

Council Agenda Report

To: Mayor Grisanti and Honorable Members of the City Council

Prepared by: David Eng, Assistant Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, Interim City Manager

Date prepared: August 11, 2021 Meeting Date: August 19, 2021

Subject: Appeal No. 21-008 - Appeal of Planning Commission Resolution No. 21-051 (6255 Paseo Canyon Drive; Appellants: Elizabeth and Jason Riddick; Applicants and Property Owners: Elizabeth and Jason Riddick) (Continued from August 9, 2021)

RECOMMENDED ACTION: Adopt Resolution No. 21-47 (Exhibit A), determining the project is categorically exempt from the California Environmental Quality Act (CEQA); and denying Appeal No. 21-008 (Exhibit B); 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 (TDSF) and total impervious lot coverage (TILC) for the parcel, located in the Single Family (SF-L) Zoning District at 6255 Paseo Canyon Drive (Riddick).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item is not included in the Adopted Work Plan for Fiscal Year 2021-2022. Processing this application is part of normal staff operations.

DISCUSSION: The matter is an appeal of the Planning Commission's denial of RRA No. 21-001 and CDP NO. 20-034, an application for an attached ADU and other additions and alterations to an existing one-story, single-family residence (Exhibit D).

In 2017 and 2019, the State of California amended Government Code Section 65852.2 and added Government Code Section 65852.22 that eases development standards related to the construction of ADUs and Junior Accessory Dwelling Units (JADUs). These are accessory units with complete independent living facilities that are either attached to or detached from a primary dwelling and can be created through new square footage or conversion of existing space.

Local governments, such as the City of Malibu, are required to comply with new State provisions for ADUs/JADUs and the Coastal Act. However, per the statutes themselves and technical guidance dated April 21, 2020 from the California Coastal Commission to Coastal Cities and Counties (Exhibit C, Attachment 3 – California Coastal Commission Memorandum), “currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to requirements of the Certified LCP for ADUs until an LCP amendment is adopted.” The City of Malibu is currently undergoing an effort to amend the Local Coastal Program and Malibu Municipal Code (MMC) Title 17 (Zoning Ordinance) to create a new local ADU ordinance. Until the City Council adopts and the California Coastal Commission certifies a new ADU ordinance, the LCP’s existing regulations concerning ADUs apply.

On July 10, 2020, the property owners, Elizabeth and Jason Riddick, submitted an application for a new attached ADU and other additions and alterations to their residence. Planning staff reviewed the application and determined that the proposal does not comply with the existing zoning regulations of the LIP with respect to required rear and side yard setbacks and the maximum allowed TDSF and TILC for the parcel.

Pursuant to LCP LIP Section 13.30, and in accordance with the Federal Housing Act and the California Fair Employment and Housing Act, a request for reasonable accommodation may be made by any person with a disability, his/or her representative, or any property owner, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. In the owners’ application and letter for a request for reasonable accommodation (Exhibit D, Attachment 5), the owners claim the proposed ADU and associated development are intended to accommodate a family member with a physical disability. Because the project cannot not be approved under existing LIP zoning regulations, on April 19, 2021, the property owners submitted an application for a request for reasonable accommodation for relief from existing LIP zoning regulations pertaining to required rear and side yard setbacks, TDSF and TILC, as these relate to the proposed project.

Pursuant to LIP Section 13.30(D), the Planning Director referred the request for a reasonable accommodation to the Planning Commission for consideration, as the proposed development associated with the relief is permanent and will have a material effect on surrounding properties. The applicant has requested that the changes which include exceeding the TDSF and TILC limits remain in perpetuity. Per LIP Section 13.30(J) the rights granted are supposed to terminate if the person with disability does not occupy the structure for a period of 180 days or more unless the three findings listed there can be made. This would require the Planning Director to determine that the ADU continues to be occupied by a person with a disability. A condition could be added requiring a deed restriction or other measures to ensure compliance, but such condition would be difficult to enforce and technically require demolition of the ADU if it is not occupied by a person with a disability.

Project Overview

The project proposes partial demolition and additions and alterations to an existing 3,000 square foot, one-story, single-family residence that includes an attached 619 square foot garage plus a 43 square foot covered front porch that counts towards TDSF, given its dimensions. The project includes the demolition of 55 square feet of the existing dwelling and the rebuild and addition of 626 square feet (net increase of 571 square feet). Of that 626 square feet, 469 square feet will be dedicated to the attached ADU (Figure 1). The ADU and the addition to the house's main living area do not conform to the zoning requirements of the LIP with respect to required rear and side yard setbacks, maximum allowed TDSF of 3,085 square feet, and TILC of 4,132 square feet. The applicant is requesting reasonable accommodation for relief from the requirements of the LCP and its zoning requirements to allow construction of the ADU for a disabled family member. However, the request for the reasonable accommodation also includes a 157 square foot addition that will go towards the relocation and expansion of the master bathroom and an addition to the master bedroom. A 15.3 percent reduction of the 17'-5" rear yard setback and 47 percent reduction of the 9'-6" side yard setback are required for this master bathroom/bedroom addition.

The project plans are included as Attachment 2 in Exhibit D. The complete description of the project site and surrounding land uses can be found in the June 7, 2021 Commission Agenda Report (Exhibit C). The analysis and findings in the Planning Commission agenda report demonstrates that the project does not comply with the LCP and Malibu Municipal Code (MMC).

On June 7, 2021, the Planning Commission held a public hearing on the project and determined that the proposed project is not consistent with the requirements of the LCP. The subject of the appeal is described in further detail below.

Project Description

The proposed scope of work is as follows:

- a. Request for Reasonable Accommodation and Coastal Development Permit for the following development:
 - i. Demolition of 55 square feet of the existing primary dwelling;
Addition and conversion of 469 square feet of floor area into a new attached ADU;
 - ii. Addition of 157 square feet to the primary dwelling;
 - iii. Reconfiguration and remodel of interior spaces;
 - iv. New roof shingles; and
 - v. New plaster, siding, and exterior finishes to match existing.

APPEAL TO THE CITY COUNCIL

The grounds for the appeal are summarized below in *italics*. Followed by each point of the appeal are staff's responses in straight type. The full text of the appeal document can be found in Exhibit B.

Appeal Item 1.

The Riddick's proposal for an attached ADU is exempt from the requirement to obtain a CDP under the Malibu LCP. Malibu's LCP exempts certain categories of development from the requirement to obtain a Coastal Development Permit. Malibu LCP 13.4. Among other categories it exempts:

"A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms 'Improvements to existing single-family residences' includes all fixtures and structures directly attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units."

Here, the Riddick's proposal is exempt from the need to obtain a CDP because it is a structure directly attached to the residence per an April 21, 2020 memorandum from the California Coastal Commission to Planning Directors of Coastal Cities and Counties regarding the implementation of new ADU laws. The memorandum notes:

"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).)"

In its specific mention of detached residential units, the California Coastal Commission indicates that a proposal such as the Riddick's application for an attached ADU is exempt from a CDP, as an improvement to a single-family residence. This interpretation is supported in two ways. First, the language in Malibu LCP 13.4.1 can be traced directly to language from 14 Cal. Code Regs. 13250. Unlike Malibu LCP 13.4.1, which is structured in a single paragraph comprising two sentences, 14 Cal. Code Regs. 13250 is structured in separate paragraphs as follows:

- (a) For purposes of Public Resources Code Section 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.*

This original language from the statewide regulations structurally separates the category of attached structures in subdivision (1) from the exclusion of "guest houses or self-contained residential units" in subdivision (2). Application of noscitur a sociis suggests that the exclusion only applies to items which might otherwise appear in the same list in subdivision (2). Because the Riddick's proposed ADU is attached and therefore falls unambiguously into subdivision (1), and not (2), it is not the type of guest house or residential unit covered by the exclusion.

Second, where a statute is adopted from another jurisdiction or from a commission's proposed language, courts give "substantial weight" to the interpretation of the originating jurisdiction or commission. Because Malibu LCP 13.4.1 was adopted directly from regulations promulgated by the California Coastal Commission, the Commission's interpretation of its language should be given substantial weight.

Finally, the California Coastal Commission's guidance on the matter is intended to harmonize Coastal Act policies with the new statewide ADU laws. Given the California legislature's finding that ADUs are an "essential component of California's housing supply," it is appropriate to defer to a state agency on a question of statutory interpretation which potentially conflicts with "essential" statewide policy.

Staff Response

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.

Appeal Item 2.

California's ADU law preempts the local lot coverage and setback requirements. Because the Riddick's proposal is exempt from the requirement to obtain a CDP, approval of the project need not rely on conformance with Malibu's LCP, but rather the state's ADU law, which controls.

Staff Response

1. 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.

Appeal Item 3.

Alternatively, the Riddick's are entitled to a Reasonable Disability Accommodation under the Malibu Local Coastal Program. Even if the Riddick's proposal is not exempt from the requirement to obtain a CDP, they are entitled to a "Reasonable Accommodation" by the terms of Malibu's LCP. Federal and state Fair Housing Acts place an affirmative duty on local governments to make reasonable accommodation in zoning and other land use regulations that "may be necessary to afford" disabled persons" an equal opportunity to use and enjoy a dwelling." Malibu LCP 13.30 therefore provides procedures for requesting and obtaining a "reasonable accommodation for persons with disabilities seeking equal access to housing."

