  
10 inconsistent therewith. Gov't Code § 65589.5(j)(2)(A).

11           124. For housing development projects containing fewer than 150 units, such  
12 documentation must be provided within 30 days of the date that the application was determined to  
13 be complete. Gov't Code § 65589.5(j)(2)(A)(i).

14           125. If the agency fails to provide this written documentation within the 30-day  
15 timeframe, “the housing development project shall be deemed consistent, compliant, and in  
16 conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other  
17 similar provision. Gov't Code § 65589.5(j)(2)(B).

18           126. The Riddicks’ proposed ADU qualifies as a “housing development project” under  
19 the statute because it consists of a residential unit only. *See* Gov't Code § 65589.5(h)(2)(A).<sup>3</sup>

20           127. The phrase “determined to be complete” is defined by the HAA as meaning that  
21 “the applicant has submitted a complete application pursuant to [Government Code] Section  
22 65943.”

23  
24 <sup>3</sup> Although the HAA’s definition of “Housing development project” speaks of “residential units”  
25 in the plural, the statute’s construction is governed by the General Provisions of the Government  
26 Code in which it is housed. Section 13 of the General Provisions explains that “the singular number  
27 includes the plural, and the plural the singular.” While the Housing Accountability Act has  
28 historically been applied to proposals for more than one residential unit, no controlling authorities  
have specifically addressed whether the definition of “housing development project” includes a  
single unit. This issue is currently being considered by the First District Court of Appeal. *See*  
*Reznitsky v. Marin County*, No. A161813 (Cal. App. 1 Dist.).

1           128. Section 65943 is part of the Permit Streamlining Act. Gov't Code § 65920, *et seq.*  
2 It provides that an agency must make a written determination of completeness or noncompleteness  
3 within 30 calendar days after receiving an application for a development project. Gov't Code  
4 § 65943(a). If such written determination is not made within 30 days, and the application includes  
5 a statement that it is an application for a development permit, the application shall be "deemed  
6 complete."

7           129. Although Petitioners maintain that their project is exempt from the requirement to  
8 obtain a coastal development permit, it was nevertheless processed as an application for a coastal  
9 development permit by the Planning Department, the Planning Commission, and the City Council.

10          130. Therefore, the Permit Streamlining Act required the government to provide a written  
11 determination of completeness or noncompleteness within 30 days of receiving the application.

12          131. The Riddicks' application was submitted on July 10, 2020. The Planning  
13 Department did not make a written determination of incompleteness until October 9, 2020, far  
14 exceeding the 30-day time limit in Government Code Section 65943(a).

15          132. Therefore, the application was "deemed complete" under Government Code Section  
16 65943(a) on August 10, 2020, the 31st day after the application was submitted.

17          133. As a result, the application was "determined to be complete" for purposes of the  
18 HAA on August 10, 2020.

19          134. If the City considered the application to be inconsistent with applicable objective  
20 provisions of law, it was required by the HAA to provide a written documentation explaining its  
21 position by September 9, 2020, 30 days after the application was determined to be complete under  
22 the HAA.

23          135. The City did not provide any documentation relating to the project's inconsistency  
24 with applicable provisions of law until October 9, 2020, far exceeding the 30-day time limit in  
25 Government Code Section 65589.5(j)(2)(A)(i).

26          136. Therefore, under the HAA, the project "shall be deemed consistent, compliant, and  
27 in conformity" with applicable provisions of law. Gov't Code § 65589.5(j)(2)(B).

28       ///

1           137. Where a housing project is so compliant, local agencies may not disapprove the  
2 project without making the requisite findings mandated by Government Code Section  
3 65589.5(j)(1)(A)–(B).

4           138. The City made none of these requisite findings.

5           139. The City’s denial of the Riddicks’ ADU without the requisite written findings  
6 therefore constitutes a violation of the Housing Accountability Act.

7           140. Moreover, although the Riddicks consistently raised the Coastal Commission  
8 guidance throughout the application process, they were never given any suggestion that a  
9 representative or representatives from the Coastal Commission had qualified the language from its  
10 published guidance in private communications with the City until Richard Mollica averred as such  
11 at their meeting on October 6, 2021.

12           141. Assuming, without alleging, that Mr. Mollica’s statement is true, the Coastal  
13 Commission’s communication with the City in this regard constitutes evidence that was improperly  
14 excluded at the hearing for the reasons stated in the Second Cause of Action.

15           142. However, if Mr. Mollica’s statement was not true, then the statement was frivolous  
16 and without merit.

17           143. Therefore, if the statement was not true, then an order directing Respondents to  
18 approve the Riddicks’ project is appropriate under Government Code Section 65589.5(k)(1)(A)(ii).

19           144. Petitioners Jason and Elizabeth Riddick are the applicants for the subject housing  
20 development project.

21           145. Petitioner Renee Sperling is a person who would be eligible to apply for residency  
22 in the subject housing development project.

23           146. All Petitioners are therefore appropriate parties to bring this action to enforce the  
24 provisions of the Housing Accountability Act. *See* Gov’t Code § 65589.5(k)(1)(A)(i).

25           147. Petitioners are therefore entitled to an order directing Respondents to comply with  
26 the Housing Accountability Act.

27           148. Petitioners also request an order directing Respondents to approve the housing  
28 development project.



149. Petitioners are entitled to reasonable attorneys' fees and costs of suit under Government Code Section 65589.5(k)(1)(B).

150. Pursuant to Government Code Section 65589.5(m), Respondents shall prepare and certify the record of proceedings in accordance with Code of Civil Procedure Section 1094.6(c) within 30 days after service of this petition, and shall bear the costs of preparation.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners request relief as follows:

1. A writ of administrative mandamus commanding the Respondents to invalidate, set aside, and not enforce Resolution No. 21-47, in whole or in part, as described above;

2. A writ of traditional mandate compelling Respondents to ministerially approve the Riddicks' revised ADU application as required under Government Code Section 65852.2.

3. A declaration pursuant to Code of Civil Procedure Section 1060 that:

a. Attached ADUs are exempt from the requirement to obtain a Coastal Development Permit under state and local law; and that

b. Attached ADUs must be ministerially reviewed pursuant to Government Code Section 65852.2.

4. An order commanding that Respondents comply with Government Code Section 65589.5 within 60 days.

5. An order commanding that Respondents approve the Riddicks' housing development project pursuant to Government Code Section 65589.5(k)(1)(A)(ii).

6. For costs of suit, including reasonable attorney fees pursuant to Government Code Section 65589.5(k)(ii), Code of Civil Procedure Section 1021.5, and/or any other basis in law or equity; and for such other and further relief as the Court may deem proper.

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DATED: November 18, 2021.

Respectfully submitted,

DAVID J. DEERSON  
Pacific Legal Foundation

By           /s/ David J. Deerson            
DAVID J. DEERSON

*Attorney for Petitioners*

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**VERIFICATION**

I, Elizabeth Riddick, declare:

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE (CCP §§ 1085, 1094.5) & COMPLAINT FOR DECLARATORY RELIEF (CCP § 1060) and, except for matters stated on information and belief, the facts stated therein are true on my own knowledge, and as to those matters stated on information and belief, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on this 16 day of November, 2021, at Malibu, California.



ELIZABETH RIDDICK

# **EXHIBIT A**

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: New Accessory Dwelling Unit Legislation

DATE: April 18, 2017

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New State requirements regarding local government regulation of “accessory dwelling units” (ADUs) became effective on January 1, 2017. The Legislature amended Government Code section 65852.2 to modify the requirements that local governments may apply to ADUs, most notably with respect to parking. The Legislature further specified that local ADU ordinances enacted prior to 2017 that do not meet the requirements of the new legislation are null and void. (Gov. Code, § 65852.2, subd. (a)(4).) Significantly, however, the Legislature further directed that the statute shall not be interpreted to “supersede or in any way alter or lessen the effect or application of the California Coastal Act . . . except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.” (Gov. Code, § 65852.2, subd. (j).) The Legislature also enacted Government Code section 65852.22, which establishes streamlined review of “junior” ADUs in jurisdictions that adopt ordinances that meet certain specified criteria. Unlike Government Code section 65852.2, the junior ADU statute does not specifically address or refer to the Coastal Act.

The Coastal Act requires the Coastal Commission to encourage housing opportunities for low and moderate income households and calls for the concentration of development in existing developed areas. (Pub. Resources Code, §§ 30250, subd. (a); 30604, subd. (f).) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that avoids significant adverse impacts on coastal resources.

Some local governments have requested guidance from the Coastal Commission regarding how to implement the ADU and junior ADU statutes in light of Coastal Act requirements. This memorandum is intended to provide general guidance for local governments with fully certified local coastal programs (LCPs). The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Coastal Commission.

**1) Update Local Coastal Programs**

The Coastal Commission strongly recommends that local governments amend their LCPs to address the review of coastal development permit (CDP) applications for ADUs in light of the new



legislation. Currently certified provisions of LCPs, including specific LCP ADU sections currently in place, are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs. Any conflicts between those LCP provisions and the new statutory requirements as they apply to *local permits other than CDPs*, however, may cause confusion that unnecessarily thwarts the Legislature's goal of encouraging ADUs. Government Code section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources, and thus the coastal resource context applicable to any particular local government jurisdictional area needs to be addressed in any proposed LCP ADU sections. Coastal Commission staff anticipates that LCP amendments to implement the ADU legislation will reconcile Coastal Act requirements with the ADU statutes, thus allowing accomplishment of the Legislature's goals both with respect to coastal protection and encouragement of ADUs.

When evaluating what specific changes to make to an LCP, consider whether amendments to the land use plan component of the LCP are necessary in order to allow proposed changes to the implementation plan component. LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impact on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Resources Code, § 30514, subd. (d); Cal. Code Regs., § 13554.)

## **2) Review of ADU Applications**

- A) **Check CDP History for the Site.** The ADU statutes apply to residentially zoned lots that currently have a legally established single-family dwelling. Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. In such cases, previous CDP requirements must be understood in relation to the proposed ADU, and they may restrict the proposal. If an ADU application raises questions regarding a Coastal Commission CDP, including if an amendment to a CDP issued by the Coastal Commission may be necessary, instruct the applicant to contact the appropriate district office of the Coastal Commission.
- B) **Determine Whether the Proposed ADU Qualifies As Development.** The Coastal Act's permitting requirements apply to development performed or undertaken in the coastal zone. (Pub. Resources Code, § 30600, subd. (a).) Minor changes to an existing legally established residential structure that do not involve the removal or replacement of major structural components (e.g., roofs, exterior walls, foundations) and that do not change the size or the intensity of use of the structure do not qualify as development with the meaning of the Coastal Act. A junior ADU that complies with the requirements of an ordinance enacted pursuant to Government Code section 65852.22 generally will not constitute development because it will not change the building envelope and because it must contain at least one bedroom that was previously part of the primary residence. Such minor changes do not require a Coastal Act approval such as a CDP or waiver unless specified in a previously issued CDP for existing development on the lot. If questions arise regarding whether a

proposed ADU qualifies as development, please contact the appropriate district office of the Coastal Commission.

**C) If the Proposed ADU Qualifies As Development, Determine Whether It Is Exempt.**

Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Coastal Commission's regulations. (Pub. Resources Code, § 30610, subd. (a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require Coastal Act approval unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250, subd. (b)(6).)

An improvement does not qualify as an exempt improvement if the improvement or the existing dwelling is located on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, in an area designated as highly scenic in a certified land use plan, or within 50 feet of the edge of a coastal bluff. Improvements that involve significant alteration of land forms as specified in section 13250 of the Commission's regulations also are not exempt. In addition, the expansion or construction of water wells or septic systems are not exempt. Finally, improvements to structures located between the first public road and the sea or within 300 feet of a beach or the mean high tide line are not exempt if they either increase the interior floor area by 10 percent or more or increase the height by more than 10 percent. (Cal. Code Regs., tit. 14, § 13250, subd. (b).)