The Planning Commission rejected the Riddick's application for reasonable disability accommodation based on its inability to make four of the six required findings. The Commission found that the requested accommodation was not necessary, that it would impose an undue burden on the City; that it would require a fundamental alteration in the nature of the LCP; and that it would adversely impact coastal resources. The Riddick's contest the Planning Commission's findings as follows:

- A. On the finding of necessity, local governments must provide a reasonable accommodation where one is necessary to afford a disabled person equal opportunity to use and enjoyment of a dwelling. Malibu's application of its zoning requirements including TDSF and setbacks interferes with the applicant's disabled relative's use and enjoyment of the subject property by preventing its approval and construction. The City's suggestion that the Riddick's convert and reconfigure their existing floor area to create an ADU would create cramped conditions that are incompatible with the relative's immunocompromised condition.*
- B. On the finding that the approved reasonable accommodation would not impose an undue financial or administrative burden on the City, Planning staff noted that approving the accommodation would create such a burden as it would require the Planning Director to periodically monitor the property to ensure that the ADU was occupied by a disabled person. No legal basis exists for such monitoring. Further, the request for accommodation poses no burden because it only seeks the nonenforcement of TDSF and setback rules.*
- C. On the finding that the approved reasonable accommodation would not require a fundamental alteration in the nature of the LCP, staff claimed at the Planning Commission hearing that regulations requested to be waived are in place to preserve a certain type of character with respect to development in the City.*
- D. On the finding that the approved reasonable accommodation would not adversely impact coastal resources, Planning staff noted that the proposed development itself, and as confirmed through various City departmental and agency reviews, would not impact coastal resources, except that approving the reasonable accommodation could set a precedent of allowing greater development in the coastal zone through the LIP's reasonable accommodation provision. Concerns about what third parties may try to achieve in the future have no bearing on the determination of whether to grant a reasonable disability accommodation.*

Staff Response

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 of 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,¹ 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

¹ 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.

cumulative impacts on coastal resources as other property owners will undoubtedly seek 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.

PUBLIC CORRESPONDENCE: As of the date of this Council Agenda Report, staff has received public correspondence concerning this appeal, and they are provided herein as Exhibit F.

PUBLIC NOTICE: On July 16, 2021, a Notice of City Council Public Hearing was published in a newspaper of general circulation within the City and a public notice was mailed to the owners and occupants of all properties within a radius of 500 feet of the subject property (Exhibit E).

SUMMARY: Based on the record as a whole, including but not limited to all written and oral testimony offered in connection with this matter, staff recommends that the City Council adopt Resolution No. 21-47 denying Appeal No. 21-008 and approving RRA 21-001 and CDP No. 20-034, subject to the conditions of approval in the resolution.

EXHIBITS:

- A. City Council Resolution No. 21-47
- B. Appeal No. 21-008 (personal information redacted)
 - 1. Application for appeal, dated June 15, 2021
 - 2. Updated appeal letter and exhibits, dated June 28, 2021
- C. June 7, 2021 Planning Commission Item No. 5.A.
 - 1. Planning Commission Resolution No. 21-51
 - 2. Project Plans
 - 3. California Coastal Commission Memorandum to Coastal Cities and Counties
 - 4. Department Review Sheets
 - 5. Applicant Request for Reasonable Accommodation and Exhibits
 - 6. Site Photos
 - 7. Public Correspondence
 - 8. 500-foot Radius Map
 - 9. Public Hearing Notice
- D. Adopted Planning Commission Resolution No. 21-51
- E. Applicant Presentations and Public Correspondence (from Planning Commission Hearing), dated June 7, 2021
- F. Public Correspondence
- G. Public Hearing Notice

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,¹ 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

¹ 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 19th day of August 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk
(seal)

APPROVED AS TO FORM:

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

JOHN COTTI, Interim City Attorney



City of Malibu

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Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

PLANNING DEPARTMENT COASTAL DEVELOPMENT PERMIT NOTICE OF APPEAL CHECKLIST

Actions Subject to Local Appeal: Pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) Section 13.20.1 (Local Appeals), a decision or any portion of the decision of the Planning Director may be appealed to the Planning Commission by an aggrieved person, and any decision of the Planning Commission may be appealed to the City Council by an aggrieved person.

Deadline and Fees: Pursuant to LIP Section 13.20.1, an appeal shall be filed with the City Clerk within 10 days following the date of action for which the appeal is made, as indicated in the decision. If the tenth day falls on a weekend or a City-recognized holiday, the deadline shall extend to the close of business at City Hall on the first business day (whether whole or partial) following the weekend or a City-recognized holiday. Appeals shall be accompanied by the filing fee of \$750 as specified by the City Council.

To perfect an appeal, the form must be completed, together with all the necessary attachments, and must be timely received by the City Clerk either in person or by mail addressed to City of Malibu, Attn: City Clerk, 23525 Stuart Ranch Road, Malibu, CA 90265. For more information, contact Patricia Salazar, Senior Administrative Analyst, at (310) 456-2489, extension 245.

Part I. Project Information

1. What is the file number of the Coastal Development Permit you are appealing?
CDP No. 20-034 and Request for a Reasonable Accommodation No. 21-0001

2. On what date was the decision made which you are appealing?
June 7, 2021

3. Who made the decision you are appealing?

☐ Planning Director ☒ Planning Commission

4. What is the address of the project site at issue?
6255 Paseo Canyon Drive, Malibu 90265

Part II. Appeal Summary

1. Indicate your interest in the decision by checking the appropriate box.

☒ I am the Applicant for the project

☐ I am the neighbor

☐ Other (describe)

2. If you are not the applicant, please indicate the applicant's name:

3. Indicate the nature of your appeal.

a) Are you appealing the ☐ approval or ☒ the denial of the application or ☐ a condition of approval?

b) Each approval is accompanied by a list of specific conditions. If you are appealing one or more of the conditions of approval, list the condition number and state the grounds for your appeal. (Attach extra sheets if necessary.)

4. Check the appropriate box(es) to indicate which of the following reasons forms the basis of your appeal:

☒ The findings or conditions are not supported by the evidence, or the decision is not supported by the findings: or

☒ There was a lack of fair or impartial hearing: or

☒ The decision was contrary to law.

You must next provide a specific statement in support of each of the bases for appeal that you have checked above. Appeals that are stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See Attached

Each coastal development permitting decision made by the Planning Director or the Planning Commission is accompanied by written findings. The written findings set forth the basis for the decision. If you have checked the first box in this section as a ground for your appeal, you must indicate the specific finding(s) you disagree with and give specific reasons why you believe the finding(s) is/are not supported by the evidence or why the decision is not supported by the findings. Appeals stated in generalities, legal or otherwise, are not adequate. (Attach extra sheets if necessary.)

See attached.

Part III. Appeal Checklist

ALL of the following must be timely filed to perfect an appeal.

1. ☒ Completed Appeal Checklist (This form with appellant's signature)
2. ☒ Appeal Fee \$750

The appeal fee must be submitted in the form of a check or money order made payable to the City of Malibu. Cash will not be accepted.

3. ☒ Mailing Labels and Radius Maps for Public Notice to Property Owners and Occupants

Public Notice of an appeal must conform to the manner in which the original notice was given. The notice radius for appealable CDPs and non-appealable CDPs that do not require a public hearing is 100 feet for property owners and residents. The notice radius for non-appealable CDPs that require a public hearing is 300 feet for property owners and 100 feet for residents.

The mailing labels and radius map **must be certified** by the preparer (a form is available at the public counter): certification may not be more than six months prior to the date of submittal; the radius map must be provided on an 8½" x 11" paper; the mailing labels must be printed on 8½" x 11" paper, 3 columns, 10 rows (e.g. Avery 5160).

Part IV. Signature and Appellant Information

I hereby certify that the appeal submittal contains all of the above items. I understand that if any of the items are missing or otherwise deficient, the appeal is ineffective and the filing fee may be returned. IN ORDER TO PERFECT AN APPEAL, ALL APPEAL SUBMITTALS MUST BE COMPLETE BY THE DEADLINE. NO EXTENSIONS WILL BE ALLOWED FOR APPELLANTS WHO ONLY PARTIALLY COMPLY WITH THESE REQUIREMENTS AS OF THE DEADLINE. IF AN APPEAL IS NOT PERFECTED BY THE DEADLINE, THE DECISION BECOMES FINAL.

Elizabeth & Jason Riddick

PRINT APPELLANT'S NAME


APPELLANT'S SIGNATURE

TELEPHONE NUMBER

06/15/2021

DATE

Appellant's mailing address: 6255 Paseo Cyn. Drive, Malibu CA 90265

Appellant's email address:

OFFICE USE ONLY

Action Appealed: _____

Appeal Period: _____

Date Appeal Form and required documents submitted: _____ Received by: _____

Appeal Completion Date: _____ by: _____
(Name, Title)

Grounds for Appeal to City Council RE: Denial of Riddick's De Minimus ADU and Request for a Reasonable Accommodation

Issues Presented:

- I. Whether an attached ADU is exempt from the requirement to obtain a Coastal Development Permit under the Malibu Local Coastal Program.
- II. Whether California's ADU law preempts the local lot coverage and setback requirements.
- III. If not, whether the Riddick's are entitled to a Reasonable Disability Accommodation under the Malibu Local Coastal Program.