To qualify as an exempt improvement to a single-family dwelling, an ADU must be contained within or directly attached to the existing single-family structure. "[S]elf-contained residential units," i.e., detached residential units, do not qualify as part of a single-family residential structure and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250, subd. (a)(2).) Again, if questions arise regarding CDP exemption requirements, please contact the appropriate district office of the Coastal Commission.

**D) If the Proposed ADU Is Not Exempt From CDP Requirements, Determine Whether A CDP Waiver is Appropriate.** If a proposed ADU qualifies as an improvement to a single-family dwelling but is not exempt, a local government may waive the requirement for a CDP if the LCP includes a waiver provision and the proposed ADU meets the criteria for a CDP waiver. Such provisions generally allow a waiver if the local government finds that the impact of the ADU on coastal resources or coastal access would be insignificant. (See Cal. Code Regs., tit. 14, § 13250, subd. (c).) In addition, they generally allow a waiver if the proposed ADU is a detached structure and the local government determines that the ADU involves no potential for any adverse effect on coastal resources and that it will be consistent with the Chapter 3 policies of the Coastal Act. (See Pub. Resources Code, § 30624.7.) Some LCPs do not provide for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions

regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

- E) **If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency With Certified LCP Requirements.** If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act, except that no local public hearing is required. (Gov. Code, § 65852.2, subd. (j).) Provide the required public notice for any CDP applications for ADUs, and process the CDP application according to LCP requirements. Once a final decision on the CDP application has been taken, send the required final local action notice to the appropriate district office of the Coastal Commission. (Cal. Code Regs., tit. 14, §§ 13565-13573.) If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Resources Code, § 30603.)



## **EXHIBIT B**

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400  
TDD (415) 597-5885



TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: Implementation of New Accessory Dwelling Unit Law

DATE: November 20, 2017

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On April 18, 2017, we circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of “accessory dwelling units” (ADUs) in the coastal zone. Following the enactment of AB 2299 (Bloom) and SB 1069 (Wiekowski), changes to Government Code 65852.2 now impose specific requirements on how local governments can and cannot regulate ADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. Our earlier memo was intended to help coastal jurisdictions and members of the public understand how to harmonize the new ADU requirements with LCP and Coastal Act policies. This memo is meant to provide further clarification and reduce confusion about whether and how to amend LCPs in response to these changes.

Although Government Code Section 65852.2(j) states that it does not supersede or lessen the application of the Coastal Act, it would be a mistake for local governments with certified LCPs to interpret this as a signal that they can simply disregard the new law in the coastal zone. The Commission interprets the effect of subdivision (j) as preserving the authority of local governments to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent with the standards in Section 65852.2 should be approved administratively, provided they are also consistent with Chapter 3 of the Coastal Act as implemented in the LCP. Where LCP policies and ordinances are already flexible enough to implement the provisions of Section 65852.2 directly, local governments should do so. Where LCP policies directly conflict with the new provisions or require refinement, those LCPs should be updated to be consistent with the new ADU statute to the greatest extent feasible while still complying with Coastal Act requirements.

Bear in mind that Section 65852.2 still preserves a meaningful level of local control by authorizing local governments to craft policies that address local realities. It allows local governments to designate areas where ADUs are allowed based on criteria such as the adequacy of public services and public safety considerations. It also explicitly allows local governments to adopt ordinances that impose certain standards, including but not limited to standards regarding height, setbacks, lot coverage, zoning density, and maximum floor area. In the coastal zone, local governments can incorporate such standards in LCP policies in order to protect Chapter 3 resources while still streamlining approval of ADUs.

Therefore, the Commission reiterates its previous recommendation that local governments amend their LCPs accordingly, using Section 65852.2 as a blueprint for crafting objective

standards related to design, floor area, parking requirements and processing procedures for ADUs in a manner that protects wetlands, sensitive habitat, public access, scenic views of the coast, productive agricultural soils, and the safety of new ADUs and their occupants. Depending on the individual LCP, such amendments might include:

- Updating the definition of an ADU (variously referred to in existing LCPs as second units, granny units, etc.)
- Implementing an administrative review process for ADUs that includes sufficient safeguards for coastal resources
- Re-evaluating the minimum and maximum ADU floor area and related design standards
- Specifying that ADUs shall not be required to install new or separate utility connections
- For ADUs contained within existing residences or accessory structures, eliminating local connection fees or capacity charges for utilities, water and sewer services.
- Providing for ministerial approval of Junior Accessory Dwelling Units (JADUs)
- Clarifying that no more than one additional parking space per bedroom is required
- Eliminating off-street parking requirements for ADUs located within a ½ mile of public transit, an architecturally significant historic district, an existing primary residence or accessory structure, one block of a car share vehicle, or where on-street parking permits are required but not offered to the occupant of an ADU

This is just a partial list, as specific changes will depend on existing LCP policies as well as unique local resource constraints. See our earlier memo for additional recommendations.

We are currently conducting a survey to identify the number of local governments which have already initiated the amendment process. For those that have not, Commission staff strongly urges those jurisdictions to do so in the very near future.

To expedite the process, the Commission will process ADU-specific LCPAs as minor or de minimis amendments whenever possible. We realize that procedural requirements for public review and participation can be time consuming, and will strive to complete the Commission's review process expeditiously. In the interim, we urge local governments to consider which provisions of Section 65852.2 might be implemented administratively, through existing procedures, definitions, or variances. Because each LCP is distinct and unique to its particular jurisdiction, some are inherently more flexible than others. We strongly suggest applying any existing discretion in a manner that conforms to Section 65852.2 as well as your LCP.

We acknowledge that because of the nature of our state/local partnership the Commission cannot compel local governments to undertake these amendments. The foregoing advice is offered in the spirit of our mutual goals and responsibilities of preserving both Coastal Act objectives and local control of planning and permitting decisions. We are grateful that the Legislature elected to preserve the integrity of the Coastal Act when it passed these bills. We are also mindful that this did not reflect any intent to discourage ADUs in the coastal zone, but rather to ensure that new ADU incentives are implemented in a way that does not harm coastal resources. In order to maintain the Legislature's continued support for this approach, and avoid the imposition of unilateral coastal standards for ADUs in the future, it is essential to demonstrate that these housing policies can and will be responsibly implemented in the coastal zone.

My staff and I remain ready and available to assist in this effort.

## **EXHIBIT C**

**CALIFORNIA COASTAL COMMISSION**

45 FREMONT STREET, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE (415) 904-5200  
FAX (415) 904-5400



To: Planning Directors of Coastal Cities and Counties  
From: John Ainsworth, Executive Director  
Re: Implementation of New ADU Laws  
Date: April 21, 2020

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The Coastal Commission has previously circulated two memos to help local governments understand how to carry out their Coastal Act obligations while also implementing state requirements regarding the regulation of accessory dwelling units ("ADUs") and junior accessory dwelling units ("JADUs"). As of January 1, 2020, AB 68, AB 587, AB 670, AB 881, and SB 13 each changed requirements on how local governments can and cannot regulate ADUs and JADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. This memo is meant to describe the changes that went into effect on January 1, 2020, and to provide guidance on how to harmonize these new requirements with Local Coastal Program ("LCP") and Coastal Act policies.

**Coastal Commission Authority Over Housing in the Coastal Zone**

The Coastal Act does not exempt local governments from complying with state and federal law "with respect to providing low- and moderate-income housing, replacement housing, relocation benefits, or any other obligation related to housing imposed by existing law or any other law hereafter enacted." (Pub. Res. Code § 30007.) The Coastal Act requires the Coastal Commission to encourage housing opportunities for low- and moderate-income households. (Pub. Res. Code § 30604(f).) New residential development must be "located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it" or in other areas where development will not have significant adverse effects on coastal resources. (Pub. Res. Code § 30250.) The creation of new ADUs in existing residential areas is a promising strategy for increasing the supply of lower-cost housing in the coastal zone in a way that may be able to avoid significant adverse impacts on coastal resources.

This memorandum is intended to provide general guidance for local governments with fully certified LCPs. The Coastal Commission is generally responsible for Coastal Act review of ADUs in areas that are not subject to fully certified LCPs. Local governments that have questions about specific circumstances not addressed in this memorandum should contact the appropriate district office of the Commission.

## **Overview of New Legislation<sup>1</sup>**

The new legislation effective January 1, 2020 updates existing Government Code Sections 65852.2 and 65852.22 concerning local government procedures for review and approval of ADUs and JADUs. As before, local governments have the discretion to adopt an ADU ordinance that is consistent with state requirements. (Gov. Code § 65852.2(a).) AB 881 (Bloom) made numerous significant changes to Government Code section 65852.2. In their ADU ordinances, local governments may still include specific requirements addressing issues such as design guidelines and protection of historic structures. However, per the recent state law changes, a local ordinance may not require a minimum lot size, owner occupancy of an ADU, fire sprinklers if such sprinklers are not required in the primary dwelling, or replacement offstreet parking for carports or garages demolished to construct ADUs. In addition, a local government may not establish a maximum size for an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom. (Gov. Code § 65852.2(c)(2)(B).) Section 65852.2(a) lists additional mandates for local governments that choose to adopt an ADU ordinance, all of which set the “maximum standards that local agencies shall use to evaluate a proposed [ADU] on a lot that includes a proposed or existing single-family dwelling.” (Gov. Code § 65852.2(a)(6).)

Some local governments have already adopted ADU ordinances. Existing or new ADU ordinances that do *not* meet the requirements of the new legislation are null and void, and will be substituted with the provisions of Section 65852.2(a) until the government comes into compliance with a new ordinance. (Gov. Code § 65852.2(a)(4).) However, as described below, existing ADU provisions contained in certified LCPs are not superseded by Government Code section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. One major change to Section 65852.2 is that the California Department of Housing and Community Development (“HCD”) now has an oversight and approval role to ensure that local ADU ordinances are consistent with state law, similar to the Commission’s review of LCPs. If a local government adopts an ordinance that HCD deems to be non-compliant with state law, HCD can notify the Office of the Attorney General. (Gov. Code § 65852.2(h).)

If a local government does *not* adopt an ADU ordinance, state requirements will apply directly. (Gov. Code § 65852.2(b)–(e).) Section 65852.2 subdivisions (b) and (c) require that local agencies shall ministerially approve or disapprove applications for permits to create ADUs. Subdivision (e) requires ministerial approval, whether or not a local government has adopted an ADU ordinance, of applications for building permits of the following types of ADUs and JADUs in residential or mixed use zones:

- One ADU or JADU per lot *within* a proposed or existing single-family dwelling or existing space of a single-family dwelling or accessory structure, including an expansion of up to 150 square feet beyond the existing dimensions of an existing accessory structure; with exterior access from the proposed or existing single-family

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<sup>1</sup> This Guidance Memo only provides a partial overview of new legislation related to ADUs. The Coastal Commission does not interpret or implement these new laws.

dwelling; side and rear setbacks sufficient for fire and safety; and, if a JADU, applicant must comply with requirements of Section 65852.22; (§ 65852.2(e)(1)(A)(i)-(iv))

- One detached, new construction ADU, which may be combined with a JADU, so long as the ADU does not exceed four-foot side and rear yard setbacks for the single family residential lot; (§ 65852.2(e)(1)(B))
- Multiple ADUs within the portions of existing multifamily dwelling structures that are not currently used as dwelling spaces; (§ 65852.2(e)(1)(C))
- No more than two detached ADUs on a lot that has an existing multifamily dwelling, subject to a 16-foot height limitation and four-foot rear yard and side setbacks. (§ 65852.2(e)(1)(D))

ADUs and JADUs created pursuant to Subdivision (e) must be rented for terms greater than 30 days. (Gov. Code § 65852.2(e)(4).)