Legal & Factual Background:

Jason and Elizabeth Riddick seek to add an attached ADU onto their existing single-family home in order to provide Elizabeth's aging mother, Renee Sperling, a safe and private place to live. The ADU has been approved by the Malibu West home owner's association and has the support of all adjoining neighbors. Ms. Sperling is 82 years old and suffers from numerous ailments, including glaucoma, arthritis, asthma, osteoporosis, and is immunocompromised. The proposed ADU would permit Ms. Sperling to age in place with her family while maintaining a modicum of privacy and the distance required to reduce the risk of contracting ordinary illnesses.

The City of Malibu, however, has denied the Riddick's application to construct their ADU. According to the City, the proposed ADU constitutes a development subject to Malibu's Local Coastal Program (LCP). Although the ADU complies with state law, the City concluded that it does not comply with two aspects of the LCP. First, the addition would cause the lot to exceed its total allowable development square footage (TDSF). Second, the addition would violate the LCP's cumulative setback requirement.

California state law, however, provides that ADUs shall not be subject to local lot coverage limits or setback requirements. Instead, local governments must approve ADUs of up to 800 square feet with at least four-foot side and rear setbacks. Cal. Gov. Code § 65852.2(c)(2)(C). The Riddick's proposed an ADU that fits well within these parameters, measuring 469 square feet with a rear setback of over 14 feet and a side setback of 5 feet. Furthermore, qualifying attached ADUs are to be considered exempt under Malibu's current LCP, per written guidance from the California Coastal Commission, meaning that state-wide ADU laws supersede local lot coverage and setback requirements.

Coastal Development Permits

State ADU law includes a carve-out provision that it does not "supersede or in any way alter or lessen the effect or application of the California Coastal Act[.]" Cal. Gov. Code § 65852.2(l); see Cal. Pub. Res. Code § 30000 *et seq.* The City seizes upon this language to insist that its current LCP —promulgated pursuant to the Coastal Act—blocks all ADUs that exceed local lot coverage and set back requirements.

Yet the City's LCP also includes a provision exempting "improvements to existing single-family residences" from the requirement to obtain a Coastal Development Permit (CDP). The LCP defines this category as follows:

For purposes of this section, the terms "Improvements to existing single-family residences" includes all fixtures and structures directly attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units."

Malibu LIP § 13.4.1(A). The Riddick's argue that their proposed ADU is a "structure[] directly attached to the residence" and therefore is exempt from the requirement to obtain a CDP. Assuming they are correct that their proposal is not covered by the LCP, then the state's ADU law must control because the City has no independent ordinance for ADUs.¹ See Cal. Gov. Code § 65852.2(b). The City argues that the exemption provision explicitly excludes "guest houses or accessory self-contained residential units," and that ADUs are therefore not exempt from the CDP requirement.

The California Coastal Commission (CCC) has provided some guidance on this point. In a memorandum to the Planning Directors of all coastal municipalities, dated April 21, 2020, CCC Director John Ainsworth stated:

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).)

(emph. added). Thus, the CCC interprets the language "guest houses and self-contained residential units" to refer only to *detached* units. Despite this guidance, the City insists that the Riddick's proposed ADU requires a CDP permit.

Request for Reasonable Accommodation

Sensing that the Planning Commission was unlikely to grant a CDP, the Riddick's also included in their application a Request for Reasonable Accommodation (RRA). Pursuant to the state and federal Fair Housing Acts, the Malibu LCP provides a mechanism for "reasonable accommodation for persons with

¹ The City is currently in the process of passing its own local ADU ordinance pursuant to Cal. Gov. Code § 65852(a).

disabilities seeking equal access to housing[.]” Malibu LCP § 13.30. The Planning Commission must approve an RRA if it makes the following findings:

1. The housing, which is the subject to 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.

Id.

The Planning Commission’s Decision

The Planning Commission denied both the CDP and the RRA at its June 7, 2021 meeting by a 3-2 vote.² As expected, the Commission denied the CDP because of the violations of TDSF and setback requirements that would result from approval. It also accepted its staff’s determination that the RRA did not satisfy points 2-5. In particular, staff determined that the accommodation was not necessary because the Riddick’s had reasonable alternatives. Staff speculated that they could, for example, reconfigure their existing modest home (which the Riddick’s share with three children) into an ADU/JADU without adding additional square footage. Staff further found that this one-time minor accommodation to be flexible on the strict imposition of overbearing TDSF and setback requirements would effect a fundamental alteration in the nature of their LCP, and that the project would adversely impact coastal resources if others took advantage of the RRA section of the LCP. Commenting on this latter determination, Assistant Planner David Eng stated:

“While we don’t believe that the project will impact things like public access or environmental resources, again, the approval of the request . . . would allow for higher amounts of development in this neighborhood, and also set a precedent³ for pursuing requests for reasonable accommodation to achieve higher levels of development in the city.”

On top of the illegality of the above reasoning for denial of an RRA , staff went even further attempting to claim that accommodating California state law would impose an undue burden on the City because

² A video recording of the meeting is available at: <https://youtu.be/CP7exIPZMJs?t=1823>

³ Later in the meeting, Planning Director Richard Mollica clarified that this was the first RRA ever sought in the City.

approval of the ADU “would require monitoring by the Planning Director and periodic confirmation that a person with a disability is a resident at that ADU.”

Some Planning Commission members throughout the hearing displayed an open hostility to ADUs and an ignorance of state law on the subject. For example, Commissioner John Mazza stated: “Staff keeps mentioning ADUs, and as far as I can tell, there is no such thing as an ADU in Malibu because we haven’t passed an ADU ordinance or amended our LCP. So can we use that term?”

Arguments:

- I. The Riddicks’ proposal for an attached ADU is exempt from the requirement to obtain a CDP under the Malibu LCP

Malibu’s LCP exempts certain categories of development from the requirement to obtain a Coastal Development Permit. Malibu LCP 13.4. Among other categories it exempts:

A. Improvements to existing single-family residences except as noted below in (B).⁴ For purposes of this section, the terms “Improvements to existing single-family residences” includes all fixtures and structures directly attached to the residence and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units.

Here, the Riddick’s proposal is exempt from the need to obtain a CDP because it is a “structure[] directly attached to the residence[.]”

Although the Riddick’s claimed an exemption under this provision on several occasions, the staff report does not even mention it. At the Planning Commission hearing, the staff attorney argued that that proposal did not fall within the exemption provision, since that provision specifically excludes “guest houses or accessory self-contained residential units.”

A guidance memo from the CCC, however, makes clear that the phrase “guest houses or accessory self-contained residential units” applies only to *detached* structures. Memorandum from John Ainsworth to Planning Directors of Coastal Cities and Counties Re: Implementation of New ADU Laws 5 (April 21, 2020) (hereinafter Ainsworth Memo). The memo “is meant to . . . provide guidance on how to harmonize [the new ADU] requirements with Local Coastal Program (“LCP”) and Coastal Act policies.” *Id.* at 1. It lays out a “Basic Guide” for reviewing ADU applications, apparently intended to prioritize avoiding the application of Coastal Act policies wherever legally permissible. After determining whether a previously issued CDP controls, local agencies should next determine whether the proposed ADU qualifies as development at all. *Id.* at 4. If it does, then agencies should check whether it is exempt from the requirement to obtain a CDP. *Id.* If it is not, then agencies must next assess whether a CDP waiver is appropriate. *Id.* at 5. Only then, if the project is non-exempt development for which a waiver is not appropriate, should the agency review the project for consistency with the LCP. *Id.*

In addressing whether an ADU is exempt from the CDP requirement, the memo interprets language substantially identical to that found in Malibu LCP 13.4.1(A):

⁴ Subsection (B) contains a list of classes of development “which require a coastal development permit because they involve a risk of adverse environmental impact[.]” None are at issue here.

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).)

Thus, the CCC indicates that a proposal like the Riddick's, which contemplates only an attached ADU, is exempt as an improvement to a single-family residence.

Several factors support the correctness of the CCC's interpretation in this matter.⁵ First, the language in Malibu LCP 13.4.1 can be traced directly to language from 14 Cal. Code Regs. 13250. That regulation implements Cal. Pub. Res. Code § 30610(a), which provides that “no coastal development permit shall be required” for, among other things, “[i]mprovements to existing single-family residences[.]” While Malibu LCP 13.4.1 is structured as a single paragraph composed of two sentences, 14 Cal. Code Regs. 13250 is structured in separate paragraphs, as follows:

- (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.

Thus, the original language from the statewide regulations, which was adopted in substantially similar form by the City of Malibu, structurally separates the category of attached structures in subdivision (1) from the exclusion of “guest houses or self-contained residential units” in subdivision (2). Application of *noscitur a sociis* suggests that the exclusion only applies to items which might otherwise appear in the same list in subdivision (2). Because the Riddick's proposed ADU is attached and therefore falls unambiguously into subdivision (1), and not (2), it is not the type of guest house or residential unit covered by the exclusion. *See, e.g., Kaatz v. City of Seaside*, 143 Cal. App. 4th 13, 40 (2006).

Second, and relatedly, where a statute is adopted from another jurisdiction or from a commission's proposed language, courts give “substantial weight” to the interpretation of the originating jurisdiction or commission. *Brewer v. Carter*, 218 Cal. App. 4th 1312, 1318 n.5 (2013) (quoting *Smith v. Superior Court*, 68 Cal. App. 3d 457, 463 (1977)). Thus, because Malibu LCP 13.4.1 was adopted directly from regulations promulgated by the CCC, the CCC's interpretation of its language should be given substantial weight.

⁵ While California courts accord deference to the CCC regarding the property interpretation of LCPs, it is an open question whether such deference is available in the event of a disagreement with the local implementing agency. *Lindstrom v. California Coastal Comm'n*, 40 Cal. App. 5th 73, 94-96 (2019).

Finally, the CCC's guidance on this matter is intended to harmonize Coastal Act policies with the new statewide ADU laws. Given the California legislature's finding that ADUs are "an essential component of California's housing supply," Cal. Gov. Code § 65852.150(a)(8), it is appropriate to defer to a state agency on a question of statutory interpretation which potentially conflicts with "essential" statewide policy. *Cf. Yamaha Corp. of Am. V. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998) (deference to agency interpretation is "fundamentally *situational*," and courts must "consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command."). The CCC is the ultimate agency tasked with protection of California's coastal resources; it is in the best position to determine whether the state's interest in Coastal resources conflicts with the liberal policy toward ADUs.

II. California's ADU law preempts the local lot coverage and setback requirements.

Because the Riddick's proposal is exempt from the requirement to obtain a CDP, approval of the project need not rely on conformance with Malibu's LCP. Instead, the state's ADU law controls.

State law permits local governments to promulgate their own ADU ordinances, as long as those ordinances are not more restrictive than state law. Cal. Gov. Code § 65852.2(a)(1), (6). However, where a local agency has not done so, then the provisions of the state law apply directly. *Id.* at (b). State law prohibits local governments from capping ADU size at less than 850 square feet and from requiring side- and rear-yard setbacks of more than four feet. *Id.* at (c)(2)(B)-(C).

The Riddick's proposal is well within the parameters of the state's ADU law, and must therefore be ministerially approved without discretionary review. *Id.* at (b).

III. Alternatively, the Riddick's are entitled to a Reasonable Disability Accommodation under the Malibu Local Coastal Program.

Even if the Riddick's proposal is not exempt from the requirement to obtain a CDP, then they are entitled to a "Reasonable Accommodation" by the terms of Malibu's LCP.

Pursuant to the federal and state Fair Housing Acts, local governments have an affirmative duty to make reasonable accommodations in zoning and other land use regulations that "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." Letter Re: Adoption of a Reasonable Accommodation Procedure from Bill Lockyer, Cal. Atty. Gen., to All California Mayors (May 15, 2001) (citing 42 U.S.C. § 3604(f)(3)(B); Cal. Gov. Code §§ 12927(c)(1), 12955(1)).⁶ Malibu LCP 13.30 therefore provides procedures for requesting and obtaining a "reasonable accommodation for persons with disabilities seeking equal access to housing[.]"

The Planning Commission rejected the Riddick's application for a reasonable disability accommodation based on its findings that the requested accommodation was not necessary; that it would impose an undue burden on the City; that it would require a fundamental alteration in the nature of the LCP; and that it will adversely impact coastal resources.

⁶ Available at:

<https://www.sfautismsociety.org/uploads/1/1/7/4/11747519/attygeneralhousingreasonableaccommodation.pdf>

a. *Necessity*

Local governments must provide a reasonable accommodation where it “may be necessary to afford [disabled persons] equal opportunity to use and enjoy a dwelling.” *Giebler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003). To establish the necessity of an accommodation, the applicant must show that “but for the accommodation, they will likely be denied an equal opportunity to enjoy the housing of their choice.” *Id.* at 1155 (quoting *Smith & Lee Assocs. v. City of Taylor, Mich.*, 102 F.3d 781, 795 (6th Cir. 1996)).

Where a policy prevents a disabled person from living in a dwelling that they otherwise could use and enjoy, a reasonable accommodation may be necessary. *See id.* at 1155. In *Giebler*, the plaintiff could not meet the minimum financial qualifications to rent at an apartment complex due to his inability to earn a salary as the result of AIDS-related disabilities. *Id.* at 1144. Although the plaintiff’s mother offered to rent the apartment for her son, the owners of the complex refused based on a company policy against cosigners. *Id.* The court observed that the necessity requirement “poses little hurdle in a case such as this one,” where the policy sought to be modified “entirely prevents a tenant from living in a dwelling.” *Id.* at 1155. It therefore held that the accommodation’s necessity was “obvious.” *Id.*

This rule also applies where a zoning ordinance “directly interfere[s] with use and enjoyment” by “prevent[ing] the housing from being built.” *U.S. v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 n.3 (9th Cir. 1997) (*Mobile Home II*). In the *Mobile Home II* case, the court rejected a Fair Housing Act suit challenging a mobile home park’s failure to provide a reasonable accommodation. *Id.* at 1376. The plaintiff’s daughter had a respiratory illness which required a home health care aide. *U.S. v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1415 (9th Cir. 1994) (*Mobile Home I*). The park refused the plaintiff’s request to waive guest and parking fees for the aide. *Mobile Home II*, 107 F.3d at 1376. The court held that the plaintiff failed to establish necessity. *Id.* at 1381. It observed that the requested accommodation was “not for [the plaintiff] herself, but for a caregiver[.]” *Id.* Plaintiff had not explained why the aide could not park across the street and still provide care, or why the aide’s employer—the State of California—could not take care of the parking fees. *Id.*

Importantly, the *Mobile Home II* court distinguished the “vast majority of reported cases brought under” the Reasonable Accommodation Provision of the FHA, which “involve developers’ requests for variances of zoning ordinances that would allow them to build housing for handicapped persons.” *Id.* at 1381 n. 3. In those cases, a showing of necessity “poses no independent hurdle” since “[t]he city policies directly interfere with use and enjoyment because they prevent the housing from being built.” *Id.*

Such is the case here, too. Malibu’s application of its TDSF and setback requirements directly interferes with Ms. Sperling’s use and enjoyment by preventing her housing unit from being built. The City’s suggested alternative—that the Riddick’s convert and reconfigure their existing floor area to create a space for Ms. Sperling—is unsatisfactory and supported by no evidence. Ms. Sperling’s immunocompromised status requires her to keep a healthy distance from her three young grandchildren. Requiring the entire family to “bunch up” together in the existing floor space would pose a significant health risk.

b. *Undue Burden*

At the hearing, Assistant Planner David Eng stated that the accommodation would impose an undue burden because it “would require monitoring by the Planning Director and periodic confirmation that a person with disability is a resident at that ADU.”

We are not aware of any legal basis for that claim. Although the party granting an accommodation may, in some circumstances, inquire about the continuing need for an accommodation, *see Peklun v. Tierra Del Mar Condo. Ass'n, Inc.*, No. 15-CIV-80801, 2015 WL 8029840, at *13 (S.D. Fla. Dec. 7, 2015), such inquiry is not mandatory. Besides, this argument proves too much because it could theoretically be applied to *any* request for disability accommodation.

Instead, the request for accommodation here poses no burden because it merely seeks the non-enforcement of TDSF and setback rules. Such non-enforcement costs the jurisdiction nothing. *See Provisoo Ass'n of Retarded Citizens v. Village of Westchester, Ill.*, 914 F. Supp. 1555, 1562 (N.D. Ill. 1996), abrogated on other grounds by *Hemisphere Bldg. Co., Inc. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999); *see also* Mental Health Advocacy Services, *Model Ordinance for Providing Reasonable Accommodation Under Federal and State Fair Housing Laws* (September 2003) (hereinafter *Model Ordinance*)⁷ The Model Ordinance is attached hereto as Exhibit 3.

c. Fundamental Alteration

Planning Assistant Eng commented that the requested accommodation would effect a fundamental alteration in the nature of the LCP because the regulations sought to be waived “are in place to preserve a certain type of character with development in the City.”