## **What Should Local Governments in the Coastal Zone Do?**

### **1) Update Local Coastal Programs (LCPs)**

Local governments are required to comply with both these new requirements for ADUs/JADUs and the Coastal Act. Currently certified provisions of LCPs are not, however, superseded by Government Code section 65852.2, and continue to apply to CDP applications for ADUs until an LCP amendment is adopted. Where LCP policies directly conflict with the new provisions or require refinement to be consistent with the new laws, those LCPs should be updated to be consistent with the new ADU provisions to the greatest extent feasible, while still complying with Coastal Act requirements.

As noted above, Section 65852.2 expressly allows local governments to adopt local ordinances that include criteria and standards to address a wide variety of concerns, including potential impacts to coastal resources. For example, a local government may address reductions in parking requirements that would have a direct impact on public access. As a result, we encourage local governments to identify the coastal resource context applicable in a local jurisdiction and ensure that any proposed ADU-related LCP amendment appropriately addresses protection of coastal resources consistent with the Coastal Act at the same time that it facilitates ADUs/JADUs consistent with the new ADU provisions. For example, LCPs should ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. Our staff is available to assist in the efforts to amend LCPs.

Please note that LCP amendments that involve purely procedural changes, that do not propose changes in land use, and/or that would have no impacts on coastal resources may be eligible for streamlined review as minor or de minimis amendments. (Pub. Res. Code § 30514(d); Cal. Code Regs., tit. 14, § 13554.) The Commission will process ADU-specific LCP amendments as minor or de minimis amendments whenever possible.

## 2) Follow This Basic Guide When Reviewing ADU or JADU Applications

### a. Check Prior CDP History for the Site.

Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. The applicant should contact the appropriate Coastal Commission district office if a Commission-issued CDP limits the applicant's ability to apply for an ADU or JADU.

### b. Determine Whether the Proposed ADU or JADU Qualifies as Development.

Any person "wishing to perform or undertake any development in the coastal zone" shall obtain a CDP. (Pub. Res. Code § 30600.) Development as defined in the Coastal Act includes not only "the placement or erection of any solid material or structure" on land, but also "change in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Government Code section 65852.2 states that an ADU that conforms to subdivision (a) "shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use that is consistent with the existing general plan and zoning designations for the lot." (Gov. Code § 65852.2(a)(8).)

Conversion of an existing legally established room(s) to create a JADU or ADU within an existing residence, without removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or the intensity of use of the structure may not qualify as development within the meaning of the Coastal Act, or may qualify as development that is either exempt from coastal permit requirements and/or eligible for streamlined processing (Pub. Res. Code §§30106 and 30610), see also below. JADUs created within existing primary dwelling structures that comply with Government Code Sections 65852.2(e) and 65852.22 typically will fall into one of these categories, unless specified otherwise in a previously issued CDP or other coastal authorization for existing development on the lot. However, the conversion of detached structures associated with a primary residence to an ADU or JADU may involve a change in the size or intensity of use that would qualify as development under the Coastal Act and require a coastal development permit, unless determined to be exempt or appropriate for waiver.

### c. If the Proposed ADU Qualifies as Development, Determine Whether It Is Exempt.

Improvements such as additions to existing single-family dwellings are generally exempt from Coastal Act permitting requirements except when they involve a risk of adverse environmental effects as specified in the Commission's regulations. (Pub. Res. Code § 30610(a); Cal. Code Regs., tit. 14, § 13250.) Improvements that qualify as exempt development under the Coastal Act and its implementing regulations do not require a CDP from the Commission or a local government unless required pursuant to a previously issued CDP. (Cal. Code Regs., tit. 14, § 13250(b)(6).)



Typically, the construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).) Guest houses and “self-contained residential units,” i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

d. If the Proposed ADU is Not Exempt from CDP Requirements, Determine Whether a CDP Waiver Is Appropriate.

If the LCP includes a waiver provision, and the proposed ADU or JADU meets the criteria for a CDP waiver the local government may waive the permit requirement for the proposed ADU or JADU. The Commission generally has allowed a waiver for proposed *detached* ADUs if the executive director determines that the proposed ADU is de minimis development, involving no potential for any adverse effects on coastal resources and is consistent with Chapter 3 policies. (See Pub. Res. Code § 30624.7.)

Some LCPs do not allow for waivers, but may allow similar expedited approval procedures. Those other expedited approval procedures may apply. If an LCP does not include provisions regarding CDP waivers or other similar expedited approvals, the local government may submit an LCP amendment to authorize those procedures.

e. If a Waiver Would Not Be Appropriate, Review CDP Application for Consistency with Certified LCP Requirements.

If a proposed ADU constitutes development, is not exempt, and is not subject to a waiver or similar expedited Coastal Act approval authorized in the certified LCP, it requires a CDP. The CDP must be consistent with the requirements of the certified LCP and, where applicable, the public access and recreation policies of the Coastal Act. The local government then must provide the required public notice for any CDP applications for ADUs and process the application pursuant to LCP requirements, but should process it within the time limits contained in the ADU law if feasible. Once the local government has issued a decision, it must send the required final local action notice to the appropriate district office of the Commission. If the ADU qualifies as appealable development, a local government action to approve a CDP for the ADU may be appealed to the Coastal Commission. (Pub. Res. Code § 30603.)

### **Information on AB 68, AB 587, AB 670, and SB 13**

#### **JADUs – AB 68 (Ting)**

JADUs are units of 500 square feet or less, contained entirely within a single-family residence or existing accessory structure. (Gov. Code §§ 65852.2(e)(1)(A)(i) and 65852.22(h)(1).) AB 68 (Ting) made several changes to Government Code section 65852.22, most notably regarding the creation of JADUs pursuant to a local government ordinance. Where a local

government has adopted a JADU ordinance, “[t]he ordinance may require a permit to be obtained for the creation of a [JADU].” (Gov. Code § 65852.22(a).) If a local government adopts a JADU ordinance, a maximum of one JADU shall be allowed on a lot zoned for single-family residences, whether they be proposed or existing single-family residences. (Gov. Code § 65852.22(a)(1).) (This formerly only applied to *existing* single-family residences. Now, proposals for a new single-family residence can include a JADU.) Efficiency kitchens are no longer required to have sinks, but still must include a cooking facility with a food preparation counter and storage cabinets of reasonable size relative to the space. (Gov. Code § 65852.22(a)(6).) Applications for permits pursuant to Section 65852.22 shall be considered ministerially, within 60 days, if there is an existing single-family residence on the lot. (Gov. Code § 65852.22(c).) (Formerly, complete applications were to be acted upon within 120 days.)

If a local government has *not* adopted a JADU ordinance pursuant to Section 65852.22, the local government is required to ministerially approve building permit applications for JADUs within a residential or mixed-use zone pursuant to Section 65852.2(e)(1)(A). (Gov. Code § 65852.22(g).) That section is detailed in bullet points on pages two-three of this memorandum and refers to specific ADU and JADU approval scenarios.

#### **Sale or Conveyance of ADUs Separately from Primary Residence – AB 587 (Friedman)**

AB 587 (Friedman) added Section 65852.26 to the Government Code to allow a local government to, by ordinance, allow the conveyance or sale of an ADU separately from a primary residence if several specific conditions all apply. (Gov. Code § 65852.26.) This section only applies to a property built or developed by a qualified nonprofit corporation, which holds enforceable deed restrictions related to affordability and resale to qualified low-income buyers, and holds the property pursuant to a recorded tenancy in common agreement. Please review Government Code Section 65852.26 if such conditions apply.

#### **Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)**

AB 670 added Section 4751 to the California Civil Code, making void and unenforceable any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of any interest in a planned development, and any provision of a governing document, that either effectively prohibits or unreasonably restricts the construction or use of an ADU or JADU on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code.

#### **Delayed Enforcement of Notice to Correct a Violation – SB 13 (Wieckowski)**

SB 13 (Wieckowski) Section 3 added Section 17980.12 to the Health and Safety Code. The owner of an ADU who receives a notice to correct a violation can request a delay in enforcement, if the ADU was built before January 1, 2020, or if the ADU was built after January 1, 2020, but the jurisdiction did not have a compliant ordinance at the time the request to fix the violation was made. (Health & Saf. Code § 17980.12.) The owner can request a delay of five (5) years on the basis that correcting the violation is not necessary to protect health and safety. (Health & Saf. Code § 17980.12(a)(2).)

## **EXHIBIT D**

**From:** [David Eng](#)  
**To:** [Elizabeth Riddick](#)  
**Cc:** [Bonnie Blue](#); [Richard Mollica](#)  
**Subject:** 6255 Paseo Canyon Drive (ACDP 20-034): Incomplete Letter  
**Date:** Friday, October 9, 2020 8:41:51 PM  
**Attachments:** [6255 Paseo Canyon Dr - CDP 20-034 - Incomplete 20201009.pdf](#)  
[PLN Grading Verification Certificate.pdf](#)  
[PLN Setback Zoning Code Interpretation.pdf](#)  
[PLN TDSF Impermeable Coverage.pdf](#)  
[LCP MMC Story Pole Policy.pdf](#)  
[PLN Revised Plans Submittal Memo.pdf](#)  
[PLN Mailing Labels Radius Map Providers.pdf](#)

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Hello Elizabeth,

Please find attached the Planning Department's letter of project incompleteness for your proposed project at 6255 Paseo Canyon Drive (ACDP 20-034). Unfortunately, your project is temporarily halted from further review.

In addition to the plan corrections and comments I have listed in the attached letter, the project's more significant issues are its non-compliance with setbacks and maximum allowed Total Development Square Footage (TDSF) area. The State requires local jurisdictions such as the City of Malibu to comply with recent legislation allowing the review and permitting of accessory dwelling units as part of a ministerial process. However, per the California Coastal Commission, Government Code Section 65852.2 does not supersede currently certified provisions of local coastal programs (LCP). The entire City of Malibu is within the Coastal Zone and subject to the provisions of its LCP. Until the California Coastal Commission approves an amendment to the City of Malibu LCP, ADU proposals must comply with development standards, including setbacks and development square footage, specified in the LCP.

To proceed with your application, you must either revise the proposal to comply with the development standards in the LCP or apply for variances to setbacks and square footage. Planning staff does not support approval of variances for this project.

If you have further questions regarding the City's application of its LCP to this project, I am happy to coordinate a call between you, me, and my Planning Director, Bonnie Blue (copied on this e-mail).

Best,

David

**David Eng | Assistant Planner | City of Malibu**

23825 Stuart Ranch Road, Malibu, CA 90265

Phone: 310.456.2489 ext. 372

Fax: 310.456.7650

Email: [deng@malibucity.org](mailto:deng@malibucity.org)

# **EXHIBIT E**



# City of Malibu

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Phone (310) 456-2489 · Fax (310) 456-3356 · [www.malibucity.org](http://www.malibucity.org)

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October 9, 2020

Elizabeth and Jason Riddick  
6255 Paseo Canyon Drive  
Malibu, CA 90265

**Reference: 6255 Paseo Canyon Drive**  
**Coastal Development Permit (CDP) No. 20-034**  
*New attached accessory dwelling unit and minor addition to existing single-family dwelling.*

Dear Mr. and Mrs. Riddick,

On **July 10, 2020**, the application listed above was submitted to the City of Malibu's Planning Department for processing. The proposal is for a new 414 square foot attached accessory dwelling unit, 157 square foot addition, and 43 square foot expansion of a covered porch. The subject property is located at 6255 Paseo Canyon Drive (APN 4469-033-013) and is zoned Single Family- Medium (SF-L). The subject property is within the Non-Appealable Jurisdiction of the California Coastal Commission (CCC) as depicted on the Post Local Coastal Program Certification Permit and Appeal Jurisdiction Map of the City of Malibu.

Planning Department Staff has completed an initial review of the application and determined on **October 9, 2020** that the application submitted was **INCOMPLETE and will require further information to be processed as an Administrative Coastal Development Permit**. To continue processing the application, please address the following items.

## **Advisory on Accessory Dwelling Units in the Coastal Zone**

1. Local jurisdictions are required to comply with state provisions allowing and permitting of accessory dwelling units (ADU). However, per the California Coastal Commission, Government Code section 65852.2 does not supersede currently certified provisions of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the provisions of the LCP will continue to apply to Coastal Development permit applications for ADU's. The subject application for a new attached ADU does not comply with the City's LCP regulations pertaining to setbacks and maximum allowed total development square footage. Additional information on these issues is provided further in this letter.

## **Discretionary Requests**

2. This proposal for a new attached ADU requires and includes an application for an Administrative Coastal Development Permit. As proposed, the project also requires applications for variances for side and rear yard setbacks, and for exceeding the maximum allowed total development square footage. While applications for ADU's are reviewed ministerially, requests for discretionary approvals such as variances require a public hearing by the City's Planning Commission. Please note that it is Planning staff's opinion that the Planning Commission is unlikely to grant the variances and does not support their approval.

## Documentation

3. Total Grading Yardage Verification Certificate. Please find, complete, and return the enclosed Total Grading Yardage Verification Certificate for all the grading or excavation the foundation of the proposed addition will necessitate. Please attach all calculations utilized to estimate the cubic yardages indicated. Should the proposed grading exceed 99 cubic yards, the form and the required calculations must be prepared by a State of California Licensed Civil Engineer. The form and the calculations shall be stamped and wet signed by the preparing party.
4. Demolition Permit. The project includes the partial demolition of the existing single-family residence to accommodate the remodel and addition. Please submit a form of payment in the amount of \$348.00 for the demolition permit.
5. Mailing List and Radius Map. Please submit a 500 foot radius map and a certified list of corresponding property owners and occupants within the 500 foot radius of the subject property. Property owner and applicant addresses on mailing labels will not be accepted. Mailing addresses and radius maps shall be submitted in digital format. Please refer to the enclosed list of mailing label providers for the required format.

## Plan Revisions

Please make the following revisions. When complete, submit the Revised Plans Memorandum form to staff for review, the form is available at the public counter or on the City of Malibu Planning Department webpage under forms. Additionally, please submit one electronic set of 24" x 36" plans.

## Cover Sheet

6. Scope of Work: In addition to the new accessory dwelling unit, please note the minor addition to the existing residence and porch.
7. Setbacks: The project does not comply with the required setbacks. Based on the estimated lot depth of 116 feet and lot width of 95 feet, the parcel has the following approximate required setbacks:
  - a. Front: 23' - 2"
  - b. Side (minimum): 9' - 6"
  - c. Side (cumulative): 23' - 9"
  - d. Rear 17' - 5"

As proposed, the additions have a 5' minimum side yard setback, a 13' cumulative side setback, and 14' - 9" rear setback, which do not comply with the required setbacks. Please revise the proposal to comply with the setbacks.

Please depict the required setbacks and setback calculations on the site plan. Refer to the enclosed Zoning Code Interpretation No. 3 Determining Setbacks for further direction.

8. Total Development Square Footage (TDSF): The proposed total of 3,614 square feet exceeds the maximum allowed TDSF of 3,085 for the parcel. Although any new or converted square footage for the ADU that is within the existing footprint of the dwelling (eg. ADU bathroom) may be exempted, the ADU area within the expanded footprint will cause the dwelling to exceed its TDSF.

Include the total development square footage (TDSF) calculation on the cover sheet. Provide a breakdown of the existing, demolished and proposed TDSF. Refer to the enclosed TDSF calculation sheet for further direction.

9. Provide a breakdown of the impermeable coverage; include the existing, demolished, new and the total proposed. Impermeable coverage is anything that water cannot “permeate” through. This includes, but is not limited to, building footprints, driveways, walkways, patios, decks surrounding pools, etc. Swimming pools and spas are not counted in impermeable coverage calculations. Refer to the enclosed impermeable coverage calculation sheet for further direction.
10. Provide the total number of existing and proposed enclosed and unenclosed parking spaces. Please note the minimum size allowed is 10 feet wide by 18 feet deep.

#### Site Plan

11. Please submit an impermeable coverage exhibit, i.e. a site plan that identifies the square footage of the impermeable areas and a corresponding list of the existing and proposed impermeable coverage.
12. Depict the pool equipment and screening materials on the site plan.
13. Show the location, height, and material of all existing and proposed fences, site walls, and hedges.

#### Demolition Plans

14. Provide the linear footage adjacent to the exterior walls, doors and substantial windows proposed to be demolished. Provide a table with the calculation of the percentage of exterior walls to be demolished that corresponds to the exterior wall diagram. Please provide a separate calculation for each structure. This information will help staff evaluate the percentages of exterior renovation proposed.
  - a. Please note the portion of exterior walls where the structural components are removed or structurally strengthened to extend the life of the building are considered demolished, (i.e., the wall is demolished if the top plate is removed or if new beams “sister in” old beams).
  - b. If a new exterior wall is proposed to accommodate the addition which results in the conversion of an existing exterior wall into an interior wall, please include that linear feet of the interior wall as a wall demolished in the calculation.

#### Elevations

15. Provide elevation plans that illustrate the existing condition of the structure from all directions. Currently, only a proposed condition is shown. If existing and proposed elevations are provided on the same plan sheet, please clearly differentiate between existing development and proposed development.
16. Provide plans that illustrate the existing condition of the structure from all directions.
17. The south elevation depicts a new attic window. Please clarify whether this is a decorative feature, or if there is any development within the attic space.



### **Outstanding Agency Approvals**

18. Approval from the Los Angeles County Fire Department Fire Prevention Engineer. Please contact the Los Angeles County Fire Department Fire Prevention Engineer at (818) 880-0341 for submittal requirements and review status.

### **Further Processing**

19. Please note the certified mailing labels and radius map shall expire 6 months subsequent to the certification date. In order to ensure adequate public notification, the submitted notification labels for property owners and occupants may need to be updated prior to public hearing notices. Staff will coordinate with the applicant about this as necessary in the future.
20. Please note that a story pole plan will be required if variances for setbacks are pursued. Staff will coordinate with the applicant about this if variances are pursued. Please refer to the attached Story Pole Policy for more information.
21. Staff will prepare a Notice of Application for a CDP application sign for the proposed project. When ready, the sign will be made available for pickup at the Planning Counter. The applicant shall post the sign on a visually prominent onsite location. After posting the sign, the applicant is responsible for filling out and returning a Notice Posting Affidavit, including onsite photographs of the posted sign.

Additional comments may be forthcoming upon receipt of revised plans and/or new information. Please be aware that additional fees and requirements may be required in the near future should it be determined that additional discretionary review or studies are required.

Please provide written response to the Planning Department within 45 days of the date of this letter, otherwise staff may close the subject application due to inactivity. The subject application and a portion of the fees will be mailed back to you. Should this application be closed, yet you wish to proceed with the subject project, then you will be required to resubmit a new application and filing fees.

If you have any questions, please contact me at (310) 456-2489, extension 372 or at [deng@malibucity.org](mailto:deng@malibucity.org)

Sincerely,



David Eng  
Assistant Planner

### **Enclosed**

- Grading Verification Certificate
- Setback and Zoning Code Interpretation Handout
- TDSF and Impermeable Coverage Calculation Sheet
- Mailing Data and Radius Map Certification
- Revised Plan Submittal Form

## **EXHIBIT F**

— . . . . —

Jason and Elizabeth Riddick

6255 Paseo Canyon Drive  
Malibu, California 90265  
Telephone: (310) 633-4490  
Jason\_Riddick@hotmail.com  
ElizabethRiddick@hotmail.com

December 7, 2020

*Via E-Mail Only*

Mr. Trevor L. Rusin, Esq.  
Assistant City Attorney  
310-220-2177  
trevor.rusin@bbklaw.com

Mr. Richard Mollica, AICP  
Acting Planning Director  
City of Malibu  
310-456-2489 Ext. 346  
Rmollica@malibucity.org

*Re: Proposed Attached Accessory Dwelling Unit At 6255 Paseo Canyon*

Gentlemen,

This letter follows our Zoom meeting held on November 25, 2020 in which the four of us discussed the proposed Accessory Dwelling Unit (“ADU”) proposed to be attached to our existing single family residence at 6255 Paseo Canyon Drive, Malibu, CA 90265 (the “Project”), approval of which is currently pending with the City of Malibu (“City”). During the Zoom, it was noted by Mr. Rusin that if our Project is determined by the City to fall within the exemptions enumerated by Section 13.4.1(A) (“Section 13.4.1(A)”) of the City’s certified Local Coastal Program adopted September 13, 2002 (the “LCP”), it would not require a Coastal Development Permit (“CDP”). If our Project does not require a CDP, it is subject only to ministerial processing by the City under the recently enacted statewide ADU laws, whereby the City is required by law to approve our Project once City staff determines that applicable state-wide ADU requirements are met.

For the reasons set forth below, the Project should be approved immediately because it both (i) meets the state-wide ADU requirements and (ii) is exempt from the LCP’s requirement for a CDP under the plain language of Section 13.4.1(A) of Malibu’s LCP. Indeed, controlling provisions of the California Coastal Act and Title 14 of the Code of Regulations that are virtually identical to the LCP show that attached ADUs with no potential for adverse environment impacts are exempt from the requirement to obtain a CDP. Finally, this point is made explicit in the April 21, 2020 Memorandum Re Implementation of New ADU Laws from Coastal Commission Executive Director John Ainsworth. (*See* LCP, § 13.4.1(A); Cal. Code Regs., tit. 14, § 13250(a)(1); Cal. Pub. Resources Code § 30610; April 21, 2020 Coastal Commission Memorandum Re Implementation of New ADU Laws.)

**I. The Project Conforms to California’s New ADU Laws**

As a threshold matter, our Project qualifies as an Accessory Dwelling Unit under the recently revised California Government Code Section 65852.2 (“Section 65852.2”). Under Section 65852.2, as of January 1, 2020, all local governments in California must allow at least an

800 square foot accessory dwelling unit to be constructed that is at least 16 feet in height with 4-foot side and rear yard setbacks, provided all other ADU statutory requirements are satisfied. City imposed limits on lot coverage, floor area ratio (i.e., “TDSF”), open space, and minimum lot size restrictions may not be used if they prohibit the construction of an accessory dwelling unit that meets the state-wide specifications. The fact that our Project falls well inside these parameters is evident from our plans on file with the City. Thus, the only remaining question to be determined is whether the Project is exempt from the requirement to obtain a CDP under the LCP.