Case law from several jurisdictions makes clear that an accommodation seeking a waiver of rules designed to preserve neighborhood character does not work a fundamental alteration. *See Ex. 3 (Model Ordinance)*.⁸

For example, in *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir. 1996), the court held that “an additional three residents” in a single-family zone generally permitting only six residents to live in an adult foster care facility would not “fundamentally alter the nature of” the neighborhood. *Id.* at 796; *see also Oxford House-C v. City of St. Louis*, 77 F.3d 249, 251 (8th Cir. 1996) (“The Supreme Court recently held [that the FHA’s exemption provision] only exempts total occupancy limits intended to prevent overcrowding in living quarters, not ordinances like the City’s that are designed to promote the family character of a neighborhood.”) (citing *Cty of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 728 (1995)).

d. Impact on Coastal Resources

⁷ Made available as a “Sample Program Implementation” by the California Department of Housing and Community Development at https://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints/docs/model_reasonable_accommodation_ordinance.pdf

⁸ Collecting the following cases: *Smith & Lee Assoc. v. City of Taylor*, 102 F.3d 781 (6th Cir. 1996) (allowing a 9-person adult foster care home to locate in a single family residential zone is fundamentally consistent with the single family uses surrounding the proposed home and would not constitute an undue burden or a fundamental alteration of the city’s master plan); *Martin v. Constance*, 843 F.Supp. 1321 (E.D. Mo. 1994)(it would be neither an undue burden nor undermine the basic purpose of maintaining the residential character of a neighborhood to not enforce a restrictive covenant against a state operated home for individuals with developmental disabilities); *Oxford House v. Babylon*, 819 F.Supp. 1179 (E.D.N.Y. 1993) (modifying city’s interpretation under the ordinance of the term “family” was reasonable where the group home had no adverse effect on the residential character of the neighborhood and neither the operation of the group home nor the residents caused any financial or administrative burdens on the town); *United States v. Marshall*, 787 F.Supp. 872 (W.D. Wis. 1992) (granting a variance under state law to allow a group home for people with mental disabilities to locate within 2500 feet of a group home for the elderly would not “undermine the basic purpose which the requirement seeks to achieve” where the homes would not be separated by a wide portion of a river with no bridge connection).

Mr. Eng clarified that “while we don’t believe that the project would impact things like public access or environmental resources,” it would “allow for higher amounts of development in this neighborhood, and also set a precedent for pursuing requests for reasonable accommodations to achieve higher levels of development in the City.” Along similar lines, the staff report explains that 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.”

A request for a reasonable accommodation cannot be denied based on the person’s or another individual’s fears or prejudices about the individual’s disability, nor can a denial be based on the fact that provision of a reasonable accommodation might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations. See Cal. Gov. Code, §§ 12935(a), 12920, 12921, 12926, 12926.1, 12927, 12955, and 12955.3; see also *Auburn Woods Homeowners Ass’n v. Fair Employment and Housing Com’n* (2004) 121 Cal.App.4th 1578.

Therefore, concerns about “setting a precedent,” i.e., concerns about what third parties may try to achieve in the future, have no bearing on the determination of whether to grant a reasonable disability accommodation. **The only "precedent" set by granting the Riddick's request for reasonable disability accommodation will be that of following the law as written in the City’s LCP and as required by state and federal law.**

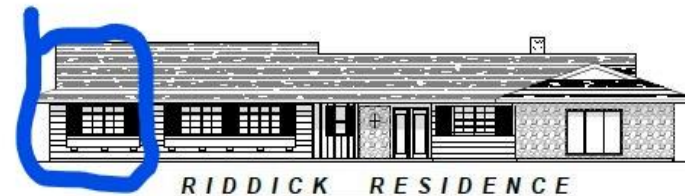
EXHIBIT 1

**June 7, 2021 -Riddick
Presentation to Planning
Commission**

RRA for a 469 SF ADU with a 90 SF minor addition to main residence

1

- Compliant with State Law
- Exempt from Current LCP
- Approved by HOA and All Neighbors
- For a Disabled Family Member
- Tiny
- In Backyard
- Consistent W/ Neighborhood Character
- No water/fire access/septic issues
- No Impact on Coastal Resources
- Neighbors Support Project



Our Neighbors Support Us !

2



**All of our immediate neighbors have
NO OPPOSITION TO OUR PROJECT**

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Simon & Vickie Barret
6267 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6267 Paseo Cyn. Dr

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Roy and Janet Ettinger
30717 El Pequeno Drive
Malibu, CA 90265

6/2/21
Date

El Pequeno Dr
30717 ~~Paseo Cyn Dr~~

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 5255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,

Mr. & Mrs. Don Fauntleroy
6252 Paseo Canyon Drive
Malibu, CA 90265

6/2/21
Date

6252 Paseo Cyn. Dr


**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Marc and Catherine Goodman
30710 El Pequeño Drive
Malibu CA 90265

Date:

6/6/21

30710 El Pequeño

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you

Respectfully,


Ron Israel

6244 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6244 Paseo Cyn Dr.

The purpose of the RRA is to Provide Housing for my mother, an 82-year-old Disabled Senior Citizen

The only “reasonable accommodation” we are asking for is for the City to honor existing law:

- Malibu LCP section 13.4.1 which exempts our project from the requirement to obtain a CDP
- California State ADU Law
- Clear guidance from the California Coastal Commission re meaning of 13.4.1 per Cal. Code Regs., tit. 14, § 13250(a)(1) and Cal. Pub. Resources Code § 30610;
- The Federal and State Fair Housing Act

What is LCP Sec 13.30 and Why is it in our LCP?

In 2001 the State of California required that cities and counties implement a procedure to eliminate fair housing violations and implement reasonable accommodations to ensure that overly restrictive land use, zoning, practices, rules, regulations, policies and procedures do not create a barrier for a “disabled person” to have access to what would otherwise be an available housing opportunity.

The Reasonable Accommodation is the mechanism which local governments should use to provide RELIEF from those policies, rules, regulations, zoning and land use restrictions that are creating barriers to housing opportunities for disabled persons.

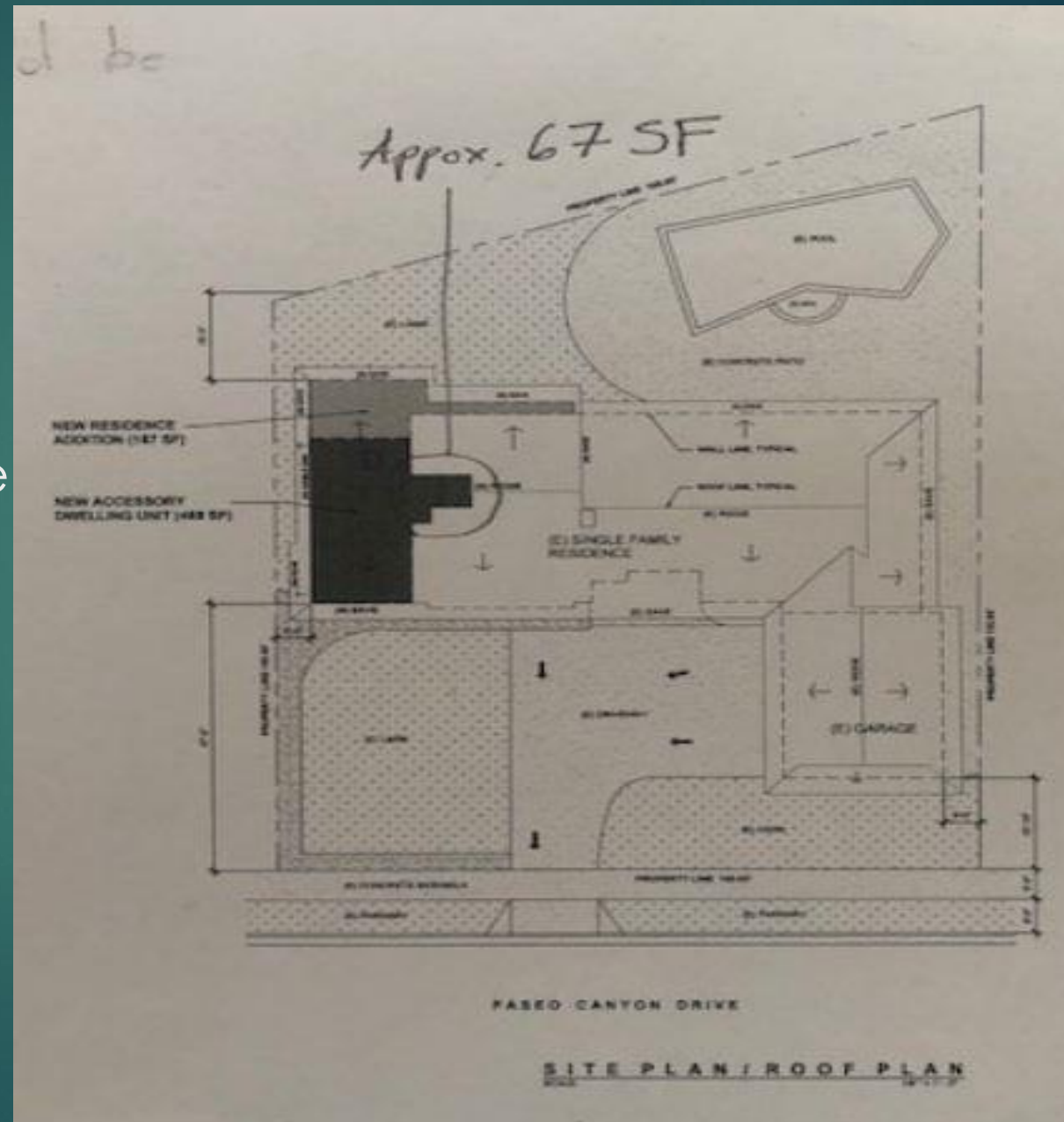
Cal. Gov. Code § 65583(c)(3).