## **II. Our Project Is Exempt from The Requirement to Obtain a CDP**

Our Project is exempt from the requirement to obtain a CDP under the LCP because it falls within the CDP exemptions set forth under Section 13.4.1(A). Specifically, our Project seeks to build a “structure[] attached directly to the residence” as stated in Section 13.4.1(A) of the Malibu LCP that does not “involve a risk of adverse environmental impact” under Section 13.4.1(B)(1)-(3). The Project proposes a small (less than 500 sqft) ADU attached directly to our home in our enclosed backyard. Our home is situated inside the long-established residential neighborhood of Malibu West. There is no question that the Project does not “involve a risk of adverse environmental impact” because none of the enumerated categories of environmentally sensitive impacts are implicated by the Project. (*See* LCP, Section 13.4.1(B)(1)-(3).) Specifically, our residence is not located “on a beach, in a wetland, seaward of the mean high tide line, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff” nor does it require “the construction of water wells or septic systems.” (*Id.*)

## **III. The Limitation On CDP Exemptions For “Guest Houses or Accessory Self-Contained Residential Units” Contained in Section 13.4.1(A) Are Not Applicable To The Project**

The City has raised a question as to whether the language within Section 13.4.1(A) concerning certain “guest houses or accessory self-contained residential units” would somehow remove attached ADU from the category of exempt “structures attached to directly to the residence” for exemption purposes. The answer is no. The requirement within Section 13.4.1(A) that certain “guest houses or self-contained residential units” obtain a CDP only applies to limit the following otherwise CDP exempt category of development in the immediately preceding clause, which is irrelevant to our Project: “structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping.” Instead, attached ADUs fall into a separate and distinct CDP exception for “structures attached directly to the residence” under Section 13.4.1(A)

The LCP cannot be read to conflate an exempt attached ADU with a non-exempt “guest house or self-contained residential unit” for two primary reasons: (1) the plain language of Section 13.4.1(A) of Malibu’s LCP and the virtually identically worded and controlling provisions of the California Coastal Act and Title 14 of the Code of Regulations from which its verbiage is derived support the view that attached ADUs are CDP exempt “structures attached directly to the residence” and (2) the April 21, 2020 Memorandum Re Implementation of New

ADU Laws by Coastal Commission Executive Director John Ainsworth confirms in no uncertain terms that attached ADUs are “structures attached directly to the residence” for purposes of making exemption determinations.

***A. The California Coastal Act, Title 14 of the California Code of Regulations, and a Plain Reading of the LCP Strongly Show That Attached ADUs Are Exempt “Structures Attached Directly To the Residence”***

**First**, a plain reading of the controlling provisions of the Coastal Act codified in Public Resources Code § 30610, as interpreted through implementing regulations set forth in the California Code of Regulations, Title 14, Section 13250(a)(2), show that exempt “structures attached to a primary residence,” i.e., an attached ADU, are not limited by the exclusion applicable to “Guest Houses or Self-Contained Residential Units” in a different subsection of the regulations.

Public Resources Code § 30610(a) states in relevant part:

“[N]o coastal development permit shall be required pursuant to this chapter for . . . Improvements to existing single-family residences; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter...”

The Coast Commission, through California Code of Regulations, in turn, expounds upon the meaning of Public Resources Code § 30610(a):

(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:

(1) **All fixtures and other structures directly attached to a residence.**

(2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; **but not including guest houses or self-contained residential units;** and

(3) Landscaping on the lot.

(Cal. Code Regs., tit. 14, § 13250(a)(1)) (emphasis added.)

The above statutory provisions, from which the language in Malibu’s LCP originated, make it clear that the exemption to the requirement to obtain a coastal development permit “for fixtures and other structures directly attached to a residence”, such as an attached ADU, as described in Section 13250(a)(1) ***is not modified*** by the exclusion for “guest houses or self-contained residential units,” because the later is contained in the entirely separate subsection 13250(a)(2). Moreover, the qualifying language “but not including guest houses or self-

contained residential units” must be read in its usual and ordinary sense, which is to modify only the phrase that immediately proceeds it and which is contained in the same section, which, again, is only “structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds,” **not attached ADUs**. Furthermore, to construe the qualifications imposed inside Section 13250(a)(2) to also delimit exempt structures attached to a residence in Section 13250(a)(1) would violate the last antecedent rule, which is a core principle of statutory construction. “A longstanding rule of statutory construction--the 'last antecedent rule'--provides that 'qualifying words, phrases and clauses are to be applied to the words or phrases immediately preceding and are not to be construed as extending to or including others more remote.’” (*Garcetti v. Superior Court* (2000) 85 Cal.App.4th 1113, 1120) *quoting White v. County of Sacramento* (1982) 31 Cal. 3d 676, 680) (holding that qualifying language in a subsection only applied to that subsection, not a proceeding and separate subsection). Finally, it also would not make logical sense to interpret the last words of subpart (a)(2) as qualifying anything other than the preceding portions of subpart (a)(2), since both guest houses and self-contained residential units are commonly thought of as detached, rather than attached, structures (unlike an attached ADU).<sup>1</sup>

Malibu may not interpret its certified LCP in a manner that departs from how the exemption exclusion for guest houses or self-contained residential is applied within the California Coastal Act and Title 14 of the California Code of Regulations. First, to apply a strained interpretation to the LCP that is inconsistent with the Coastal Act to block our Project would violate the expressed purpose and intent of the LCP, which is to ensure that the “process for review of all development with the coastal zone of the City of Malibu...**will be consistent with** . . . the California Coastal Act and the California Code of Regulations Title 14 Division 5.5.” (LCP, § 13.1.) (emphasis added). Second, the LCP is subject and subservient to the Coastal Act and California Code of Regulations. All public agencies, including the City, must comply with the requirements of the Coastal Act, and are subject to the jurisdiction of the Coastal Commission when acting within the coastal zone. (Public Resources Code § 30003.)<sup>2</sup>

***B. The April 21, 2020 Memorandum Re Implementation of New ADU Laws by Coastal Commission Executive Director John Ainsworth Directly Supports the Interpretation Of LCP Section 13.4.1(A) Urged Herein***

**Second**, if you harbor any lingering doubt as to whether attached ADUs should be considered part of the class of exempt structures attached directly to a residence, it should be dispelled by the April 21, 2020 Memorandum Re Implementation of New ADU Laws by Coastal Commission Executive Director John Ainsworth (the “Memo”), a copy of which is attached to

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<sup>1</sup> Nor would an attached ADU fit the definition of a guest house or a self-contained residential unit in any event. “Houses” are commonly defined as having four free standing wall, but an attached ADU does not. Likewise, an attached ADU is not “self-contained residential unit” since it partially relies on a shared wall with the home for containment and is by definition not “self-contained.”

<sup>2</sup> “Public agency” is not defined within the definitions section of Coast Act 30100-30122 but it is commonly understood to include cities. (*See e.g.*, Cal. Gov. Code. 6252(d).)

Mr. Richard Mollica  
Mr. Trevor Rusin  
December 7, 2020  
Page 5

this letter as Exhibit A. The Memo provides guidance to Malibu and all other coastal cities on how to evaluate whether a proposed attached ADU is exempt from the CDP requirements of an LCP under the Coastal Act. The Memo confirms that attached ADUs are exempt from the requirement to obtain a CDP under language virtually identical to Section 13.4.1(A) of Malibu's LCP, and that the exclusion for guest houses and self-contained residential units refer only to "detached residential units" and therefore **do not** apply to attached ADUs. The Memo states, in relevant part:

**[T]he construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)** Guest houses and "self-contained residential units," i.e. detached residential units, do not qualify as part of a single-family residential structure, and construction of or improvements to them are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)

(Ex. A at p. 5 [emphasis added].)

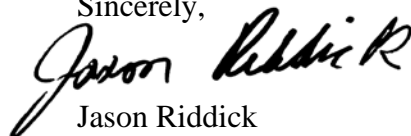
Following the guidance to you from Mr. Ainsworth, our proposed ADU is "directly attached to an existing single-family residence" and therefore should "qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)" as opposed to "Guest houses and "self-contained residential units," i.e. detached residential units, [that] do not qualify as part of a single-family residential structure, and . . . are therefore not exempt development. (Cal. Code Regs., tit. 14, § 13250(a)(2).)" (Ex. A [Memo at p.5].)

#### **IV. Conclusion**

We respectfully ask that you confirm that the City of Malibu will process our Project on an administrative basis as a CDP-exempt attached ADU improvement pursuant to Cal. Code Regs., tit. 14, § 13250(a)(1) and LCP Section 13.4.1(A). If you decline to do so, please state the detailed basis of your decision in writing, so that we may evaluate our legal remedies moving forward.

Thank you both for your ongoing time and attention to this matter, and we wish you Happy Holidays and a joyous New Year.

Sincerely,



Jason Riddick

# **EXHIBIT G**





# City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861  
Phone (310) 456-2489 · Fax (310) 456-7650 · [www.malibucity.org](http://www.malibucity.org)

February 24, 2021

Jason and Elizabeth Riddick  
6255 Paseo Canyon Drive  
Malibu, CA 90265

**Re: Coastal Development Permit (CDP 20-034)**

Proposed Accessory Dwelling Unit and minor addition to existing single-family dwelling at 6255 Paseo Canyon Drive.

Dear Mr. and Mrs. Riddick:

The City is in receipt of your December 7, 2020 letter regarding your application for an attached Accessory Dwelling Unit (ADU) at your property at 6255 Paseo Canyon Drive. After careful consideration, we disagree with your conclusion. Your proposed ADU would violate the Total Development Square Footage (TDSF) limit and required setbacks in the City's certified Local Coastal Program (LCP), and neither the state ADU law nor the City's ADU ordinance changes that.

**Coastal Act requirements *do* apply to your proposed ADU.**

Except for a no-public-hearing requirement, the state ADU law has no bearing on how the City approves or regulates a proposed ADU under the California Coastal Act. As plainly stated in the ADU law itself, "Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ..., except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units."

Yes, it's true that the City has a ministerial-approval process for ADUs that comply with the state ADU law and the City's ADU ordinance — but that is separate from, and really irrelevant to, how the City approves and regulates ADUs *under the Coastal Act*.

**The proposed ADU fails to comply with setback and TDSF standards in the certified LCP.**

There is no provision in the existing, certified Malibu LCP that allows your ADU project as proposed to go forward in violation of the setback and TDSF standards in the City's certified LCP. As explained above, compliance with the state ADU law is irrelevant to whether your proposed ADU requires a CDP or is exempt from a CDP. Again, "Nothing in this section [the ADU law] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ...."



The Local Implementation Plan (part of the City's existing, certified LCP) includes setback and TDSF standards. These standards apply to your property, and your proposed ADU does not comply with them.

- The LIP imposes a side-yard setback of 10 feet. The proposed ADU would encroach into the required setback area by five feet.
- The LIP requires a rear-yard setback of 17 feet, 3 inches. The proposed ADU would encroach into the required setback area by two feet.
- The LIP limits Total Development Square Footage based on the formula set forth in MMC 17.40.040(A)(13) and LIP 3.6(K). The proposed ADU would exceed the allowable square footage.

The City is bound by its certified LCP to ensure compliance with these standards. The ADU law does not change that.

### **Coastal Commission Guidance re ADUs does not change these requirements.**

Yes, the Coastal Commission has issued guidance about how a City may deem certain types of ADU projects to be "not development" or eligible for a waiver from CDP requirements, but that guidance does not automatically rewrite the city's certified LCP. Nor does it preempt the LCP's setback and TDSF requirements. Nothing in the LCP relieves you or the city of the obligation to ensure compliance with the standards in the certified LCP.

### **No variance is justified here.**

Under the LCP, there is one way for you to develop the ADU as you propose: You would have to get a variance from each standard. Based on the materials submitted, the City cannot make these findings and so cannot approve a variance from any of the standards that your ADU would violate.