The Project:

Under the RRA the ADU should not count towards TDSF, TILC or Setbacks as all details of the ADU comply with State Law.

We are willing to reduce the Main Residence by 5 SF to accommodate the 3085 SF max for the primary residence TDSF.

Minor variance on the setbacks occurred as an accommodation to our HOA. All neighbors support the project as proposed.



How to determine if the RRA should be Granted.

Disability –

Does the person requesting have a disability as defined by fair housing laws? **Yes**

Accommodation –

Does the request require an accommodation in the local governments rules, policies, practices and procedures to facilitate the development of housing for the individual with disabilities -**Yes**

Necessary –

Is the accommodation or modification necessary for full use and enjoyment of the disabled person? **Yes**

Cost –

Does the accommodation or modification impose an undue financial and administrative cost on the City? **No** **Compliance with State Law not require Staff administration or monitoring!**

Effect –

Would the accommodation or modification effect a fundamental change in the City's business? **No**

If the answer to the first three questions is YES and the answer to the last two questions is NO, **THEN THE LOCAL GOVERNMENT SHOULD GRANT THE REQUEST AS DETERMINED BY THE FEDERAL AND STATE FAIR HOUSING LAWS**

The Malibu LCP states that the following projects are **EXEMPT** from the requirement to obtain a Coastal Development Permit. 13.4.1

Improvements to Existing Single-Family Residences

A. “Improvements to existing single-family residences” includes all fixtures **and structures directly attached to the residence**.....

Guidance to Coastal City Planning Directors from the California Coastal Commission RE: Attached ADUs

“[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.”

**April 21, 2020 Memo From Coastal Comm. to the
Planning Directors of Coastal Cities Re How To Evaluate
Attached ADUs Under Existing LCPs**

REASONABLE ACCOMMODATION UNDER FEDERAL AND STATE FAIR HOUSING LAW

The Act makes it unlawful
to refuse to make reasonable
accommodations to rules, policies,
practices when accommodations may
be necessary to afford persons with
disabilities an equal opportunity to
housing.

Common Mistakes and Violations of the anti-discrimination law include the following:

- Refusal to make reasonable accommodations in housing rules, policies, practices, where necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(d) A denial cannot be based on the fact that provision of a reasonable accommodation might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations.

California State Law

Lot coverage formulas cannot be used to block otherwise compliant ADUs up to 800 square feet in size. “No lot coverage, floor area ratio, open space, or minimum lot size will prevent the construction of a statewide exemption ADU” (Cal. HCD Handbook at p. 11; Gov. Code, 65852.2, subd. (c)(2)(C))

California State Law

A setback of no more than four feet from the side and rear lot lines shall can be required for an attached or detached ADU.” (See Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

TDSF And Set Back Rules do not apply
to otherwise compliant attached
ADUs under the existing LCP at Section
13.4.1

TDSF and Cumulative Setbacks would NOT apply under our RRA to accommodate the State ADU Law and the Exemption Language in the LCP

- ▶ The existing LCP Does Not Impose TDSF and Setbacks On Attached ADUs
- ▶ Why? Because attached ADUs that are California law compliant already fall within the class of CDP exempt “structures attached directly to the residence” under existing LCP Section 13.4.1 (A). Per the Coastal Commission “**[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).)” (April 14, 2020 Memo From Coastal Commission)
 - ▶ **IF TDSF and Setbacks Were Already Imposed On Attached ADUs, WHY did Staff attempt to amend the ordinance by ADDING language at 3.10(G)(1)(C) and 3.10(G)(3) trying to apply TDSF and Setbacks to otherwise exempt attached ADUs?**

Conclusion:

We Respectfully ask the Commission to Approve our Request for a Reasonable Accommodation on behalf of my 82-year-old, disabled mother by Accommodating the Exemption Language in 13.4.1 of Malibu's LCP and Complying with the California State ADU Law her protections under the Federal and State Fair Housing Act.

Note: Contradictory to what Staff recommends, The Commission cannot reasonably deny based on fear of setting a precedent. The Commission cannot reasonably deny based on the false claim of undue financial burden as ADUs require no additional administration by City Staff and, lastly, the Commission cannot reasonably deny based on Setbacks, TDSF or TIC as these cannot be legally used to block an exempt attached ADUs per our current LCP.

OUR REQUEST IS NOT A “BIG ASK” FOR TWO REASONS

- Our Attached ADU Is Already Exempt Under the Existing LCP
- Granting Our Request Creates No Possibility of Setting an Undesirable “Precedent”

1. OUR ADU IS ALREADY EXEMPT

- Attached ADUs With No Impact On Coastal Resources Are Exempt From Requirement To Obtain a CDP Under The Existing LCP 13.1.4 Language
- Why? Because Coastal Says So (See 4/21/2020 Memo From Coastal To Malibu at. P. 5) Why else? The plain words of existing LCP 13.4.1 say so (Exempt “Improvements to existing single-family residences” include “all fixtures and structures directly attached to the residence...”)
- So why does that matter? This means that the two reasons the City is blocking our Project – slight violations of local setbacks and TDSF are preempted by new statewide laws that say 1) no setbacks of more than four feet and 2) you can’t use TDSF or TILC to block an 800 sq foot or smaller attached ADU (See Gov. Code, 65852.2, subd. (c)(2)(C); Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)
- **CONCLUSION: SAYING “YES” IS JUST FOLLOWING EXISTING LAW – NOT A SIGNIFICANT ACCOMMODATION BECAUSE WE ARE ALREADY ALLOWED TO BUILD OUR PROJECT WHETHER IT IS FOR A DISABLED FAMILY MEMBER OR NOT.**

City of Malibu Planning Commission Special Meeting 06/07/21 (Prepared by Jason and Elizabeth Riddick)

2. THERE WILL BE NO UNDESIRABLE “PRECEDENT” FROM SAYING “YES”

➤ Our Project Is a Unicorn In Malibu, Unlikely to be Repeated:

- Approved by HOA and All Neighbors
- For Disabled Family Member
- Tiny (under 500 square feet)
- In Backyard
- Camouflaged – Looks Just like House - Consistent W/ Neighborhood Character
- No water/fire access/septic issues
- No Impact on Coastal Resources

➤ The Amended LCP As Drafted Block Any Future ADUs That Exceed TDSF/Setbacks

- See (I) New Section 3.10(G)(1)(c) “Application of TDSF or impermeable coverage development standards further limits the size of the ADU...” and (2) New Section 3.10(G)(3) “Setbacks. All ADUs remain subject to the setback standards...”
- Our Project was the reason why these two more restrictive sections were added by Staff after meeting with us. They are designed to block any future ADU like ours – again meaning granting our request cannot create any “precedent”

EXHIBIT 2

**April 13, 2021 - Riddick
Request for a Reasonable
Accommodation**

Jason and Elizabeth Riddick
6255 Paseo Canyon Drive
Malibu, California 90265
Telephone: [REDACTED]
[REDACTED]
[REDACTED]

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.¹ 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

¹ 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.² 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).³

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).)”⁴

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.”⁵ 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.⁶

² 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.]

³ 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]

⁴ See Ex. B [Ainsworth’s April 21, 2020 Memorandum] at p. 5 (emphasis added).

⁵ See Ex. C [February 24, 2020 Response Ltr. From City]

⁶ 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, 2019.⁷**

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

⁷ 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.”⁸

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.”⁹ 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.¹⁰

Ms. Sperling is 82-year-old, and suffers from Glaucoma, Arthritis, Asthma and Osteoporosis.¹¹ Accordingly, Ms. Sperling carries a handicap placard issued by the California State Department of Motor Vehicles.¹² 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].

⁸ 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.

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

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

¹¹ Ex. H [Doctors Note 1] and Ex. I [Doctor’s Note 2]

¹² Ex. J [Picture of Handicap Placard]

Mr. Richard Mollica

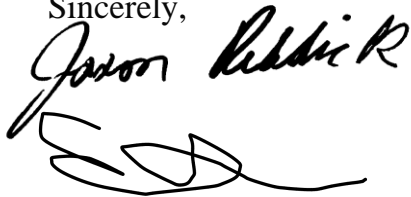
April 13, 2021

Page 6 of 6

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.

Jason and Elizabeth Riddick

Three horizontal black bars of varying lengths, used to redact the address and contact information of the signatories.

EXHIBIT A

Exhibit A

Jason and Elizabeth Riddick

6255 Paseo Canyon Drive

Malibu, California 90265

Telephone: [REDACTED]

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).¹

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.)²

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

¹ 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.”

² “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.

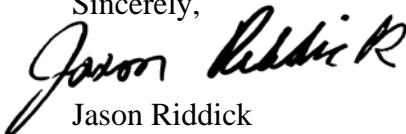
Sincerely,

Jason Riddick

Exhibit “A”

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

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 Legislation¹

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 local 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

¹ 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 B

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

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 Legislation¹

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 local 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

¹ 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.)