### **You have other ADU options.**

The non-compliant ADU that you have proposed is not your only option to create an ADU on your property. You may convert some of the existing space in the primary dwelling to create a junior ADU or ADU. You may also change your attached-ADU design to comply with the LCP's setback, TDSF, and other standards. Either would require a Coastal Development Permit because the existing LCP does not exempt any accessory dwelling unit.


The LCP is likely to change in the future to allow some exemptions from CDP requirements for ADUs that comply with certain standards, but that has not happened yet and we cannot pretend that it has.

To reiterate, we are aware of HCD's guidance suggesting that a City may amend its LCP to make a new-construction, attached ADU eligible for a waiver from CDP requirements, but HCD's guidance does not rewrite the City's LCP or otherwise preempt the requirements of the existing, certified LCP. The law requires the City to actually amend its LCP, in accordance with a specific public process. Until the City completes the legal process to amend the LCP, the existing CDP requirement for second units or ADUs remains in effect. The City has no legal authority to ignore that requirement of the City's certified LCP.

We are confident that the law does not compel otherwise, and that the City has no legal authority to do what you're asking.

You have options to move forward. We invite you to adjust your plans and submit an approvable alternative for review.

Sincerely,

 Digitally signed by  
Richard Mollica  
Date: 2021.02.24  
15:44:33 -08'00'

Richard Mollica, AICP  
Planning Director

Cc: Planning File

# **EXHIBIT H**

Jason and Elizabeth Riddick  
6255 Paseo Canyon Drive  
Malibu, California 90265  
Telephone: (310) 633-4490  
Jason\_Riddick@hotmail.com  
ElizabethRiddick@hotmail.com

April 13, 2021

*Via E-Mail Only*

Mr. Richard Mollica, AICP  
Planning Director  
City of Malibu  
310-456-2489 Ext. 346  
Rmollica@malibucity.org

*Re: Proposed Attached Accessory Dwelling Unit At 6255 Paseo Canyon  
REQUEST FOR REASONABLE ACCOMODATION UNDER ADA*

Dear Richard,

As you know, we (the “Riddick Family”) own 6255 Paseo Canyon Drive, Malibu CA, 90265 (“Property”). In June of 2020, we applied with the City of Malibu (“City” or “Malibu”) for a permit to build an attached accessory dwelling unit and minor addition to our existing single-family dwelling, totaling 571 square feet (the “Project”). At the time of our application, we informed you and our City assigned planner, David Eng, of our purpose for the Project, which is to provide housing for Elizabeth’s 82-year-old mother, Renee Sperling, who has multiple disabilities.

### **Introduction**

The purpose of this letter is to “Request a Reasonable Accommodation” under Section 13.30 of Malibu’s Local Coastal Program (“LCP”) to allow our Project to move forward.

We view such an accommodation as unnecessary because the City is legally obligated under both the recently enacted statewide ADU laws and the language of its own LCP at *Section 13.4.1* (existing and as proposed to be amended) to process and approve our ADU on an administrative basis within sixty (60) days of our application. Nevertheless, because the City has not performed, we make this formal “Request for a Reasonable Accommodation” to facilitate moving the Project forward without further delay.

Elizabeth's mother, Renee Sperling is 82 years old and suffers from numerous ailments, including glaucoma, arthritis, asthma and osteoporosis. Renee has a handicap placard issued by the California State Department of Motor Vehicles. She is disabled and protected by the Federal Housing Act and the California Fair Employment and Housing Act (hereafter, the "Acts"). We are building the ADU so that she may age in place with us and her three grandchildren, while maintaining her independence.

### **Brief Background**

It is undisputed that our planned ADU fully complies with California law, and has no potential for adverse impacts on environmentally sensitive habitat area, public access, public views or other coastal resources.<sup>1</sup> This is why you have characterized our project as "like a posterchild for why the ADU Law was created."

Unfortunately, on October 9, 2020, the City notified us that our Project could not be ministerially-administratively approved and was put on hold from any further review for the following two narrow reasons: (i) the ADU supposedly caused our lot to exceed the City's total allowable development square footage ("TDSF") by 486 square feet and (ii) the ADU did not comply with the cumulative set back requirement of the LCP. Specifically, City Staff stated:

"Local jurisdictions are required to comply with state provisions allowing and permitting of accessory dwelling units (ADU). However, per the California Coastal Commission, Government Code section 65852.2 does not supersede currently certified provisions of Local Coastal Programs (LCP). Therefore, until an amendment to the LCP is adopted, the provisions of the LCP will continue to apply to Coastal Development permit applications for ADU's. . . [and] the project . . . requires applications for variances for side and rear yard setbacks, and for exceeding the maximum allowed total development square footage. While applications for ADU's are reviewed ministerially, requests for discretionary approvals such as variances require a public hearing by the City's Planning Commission."

While agreed that the City must abide by its LCP, we strongly disagreed with the City's conclusion that there was an inconsistency between the LCP and statewide ADU law such that our Project required discretionary approval by the Planning Commission. Accordingly, on December 7, 2020, we submitted a letter to the City explaining in detail

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<sup>1</sup> Our Project is located in the fenced backyard of our single-family home located in the residential neighborhood on the inland side of PCH known as Malibu West (established in 1962). It has been approved by the Home Owner's Association of Malibu West.



our analysis of why the City's conclusion that our Project could not move forward administratively was in error.<sup>2</sup> The gist of our letter is that there is no actual conflict between California statewide law and Malibu's LCP with respect to attached ADUs because both dictate that attached ADUs with no potential for adverse environment impacts (i.e., our Project) must be ministerially- administratively approved, provided that all other conditions for an ADU are met (which they are here).<sup>3</sup>

The California Coastal Commission is in full agreement with us. In an April 21, 2020 Memorandum, Executive Director John Ainsworth provides specific guidance to planning directors of coastal cities such as Malibu regarding how they should interpret the language of their existing LCPs when deciding applications to build attached ADUs. Ainsworth confirms that attached ADUs should be deemed exempt from the set back and TDSF requirements under language identical to Malibu's LCP Section 13.4.1, stating:

**“[T]he construction or conversion of an ADU/JADU contained within or directly attached to an existing single-family residence would qualify as an exempt improvement to a single-family residence. (Cal. Code Regs., tit. 14, § 13250(a)(1).)”**<sup>4</sup>

Unfortunately, Malibu planning staff still refused to allow our Project to move forward. The only reason the City offered is its statement that “there is no provision in the existing, certified Malibu LCP that allows your ADU project as proposed to go forward in violation of the setback and TDSF standards in the City's certified LCP.”<sup>5</sup> The City did not address the California Coastal Commission's guidance cited above explaining that, in fact, attached ADUs qualify as “exempt improvements” under Section 13.4.1 of Malibu's existing LCP.<sup>6</sup>

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<sup>2</sup> Under California Government Code Section 65852.2 (“Section 65852.2”), as of January 1, 2020, all local governments in California **must** allow at least an 800 square foot accessory dwelling unit to be constructed that is at least 16 feet in height with 4-foot side and rear yard setbacks, provided all other ADU statutory requirements are satisfied. City imposed limits on lot coverage, floor area ratio (i.e., “TDSF”), open space, and minimum lot size restrictions may **not** be used if they prohibit the construction of an ADU that, like ours, meets all the state-wide specifications. While it is true the state-wide ADU laws contain a “carve out” that allows Cities to follow different rules if expressly dictated by their pre-existing LCPs, Malibu's LCP does dictate any different result. Specifically, our Project is exempt from the LCP's requirements under the plain language of Section 13.4.1(A) of Malibu's LCP, which allows attached ADUs with no potential for adverse environment impacts such as ours to be approved administratively by staff. See Ex. A [Dec. 7, 2020 Ltr.]

<sup>3</sup> Compare Malibu's Local Coast Program (“LCP”) at § 13.4.1(A) with Cal. Code Regs., tit. 14, § 13250(a)(1) and Cal. Pub. Resources Code § 30610; see also Ex. A [Dec 7, 2020 Ltr. to City]

<sup>4</sup> See Ex. B [Ainsworth's April 21, 2020 Memorandum] at p. 5 (emphasis added).

<sup>5</sup> See Ex. C [February 24, 2020 Response Ltr. From City]

<sup>6</sup> Ex. D [Email From Riddick Family to Trevor Rusin and Richard Mollica dated Feb 24, 2021]

Indeed, the City's own draft set of proposed amendments to Malibu's LCP - designed to harmonize it with statewide ADU law - makes the point even more explicit, tacking on the following proposed verbiage to the existing Section 13.4.1:

**“Attached accessory dwelling units or accessory dwelling units located in an existing accessory structure shall be exempt from obtaining a Coastal Development Permit if it is consistent with the LCP, and has no potential for adverse effects, either individually or cumulatively, on coastal resources.”**

Ex. E [Malibu's Draft Amendment To ADU Ordinance, dated December 13, 2019]. Thus, under the existing LCP as well as its proposed amended version, our Project should have been approved ministerially-administratively. There is no reason to “wait” for the proposed amendment to be passed or not passed.

***Request for a Reasonable Disability Accommodation***

While our Project should not even require a disability accommodation for the reasons set forth above, we nevertheless meet all of the requirements for such an accommodation under Section 13.30 of Malibu's LCP, and our request should be granted. Specifically, under Section 13.30, our “Project” is necessary to provide accessible housing for Renee Sperling, an 82-year-old, disabled senior citizen. Our project:

- Does not impose an undue financial or administrative burden on the City ;
- Does not require a fundamental alteration in the nature of the LCP (nor, we would argue, any alternation whatsoever);
- Does not have the potential to adversely impact wetlands, environmentally sensitive habitat area, public access, public views and/or other coastal resources;
- Has been approved by the Los Angeles County Fire Department;
- Has been approved by the City of Malibu's Geologist;
- A proposed site plan is already on file with the City;
- Has been approved by our Homeowners Association; and
- **Is in full compliance with the Malibu City Planning Staffing's own Draft ADU Ordinance dated December 13, 2019.<sup>7</sup>**

Providing a place to live for disabled seniors, such as Elizabeth's mother, Renee

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<sup>7</sup> Ex. E [Malibu City Planning Staffing's Draft ADU Ordinance dated December 13, 2019.]



Sperling, is a core purpose of the ADU laws. According to the California Housing and Community Development Department, ADUs are designed to “give homeowners the flexibility to share independent living areas with family members and others, **allowing seniors to age in place as they require more care**, thus helping extended families stay together while maintaining privacy.”<sup>8</sup>

Our Project is intended to provide housing for Elizabeth Riddick’s mother who is a disabled person under the Federal Housing Act and the California Fair Employment and Housing Act, which apply to the application by cities of zoning laws and other land use regulations, policies and procedures, including – as relevant here - the application of the allowable square footage (TDSF) and setback requirements.

The Acts makes it **unlawful** for a City or local government to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.”<sup>9</sup> The Acts further state that persons with qualifying impairments, diseases and conditions, such as orthopedic, visual, speech and hearing impairments, are considered protected under the Acts.<sup>10</sup>

Ms. Sperling is 82-year-old, and suffers from Glaucoma, Arthritis, Asthma and Osteoporosis.<sup>11</sup> Accordingly, Ms. Sperling carries a handicap placard issued by the California State Department of Motor Vehicles.<sup>12</sup> According to Ms. Sperling’s doctors:

“Renee Sperling suffers from deforming psoriatic arthritis and severe knee osteoarthritis. She is disabled. **She needs to live near her family to care for her.**”

“Ms. Sperling suffers from glaucoma. Glaucoma is a chronic disease in which damage to the optic nerve can lead to progressive, irreversible vision loss. **Ms. Sperling struggles with her vision and is on a complex medical regimen. Assistance in administering eye drops and adhering to the schedule by a third party is extremely valuable.**”

Ex. H [Doctor’s Note] & Ex. I [Doctor’s Note].