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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)

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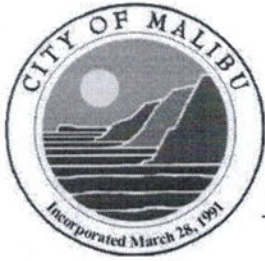
Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)

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 C



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · 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 D

Exhibit D

From: [Jason Riddick](#)
To: [Trevor Rusin](#)
Cc: [David Eng](#); [Richard Mollica](#); [Elizabeth Riddick](#)
Subject: RE: ADU Letter
Date: Wednesday, February 24, 2021 4:31:28 PM

Trevor, why haven't you addressed the only argument we made in my December 7, 2020 memorandum, which is that our attached ADU falls within the exception enumerated by Section 13.4.1 of Malibu's existing LCP? Your response does not even mention the exception, which is the only argument we made. Are you planning on completely ignoring what we wrote?

From: Richard Mollica <rmollica@malibucity.org>
Sent: Wednesday, February 24, 2021 3:52 PM
To: Elizabeth Riddick <elizabethriddick@hotmail.com>; Jason Riddick <jason_riddick@hotmail.com>
Cc: Trevor Rusin <trevor.rusin@bbklaw.com>; David Eng <deng@malibucity.org>
Subject: ADU Letter

Good Afternoon,

I realize that Trevor promised a response to you, the attached letter was drafted with input from Trevor. Please consider this as his reply as well.

Richard

Richard Mollica, AICP
Planning Director
City of Malibu
310-456-2489 Ext. 346

EXHIBIT E

ADULAND USE PLAN

CHAPTER 3—MARINE AND LAND RESOURCES

g. New Development

3.42 New development shall be sited and designed to minimize impacts to ESHA by:

- a. Minimizing grading and landform alteration, consistent with Policy 6.8.
- b. Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.
- c. Limiting the maximum number of structures to one main residence which can contain a junior accessory dwelling unit, one ~~second residential structure~~, accessory dwelling unit, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.
- d. Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.
- e. Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.
- f. Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.
- g. Minimizing impacts to water quality, consistent with Policies 3.94—3.155. (Resolution No. 07-04)

CHAPTER 5—NEW DEVELOPMENT

2. Land Use Plan Provisions

The LUP provides parameters for new development within the City. The Land Use Plan Map designates the allowable land use, including type, maximum density and intensity, for each parcel. Land use types include local commercial, visitor serving commercial, residential, institutional, recreational, and open space. The LUP describes the allowable uses in each category.

The commercial development policies provide for pedestrian and bicycle circulation to be provided within new commercial projects in order to minimize vehicular traffic. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent development. Parking facilities approved for office or other commercial developments shall be permitted to be used for public beach parking on weekends and other times when the parking is not needed for the approved uses.

The LUP encourages and provides for the preparation of a specific plan or other comprehensive plan for the Civic Center area. The Land Use Plan Map designates this area for Community Commercial, General Commercial, and Visitor- Serving Commercial uses. By preparing a Specific Plan a wider range and mix of uses, development standards, and design guidelines tailored to the unique characteristics of the Civic Center could be provided for this area as a future amendment to the LCP.

The LUP policies address new residential development. The maximum number of structures allowed in a residential development is one main residence which can contain a junior accessory dwelling unit, one ~~second residential structure~~ accessory dwelling unit and additional accessory structures provided that all such structures are located within the approved development area and clustered to minimize required fuel modification, landform alteration, and removal of native vegetation.

The LUP provides for a lot retirement program designed to minimize the individual and cumulative impacts of the potential buildout of existing parcels that are located in ESHA or other constrained areas and still allow for new development and creation of parcels in areas with fewer constraints. This includes the Transfer of Development Credit (TDC) Program, and an expedited reversion to acreage process. The TDC program will be implemented on a region-wide basis, including the City as well as the unincorporated area of the Santa Monica Mountains within the Coastal Zone. New development that results in the creation of new parcels, or multi-family development that includes more than one unit per existing parcel, except for affordable housing units, must retire an equivalent number of existing parcels that meet the qualification criteria of the program. Finally, an expedited procedure will be implemented to process reversion to acreage maps.

The LUP policies require that land divisions minimize impacts to coastal resources and public access. Land divisions include subdivisions through parcel or tract map, lot line adjustments, and certificates of compliance. Land divisions are only permitted if they are approved in a coastal

development permit. A land division cannot be approved unless every new lot created would contain an identified building site that could be developed consistent with all policies of the LCP. Land divisions must be designed to cluster development, to minimize landform alteration, to minimize site disturbance, and to maximize open space. Any land division resulting in the creation of additional lots must be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created. Certificates of compliance must meet all policies of the LCP.

The LUP policies provide for the protection of water resources. New development must provide evidence of an adequate potable water supply. The use of water wells to serve new development must minimize individual and cumulative impacts on groundwater supplies and on adjacent or nearby streams, springs or seeps and their associated riparian habitats. Water conservation shall be promoted. Reclaimed water may be used for approved landscaping, but landscaping or irrigation of natural vegetation for the sole purpose of disposing of reclaimed water is prohibited.

Communication facilities are provided for as a conditional use in all land use designations. All facilities and related support structures shall be sited and designed to protect coastal resources, including scenic and visual resources. Co-location of facilities is required where feasible to avoid the impacts of facility proliferation. New transmission lines and support structures will be placed underground where feasible. Existing facilities should be relocated underground when they are replaced.

Finally, the New Development policies provide for the protection and preservation of archaeological and paleontological resources. Measures to avoid and/or minimize impacts to identified archaeological and paleontological resources must be incorporated into the project and monitoring must be provided during construction to protect resources.

- h. Design guidelines, including architectural design, lighting, signs, and landscaping.
- i. Provisions for mixed use development. (Resolution No. 07-04)

6. Residential Development Policies

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development.

5.21 The maximum number of structures permitted in a residential development shall be limited to one main residence which can contain a junior accessory dwelling unit, one accessory dwelling unit, ~~second residential structure~~, and accessory structures such as stable, workshop, gym, studio, pool cabana, office, or tennis court provided that all such structures are located within the approved development area and structures are clustered to minimize required fuel modification.

- 5.22 ~~Second residential units~~ Accessory dwelling units (guesthouses, granny units, etc.) shall be limited in size to a maximum of 850 square feet for a studio or one-bedroom and 1,000 900 square feet for a two-bedroom two-bedroom unit. Junior accessory dwelling units shall be limited in size to a maximum of 500 square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. Detached garages, including garages provided as part of an an second residential unit accessory dwelling unit, shall not exceed 400 square feet (2-car) maximum. The area of a garage provided as part of an an second residential unit accessory dwelling unit shall not be included in the 850 or 1,000 900 square foot limit.
- 5.23 A minimum maximum of one on-site parking space shall be required for the exclusive use of an any second residential unit accessory dwelling unit. No parking shall be required for a junior accessory dwelling unit.
- 5.24 New development of an an second residential unit accessory dwelling unit or other accessory structure that includes plumbing facilities shall demonstrate that adequate private sewage disposal can be provided on the project site consistent with all of the policies of the LCP.
- 5.25 In order to protect the rural character, improvements, which create a suburban atmosphere such as sidewalks and streetlights, shall be avoided in any rural residential designation.

LOCAL IMPLEMENTATION PLAN

CHAPTER 2—DEFINITIONS

2.1. GENERAL DEFINITIONS

ACCESSORY DWELLING UNIT - a dwelling unit providing complete independent living facilities for one or more persons that is located on a parcel with another primary, single-family dwelling as defined by State law. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling's location. An accessory dwelling unit may be within the same structure as the primary unit, in an attached structure, or in a separate structure on the same parcel. The term accessory dwelling unit also includes an "efficiency unit," as defined in Health and Safety Code Section 17958., or any successor statute and a "manufactured home," as defined in Health and Safety Code Section 18007, or any successor statute.

ACCESSORY DWELLING UNIT, ATTACHED – an accessory dwelling unit that is structurally attached to the primary dwelling unit by a shared wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.

ACCESSORY DWELLING UNIT DETACHED – an accessory dwelling unit that is not structurally attached to the primary dwelling unit.

CAR SHARE VEHICLE - a motor vehicle that is operated as part of a regional fleet by a public or private car-sharing company or organization and provides hourly or daily service. A car share vehicle does not include vehicles used as part of ride-hailing companies such as Uber or Lyft.

EFFICIENCY KITCHEN - a kitchen that at a minimum contains the following: a sink with a maximum waste line diameter of 1.5 inches, a cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas, and a food preparation counter or counters that total at least 15 square feet in area and storage cabinets that total at least 30 square feet of shelf space.

JUNIOR ACCESSORY DWELLING UNIT - an accessory dwelling unit that is no more than 500 square feet in size and is contained entirely within the floor area or total development square footage of an existing or proposed single-family structure, and which includes. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

PASSAGEWAY – a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit or junior accessory dwelling unit.