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<sup>8</sup> Ex. F [California Housing and Community Development ADU Handbook] at p. 4 (emphasis added) This Handbook contains specific language for how coastal communities, such as ours, should address ADU permitting when conflict with LCPs to ensure ADUs can proceed expeditiously.

<sup>9</sup> Ex. G Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations Under the Fair Housing Act

<sup>10</sup> Ex. G Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Accommodations Under the Fair Housing Act

<sup>11</sup> Ex. H [Doctors Note 1] and Ex. I [Doctor’s Note 2]

<sup>12</sup> Ex. J [Picture of Handicap Placard]

Mr. Richard Mollica

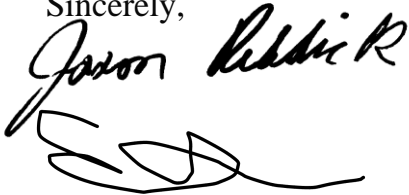
April 13, 2021

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Ms. Sperling only desires to indefinitely live independently but with her family and to be able to safely age with them, while maintaining her privacy. To prevent her from living with us (with a modicum of privacy in our backyard) because of an interpretation of allowable square footage and setback allowance in an improper manner that directly conflicts with (1) State law, (2) Malibu's existing LCP exemption language and (3) Malibu's proposed amended LCP exemption language would not just be wrong, it would be cruel.

Accordingly, we respectfully request that you grant us a reasonable accommodation and approve our permit expeditiously. The accommodation is reasonable and minimal because we are simply asking the City to comply with pre-existing California State Law, the plain language of Section 13.4.1(A) of Malibu's LCP, clear guidance from the California Coastal Commission, and last but not least, the City Planning Staffs' own draft recommendation regarding permits for attached ADUs.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Riddick". The signature is fluid and cursive, with a large, stylized "R" at the end. Below the main signature, there is a smaller, more abstract scribble or flourish.

Jason and Elizabeth Riddick  
310-490-2777  
elizabethriddick@hotmail.com  
jason\_riddick@hotmail.com

# **EXHIBIT I**

RESOLUTION NO. 21-47

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU, DETERMINING THE PROJECT IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA), AND DENYING APPEAL NO. 21-008; AND DENYING REQUEST FOR REASONABLE ACCOMMODATION NO. 21-001 PURSUANT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN (LIP) SECTION 13.30 TO ALLOW RELIEF FROM THE ZONING PROVISIONS OF THE LIP, AS THEY CURRENTLY APPLY TO AN APPLICATION FOR A NEW ATTACHED ACCESSORY DWELLING UNIT (ADU) AND ADDITIONS TO AN EXISTING SINGLE-FAMILY RESIDENCE; AND ALSO DENYING COASTAL DEVELOPMENT PERMIT NO. 20-034 WHICH WOULD ALLOW THE AFOREMENTIONED DEVELOPMENT TO ENCROACH INTO THE REAR AND SIDE YARD SETBACKS AND EXCEED THE MAXIMUM ALLOWED TOTAL DEVELOPMENT SQUARE FOOTAGE AND TOTAL IMPERVIOUS LOT COVERAGE FOR THE PARCEL, LOCATED IN THE SINGLE-FAMILY (SF-L) ZONING DISTRICT AT 6255 PASEO CANYON DRIVE (RIDDICK)

The City Council of the City of Malibu does hereby find, order and resolve as follows:

SECTION 1. Recitals.

A. On July 10, 2020, Coastal Development Permit (CDP) No. 20-034 was submitted to the Planning Department by applicants and property owners Elizabeth and Jason Riddick. The application was routed to City geotechnical staff and the City Public Works Department for review.

B. On April 19, 2021, an application for Request for Reasonable Accommodation was submitted to the Planning Department by applicants and property owners Elizabeth and Jason Riddick. As the request involves permanent development, the Planning Director referred the request and CDP No. 20-034 to the Planning Commission for its consideration at its next available hearing date.

C. On May 27, 2021, a Notice of Coastal Development Permit and Request for Reasonable Accommodation Applications was posted on the subject property.

D. On May 27, 2021, a Notice of Planning Commission Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a 500-foot radius of the subject property, which the 10 closest lots, as required by the RRA.

E. On June 7, 2021, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

F. On June 17, 2021, the owners and applicants Elizabeth and Jason Riddick filed an appeal of the Planning Commission's decision.

G. On July 15, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City of Malibu and was mailed to all property owners and occupants within a radius of 500 feet from the subject property and all interested parties.

H. On August 9, 2021, prior to the opening of the public hearing, the City Council continued the hearing to the August 19, 2021 Adjourned Regular City Council meeting.

I. On August 19, 2021, the City Council held a duly noticed public hearing on the subject appeal, reviewed and considered the agenda report, reviewed and considered written reports, public testimony, and other information in the record.

## SECTION 2. Appeal of Action.

The appellant states the reason for the basis of the appeal was due to the City's incorrect application of the City's Local Coastal Program (LCP), and inaccurate interpretation of state Accessory Dwelling Unit (ADU) law and California Coastal Commission guidance on ADU law, in denying an application for a new ADU. The appellant also objects to the City's findings that a request for reasonable accommodation cannot be made to exempt the proposed ADU from specific zoning requirements of the LCP.

## SECTION 3. Findings for Denying the Appeal.

Based on evidence in the record and in the Council Agenda Report for the project, the City Council hereby makes the following findings of fact, denies the appeal and finds that the evidence in the record supports the required findings for denial of the project. In addition, the relevant analysis, findings of fact, and conclusions set forth by staff in the Council Agenda Report and Planning Commission Agenda Report, as well as the testimony and materials considered by the Planning Commission and City Council are incorporated herein by reference.

1. The proposal for an attached ADU does not qualify for an exemption from the requirement of a CDP. Per the technical guidance dated April 21, 2020 from the California Coastal Commission to Coastal Cities and Counties, "currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to CDP applications for ADUs until an LCP amendment is adopted." The proposed ADU is an attached addition to the existing single-family residence. LIP 13.4.1 (A) addresses this very scenario and explains that while an exemption exists from the LIP's CDP requirement for improvements to existing single-family residences, an exception to this exemption is "accessory self-contained residential units." Adopting the position of the Project applicant would in practice delete the "accessory self-contained residential units" language from LIP 13.4.1(A). Specifically, the language would in effect have zero meaning as this application and all future ADU applications (*i.e.*, self-contained residential units) would nevertheless be considered exempt as an improvement to the existing single-family residences. Even if the applicant's interpretation of the California Coastal Commission's memo to Planning Directors is accurate (which staff disputes), the memorandum cannot, and does not, supersede the plain language of the City's LIP. Malibu's LCP is certified by the California Coastal Commission to implement the California Coastal Act. The LCP is an extension of state regulations and is not superseded by state ADU law.

2. Malibu's LCP is certified by the California Coastal Commission to implement the California Coastal Act. The LCP is an extension of state regulations and is not superseded by state ADU law. As explained above, the proposed project is not exempt from the requirement to obtain a CDP. Thus, the contention that only the State's ADU law applies is not accurate

3. Malibu LIP section 13.30(E) lists the required findings that must be made in order to grant a request for a reasonable accommodation. Those findings are as follows:

- (1) The housing, which is the subject of the request, will be occupied by a person with a disability.
- (2) The approved reasonable accommodation is necessary to make housing available to a person with a disability.
- (3) The approved reasonable accommodation would not impose an undue financial or administrative burden on the City.
- (4) The approved reasonable accommodation would not require a fundamental alteration in the nature of the LCP.
- (5) The approved reasonable accommodation would not adversely impact coastal resources.
- (6) The project that is the subject of the approved reasonable accommodation conforms to the applicable provisions of the LCP and the applicable provisions of this section, with the exception of the provision(s) for which the reasonable accommodation is granted.

The Planning Commission found that required findings (2) through (5) could not be met. While finding (1) (housing will be occupied by a person with a disability) was made, this finding was only for the present. The applicant provided no assurances or mechanism to ensure that the requested housing accommodation would only be used as housing by a person with a disability in perpetuity. The rest of the findings could not be made as explained in the Planning Commission denial.

The applicant has not provided any authority (nor has the City found any authority), that this type of requested accommodation is appropriate under the federal and state Fair Housing Acts. The cases and examples cited by the applicant (*i.e.*, failing to waive minimum financial requirements to rent an already existing apartment and refusing to allow cosigners, failing to provide reasonable parking accommodations, and developers being denied variances to build any housing) are all inapposite. No authority was cited where an existing house exists that could provide housing for the disabled person but an ADU in violation of local requirements was nevertheless granted. Here, a house exists and the City is in no way preventing the applicant from reconfiguring the existing house to allow the disabled person (the applicant's elderly mother) to reside there. Rather, the Planning Commission made the determination that the requested accommodation in the form of the proposed addition of the ADU does not meet the required findings.

What is more, the applicant makes no argument whatsoever (as none exist) as to why additions to the master bedroom and master bathroom qualify as a reasonable disability accommodation. These requests are entirely unrelated to the disability accommodation and staff is unable to determine that these project components are consistent with the above required findings.

As to the applicant's appeal arguments, they are addressed as follows.

1. Housing for a disabled person can be met through conversion or reconfiguration of existing floor area, or at minimum a proposal that better conforms to the LIP's existing zoning requirements. The existing floor plan shows potential options for an attached ADU in the conversion of the existing oversized garage and combination or reducing in size of common living areas. The applicant has not submitted any plan proposals beyond the initial plan submittal to study design alternatives. The applicant's argument that the disabled person requires a "healthy distance" from her three young grandchildren is belied by the applicant's request to attach the ADU to the existing residence. Further, the applicant

provides no detail on what qualifies as a “healthy distance” and dismisses the idea of rearranging the existing house as it would result in the entire family “bunching up.” Staff does not understand why residing in an attached ADU versus in an existing room would provide greater safety and wellbeing. Additionally, the current proposal includes additions and alterations, such as the augmenting the master bedroom and bathroom, that do not meet zoning standards and are not related to providing housing for a disabled person. Therefore, the reasonable accommodation is not necessary to make housing available to a person with a disability.

2. Approvals of reasonable accommodations are typically made for reasonable accommodation to enjoy a residential living unit that does not currently exist. Here, a house exists where the disabled person can reside. Further, while the applicant states that no legal basis exists for the City to monitor that the requested accommodation is occupied by a disabled person, LIP 13.30 (J) states otherwise. This section requires that unless the City determines that the reasonable accommodation runs with the land,<sup>1</sup> a reasonable accommodation shall lapse if the rights granted by it are discontinued for one hundred eighty (180) consecutive days. The applicant has submitted no plan whatsoever to confirm that the reasonable accommodation will only be used by a disabled person and what the applicant will do upon termination of the use.
3. The LCP aims to protect and maintain the overall quality of the coastal zone environment, assure orderly utilization and conservation of coastal zone resources, maintain public access, prioritize coastal-dependent and coastal-related development, and encourage state and local initiatives and cooperation in the implementation of coordinated planning and mutually beneficial uses in the coastal zone. To achieve these objectives, a goal of the LCP is also to promote the fair treatment of all people in the City’s application of laws, regulations, and policies. Granting the request for reasonable accommodation would allow the limitations of the LIP to be exceeded, not because it is required to accommodate a person with a disability, but rather because the homeowner does not want to convert a portion of their existing home to accommodate that person. Granting the request for reasonable accommodation would fundamentally change the nature of the TDSF limits in the City as it would set a precedent for exceeding the TDSF via applications for ADUs. It would create a process that incentivizes a RRA request to build an ADU no matter how temporary the use may be or tenuous the justification is for the disability. Further, because the applicant makes no provision for what to do once the request for reasonable accommodation use is discontinued by the disabled person, the end result would be numerous ADUs built above the limitations of the LIP and used by the non-disabled.
4. The proposed reasonable accommodation will allow construction of an ADU and other development in an existing residential subdivision developed with similar single-family residences and accessory structures. The Planning Department, City Public Works Department, and City geotechnical staff have reviewed the project and found that it will not adversely impact coastal resources. However, if granted, this will undoubtedly have cumulative impacts on coastal resources as other property owners will undoubtedly seek

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<sup>1</sup> Implicit in applicant’s appeal appears to be an assertion that this accommodation would run with the land and the City has no authority and ability to monitor or check that the reasonable accommodation is actually for someone who is disabled. This could produce a result where the disabled person either never lives in or resides briefly in the reasonable accommodation.

similar reasonable disability accommodations in the form of ADUs that exceed the City's LIP when existing housing already exists.

In sum, the applicant's proposal (including the additions to the master bedroom and master bathroom) does not meet the required LIP findings. While City staff is sympathetic to the applicant's desire to provide housing for an elderly mother, no other design proposals or reconfigurations of the existing developed area have been presented to the City.

#### SECTION 4. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed project. The City Council finds that Pursuant to CEQA Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

#### SECTION 5. Coastal Development Permit Findings.

Based on substantial evidence contained within the record and pursuant to LIP including Sections 13.7(B) and 13.9, the City Council adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and denies CDP No. 20-034 for the partial demolition and additions and alterations to an existing 3,000 square foot single-family residence resulting in a net addition of 571 square feet, which includes a new 426 attached ADU, and would encroach into minimum required rear and side yard setbacks and exceed the maximum allowed TDSF and TILC; and denies RRA 20-001, which would allow relief from the zoning provisions of the LIP, as they currently apply to the new ADU and associated development.

The proposed project has been determined to not be consistent with all applicable requirements of the LCP, specifically LIP Section 3.6(K) in that the project is exceeding the allowable TDSF on site. The required findings for denial of the requested variance are made herein.

#### **A. General Coastal Development Permit (LIP Chapter 13)**

1. The proposed project is located in the SFL residential zoning district, an area designated for residential uses. The proposed project has been reviewed for conformance with the LCP by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. As discussed herein, based on submitted reports, project plans, visual analysis and site investigation, the proposed project does not conform to the LCP as it violates residential development standards for required minimum rear and side yard setbacks and maximum allowed TDSF and TILC. If the RRA is granted then the project, as conditioned, would conform to the LCP in that it meets all applicable residential development standards.

2. The project is not located between the first public road and the sea. In addition, the subject property does not contain any mapped trails as depicted on the LCP Park Lands Map. Therefore, this finding is not applicable.

3. This analysis assesses whether alternatives to the proposed project would significantly lessen adverse impacts to coastal resources.

Proposed Project: The project proposes partial demolition and additions and alterations to an existing single-family residence. The project will result in a new attached ADU and an expansion



of the master bedroom/bathroom. The ADU and the addition to the primary residence do not conform to the zoning requirements of the LIP with respect to rear and side yard setbacks, TDSF, and TILC.

Alternative Project: The project seeks significant departures from the requirements of the LCP. Exceeding the TDSF limit in particular is a standard that is rarely, if ever, found to be in compliance with the LCP. These departures could be avoided in a number of ways. For example, the applicant could propose an addition that comply with the TDSF limit for the property and convert a larger portion of the existing home to the ADU. Such an alternative could comply with the LCP and result in less site disturbance.

4. The subject property is not in a designated ESHA or ESHA buffer as shown on the LCP ESHA and Marine Resources Map. Therefore, Environmental Review Board review was not required, and this finding does not apply.

**B. Request for Reasonable Accommodation (LIP Section 13.30)**

1. The applicant has submitted documentation from medical providers stating that the intended occupant of the proposed ADU is a person with a disability. However, the proposed additions to the master bedroom and bathroom are not intended to be used by a disabled person.

2. An approved reasonable accommodation would accommodate construction of an ADU to make housing available to a person with a disability. However, housing for a disabled person could be met through alternative means without reasonable accommodation, through the conversion and reconfiguration of existing floor area. Therefore, this finding cannot be made.

3. Approval of the reasonable accommodation will not require an undue amount of additional staff time and resources for review of the application; however, it will require ongoing monitoring and administrative costs to determine that the ADU is occupied by a disabled person.

4. The LCP aims to protect and maintain the overall quality of the coastal zone environment, assure orderly utilization and conservation of coastal zone resources, maintain public access, prioritize coastal-dependent and coastal-related development, and encourage state and local initiatives and cooperation in the implementation of coordinated planning and mutually beneficial uses in the coastal zone. To achieve these objectives, a goal of the LCP is also to promote the fair treatment of all people in the City's application of laws, regulations, and policies. Granting the request for reasonable accommodation would allow the limitations of the LIP to be exceeded, not because it is required to accommodate a person with a disability, but rather because the homeowner does not want to convert a portion of their existing home to accommodate that person. Granting the RRA would fundamentally change the nature of the TDSF limits in the City as it would set a precedent for exceeding the TDSF via applications for ADUs. It would create a process that favors those with the resources to pursue a request for reasonable accommodation as an incentive.

5. The proposed reasonable accommodation will allow construction of an ADU in an existing residential subdivision developed with similar single-family residences and accessory structures. The Planning Department, City Public Works Department, and City geotechnical staff have reviewed the project and found that it will not adversely impact coastal resources other than by setting a precedent of allowing greater development in the coastal zone.

6. Approval of the request for reasonable accommodation would provide relief from the required side and rear yard setbacks, and maximum allowed TDSF and TILC required under the LCP for the ADU and the master bathroom and bedroom for the primary residence. The portion of the project that proposes to expand the master bedroom and bathroom does not conform to applicable provisions of the LCP. The project would only conform if the Planning Commission found that the expansion of the master bedroom and bathroom qualifies for relief through the request for reasonable accommodation by meeting the findings required above.

**C. Environmentally Sensitive Habitat Area Overlay Chapter (LIP Chapter 4)**

1. The subject property is not in a designated ESHA, or ESHA buffer, as shown on the LCP ESHA and Marine Resources Map. Therefore, the findings of LIP Section 4.7.6 are not applicable.

**D. Native Tree Protection (LIP Chapter 5)**

1. There are no native trees on or adjacent to the subject parcel. Therefore, the findings of Chapter 5 are not applicable.

**E. Scenic, Visual and Hillside Resource Protection (LIP Chapter 6)**

1. The Scenic, Visual, and Hillside Resource Protection Chapter governs those coastal development permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road or public viewing area. The subject property is not located along, within, nor provides views to or is visible from any scenic area, scenic road or public viewing area. Therefore, the findings LIP Chapter 6 are not applicable.

**F. Transfer of Development Credit (LIP Chapter 7)**

1. The proposed project does not include a land division or multi-family development. Therefore, the findings of LIP Chapter 7 are not applicable.

**G. Hazards (LIP Chapter 9)**

Pursuant to LIP Section 9.3, written findings of fact, analysis and conclusions addressing geologic, flood and fire hazards, structural integrity or other potential hazards listed in LIP Sections 9.2(A)(1-7) must be included in support of all approvals, denials or conditional approvals of development located on a site or in an area where it is determined that the proposed project causes the potential to create adverse impacts upon site stability or structural integrity.

The proposed development has been analyzed for the hazards listed in LIP Chapter 9 by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. The required findings are made as follows:

1. Based on review of the project plans and associated reports by City Environmental Health Administrator, City Public Works Department, City geotechnical staff, and LACFD, these specialists determined that adverse impacts to the project site related to the proposed development are not expected. The proposed project will neither be subject to nor increase the instability from geologic, flood, or fire hazards. In summary, the proposed development is suitable for the intended use provided that the certified engineering geologist and/or geotechnical engineer's

recommendations and governing agency's building codes are followed.

### Fire Hazard

The entire City of Malibu is designated as a Very High Fire Hazard Severity Zone, a zone defined by a more destructive behavior of fire and a greater probability of flames and embers threatening buildings. The subject property is currently subject to wildfire hazards. The scope of work proposed as part of this application is not expected to have an adverse impact on wildfire hazards.

The City is served by the LACFD, as well as the California Department of Forestry, if needed. In the event of major fires, the County has "mutual aid agreements" with cities and counties throughout the State so that additional personnel and firefighting equipment can augment the LACFD. Conditions of approval have been included in the resolution to require compliance with all LACFD development standards. As such, the proposed project, as designed, constructed, and conditioned, will not be subject to nor increase the instability of the site or structural integrity involving wildfire hazards.

2. As stated in Finding 1, the proposed project, as designed, conditioned and approved by the applicable departments and agencies, will not have any significant adverse impacts on the site stability or structural integrity from geologic or flood hazards due to project modifications, landscaping or other conditions.

3. As previously stated in Section A, the proposed project, as designed and conditioned, is the least environmentally damaging alternative.

4. The proposed development has been analyzed for the hazards listed in LIP Chapter 9 by the Planning Department, City Public Works Department, City geotechnical staff, and LACFD. It has been determined that the proposed project does not impact site stability or structural integrity.

5. As discussed in Section A, the proposed project, as designed and conditioned, is the least environmentally damaging alternative and no adverse impacts to sensitive resources are anticipated.

### **H. Shoreline and Bluff Development (LIP Chapter 10)**

The project site is not located on or along the shoreline, a coastal bluff or bluff top fronting the shoreline. Therefore, the findings of LIP Chapter 10 are not applicable.

### **I. Public Access (LIP Chapter 12)**

LIP Section 12.4 requires public access for lateral, bluff-top, and vertical access near the ocean, trails, and recreational access for the following cases:

- A. New development on any parcel or location specifically identified in the Land Use Plan or in the LCP zoning districts as appropriate for or containing a historically used or suitable public access trail or pathway.
- B. New development between the nearest public roadway and the sea.

- C. New development on any site where there is substantial evidence of a public right of access to or along the sea or public tidelands, a blufftop trail or an inland trail acquired through use or a public right of access through legislative authorization.
- D. New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access where there is no feasible, less environmentally damaging, project alternative that would avoid impacts to public access.

As described herein, the subject property and the proposed project do not meet any of these criteria in that no trails are identified on the LCP Park Lands Map on or adjacent to the property, and the property is not located between the first public road and the sea, or on a bluff or near a recreational area. The requirement for public access of LIP Section 12.4 does not apply and further findings are not required.

**J. Land Division (LIP Chapter 15)**

This project does not include a land division. Therefore, the findings of LIP Chapter 15 are not applicable.

SECTION 6. City Council Action.

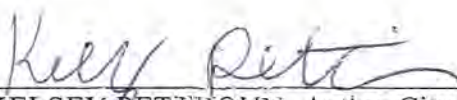
Based on the foregoing findings and evidence contained within the record, the City Council hereby denies CDP No. 20-034 and RRA 21-001.

SECTION 7. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of August 2021.

  
\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

  
\_\_\_\_\_  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JOHN COTTI, Interim City Attorney

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-47 was passed and adopted by the City Council of the City of Malibu at the Adjourned Regular meeting thereof held on the 19<sup>th</sup> day of August 2021 by the following vote:

AYES:	3	Councilmembers:	Farrer, Uhring, Grisanti
NOES:	0		
ABSTAIN:	0		
ABSENT:	2	Councilmembers:	Pierson, Silverstein

  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)