PRINCIPAL PLACE OF RESIDENCE - the residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the property owner returns frequently and periodically, as from work or vacation. There may be only one "principal place of residence," and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the Primary Residential Unit is his or her principal place of residence as evidenced by qualifying for the homeowner's tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the Property as tenants in common or some other form of common ownership, a person or persons representing at least 50 percent of the ownership interest in the Property shall reside on the Property and maintain the Property as his, her, or their principal place of residence. Any person or persons who qualify for the homeowner's tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

~~SECOND UNIT—an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family dwelling is situated. The maximum living area of a second unit shall not exceed 900 square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed 400 sq. ft. The square footage of the garage shall not be included in the maximum living area.~~

PUBLIC TRANSIT - a location, including, but not limited to, a bus stop, where the public may access buses and other forms of transportation that charges set fares, run on fixed routes, and available to the public.

CHAPTER 3—ZONING DESIGNATIONS AND PERMITTED USES

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan consisting of five single-family residences and 1.74 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the “Crummer Trust” parcel.

2. Permitted Uses

The uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on the “Malibu Coast Estate Planned Development Map 1” of this LIP.

a. Lot Nos. 1—5

- i. One single-family residence, which may contain ~~a~~one junior accessory dwelling unit, per lot.
- ii. Accessory uses (one second accessory dwelling unit or guest house per lot, garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director).
- iii. Domestic animals, kept as pets.
- iv. Landscaping.

b. Lot No. 6

- i. Uses and structures maintained by either the owners of Lots 1—5 or the homeowners’ association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

- i. Parks and public open space, excluding community centers.
- ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director. Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.
- iii. Onsite wastewater treatment facilities.

3. Lot Development Criteria

All new lots created in Malibu Coast Estate shall comply with the following criteria:

a. Lot Nos. 1—5

- i. Minimum lot area: 113,600 square feet (2.60 acres).
- ii. Minimum lot width: 115 feet.
- iii. Minimum lot depth: 480 feet.

b. Lot No. 6

- i. Minimum lot area: 125,700 square feet (2.88 acres).
- ii. Minimum lot width: 625 feet.
- iii. Minimum lot depth: 100 feet.

c. Lot No. 7

- i. Minimum lot area: 75,640 square feet (1.74 acres).
- ii. Minimum lot width: 460 feet.
- iii. Minimum lot depth: 100 feet.

4. Property Development and Design Standards

Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(Q). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section for those lots in Malibu Coast Estate.

a. Lot Nos. 1—5

- i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))

- a) The total development square footage (TDSF) on each of Lot Nos. 1—5 shall not exceed the following square footage per lot:
 - Lot 1 – 10,052 sq. ft.
 - Lot 2 – 9,642 sq. ft.
 - Lot 3 – 9,434 sq. ft.
 - Lot 4 – 9,513 sq. ft.
 - Lot 5 – 10,990 sq. ft.
 - b) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
 - c) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.
 - d) The development footprint on each lot (Lot Nos. 1—5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Structures on Lot 5 shall be setback a minimum of 190 feet from the edge of the bluff as identified on “Malibu Coast Estate Planned Development Map 1” in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements for accessory uses not to exceed 10 feet in height.
- ii. Setbacks (Replaces corresponding standards in LIP Section 3.6F)
- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.
 - b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
 - c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
 - d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.
- iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))

- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet, except the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than 15 feet, as indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Height is measured from natural or finished grade, whichever is lower.
 - b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened.
 - c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.
- iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))
- a) Notwithstanding other provisions of this Code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.
 - b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.
 - c) Net export shall be limited to 3,500 cubic yards per lot.
- v. Impermeable Coverage, Landscaping, and Berm
- a) The impermeable coverage requirement in LIP Section 3.6(I) shall apply.
 - b) In addition to the requirements of LIP Section 3.10, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures. Landscaping and trees shall be selected, sited, and maintained to not exceed 25 feet.
 - c) A natural-looking earthen berm that is 4 feet in height (except for the northernmost 30 foot long portion on Lot 1 that shall be no less than 2 feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. The berm shall be vegetated with lower-lying native species that blend with the natural bluff landscape.
- vi. Parking (In addition to the parking standards of LIP Section 3.14)

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest house or ~~second~~ accessory dwelling unit. No parking is required for a junior accessory dwelling unit.

vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

To insure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the coastal development permit (CDP) for each residential lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Malibu Municipal Code Chapter 17.68. (Ord. 398 § 4, 2015; Ord. 373 § 3, 2013; Ord. 366 § 3(C), 2012; Ord. 364 § 4(A), 2012)

3.6. RESIDENTIAL DEVELOPMENT STANDARDS

All single-family and multiple-family residences shall be subject to the following development standards:

D. The minimum floor area of a residential unit shall be as follows:

1. For a single-family residence, not less than 800 square feet, exclusive of any appurtenant structures. This minimum does not apply to accessory structures.
2. For each multi-family dwelling unit, not less than 750 square feet, exclusive of any appurtenant structures.

N. Accessory Structures. Accessory structures identified as being permitted within any zone may be established only if they are clearly accessory to a primary permitted or conditionally permitted use established concurrent with or prior to establishment of accessory use.

~~1. Second Residential Units~~

~~a. Second residential unit includes a guest house or a second unit, as defined in Section 2.1 of the Malibu LIP.~~

~~b. A maximum of one second residential unit may be permitted as an accessory to a permitted or existing single family dwelling. Development of a second residential unit shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.~~

~~c. Development Standards~~

~~i. Siting~~

~~Any permitted second residential unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.~~

~~ii. Maximum Living Area~~

~~The maximum living area of a second residential unit shall not exceed 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the second residential unit.~~

iii. ~~Parking~~

- a) ~~A minimum of one on-site parking space shall be provided for the exclusive use of a second residential unit.~~
- b) ~~One garage not to exceed 400 square feet in size may be permitted as part of a second residential unit.~~

1. Accessory Dwelling Units

- i. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units as defined in the LIP Section 2.1 (General Definitions) and in California Government Code Section 65852.2, or any successor statute in the following residential zones: Rural Residential (RR), Single Family (SF), Multiple Family (MF), Multifamily Beach Front (MFBF) or areas designated for single family residential use as part of a Planned Development (PD) zone and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.
- ii. CDP required. An accessory dwelling unit coastal development permit (ADU CDP) shall be obtained for a detached accessory dwelling unit pursuant to LIP Section 13.30.
- iii. The director shall approve, conditionally approve, or deny an ADU CDP application for an accessory dwelling unit that complies with Subsection iv (Development Standards) below within 60 days after receiving a complete application.

~~iii.~~ iv. s.

Both an ADU and a Junior ADU may be established on a lot when one detached, new-construction ADU is proposed on a lot with a proposed or existing single-family dwelling, if the detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.
- (iii) The peak height above grade is 16 feet or less.

~~iv.~~ v.

iv. v. Development Standards. Except as modified by this subsection, an accessory dwelling unit shall conform to all requirements of the underlying zoning district, any applicable overlay district and all other applicable provisions of the LIP including, but not limited to, height, setback, site coverage, and other coastal resource protection development standards. An accessory dwelling unit is exempt from these requirements if it ~~unless the unit~~ is contained within a legal nonconforming structure and the accessory dwelling unit development would comply with LIP section 13.5.

a) Setback requirements.

1) Accessory dwelling units shall provide a minimum four foot setback from all side and rear lot lines.

2) No additional setback shall be required for an existing garage that is ~~converted~~~~remodeled~~ into an accessory dwelling unit provided that the side and rear setbacks comply with required Fire and Building Codes.

3) An addition to create an accessory dwelling unit above an existing garage shall require a setback of not more than five feet from side and rear property lines.

b) Unit size

1) The maximum size of a detached or attached accessory dwelling unit is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed. An accessory dwelling unit may include a garage not to exceed 400 square feet. The square footage of the garage shall not be included in the maximum living area.

2) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.

3) Application of other development standards might further limit the size of the accessory dwelling unit, but no application of lot coverage, open space, floor area ratio or minimum lot size may require the accessory dwelling unit to be less than 800 square feet

c) Exterior Access. An accessory dwelling unit shall have independent exterior access from the primary dwelling unit.

d) Parking. Parking shall comply with requirements of LIP 3.14 (Parking Regulations) except as modified below:

1) One parking space is required for an attached or detached accessory dwelling unit or each accessory dwelling unit in a multifamily building. Such parking may be provided in setback areas, as tandem parking and/or may be located on an existing driveway.

2) Tandem parking or parking in setback areas may be prohibited if the parking configuration is not feasible based upon specific site topographic or fire and life safety conditions.

3) No parking shall be required when:

- a) The accessory dwelling unit is converted as part of the existing primary residence or existing accessory structure.
- b) The accessory dwelling unit is located within one-half mile (measured by actual walking distance) of a public transit stop with fixed route bus service.
- c) On-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- d) The location of the proposed accessory dwelling unit is within one block of a designated car share vehicle.
- 4) ~~When a required parking space within a garage, carport or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit including enclosed, unenclosed or tandem spaces or by the use of mechanical automobile parking lifts. Replacement parking must be located on hardscape and mechanical automobile parking lifts must be located within an enclosed structure.~~
- e) Fire Sprinklers. Accessory dwelling units shall not be required to provide fire sprinklers if sprinklers were not required for the primary dwelling.
- f) Passageway. A passageway or path from the street to the entrance of an accessory dwelling unit shall not be required unless required by the fire department.
- g) Utilities. Accessory dwelling units shall not be considered new residential uses for the purposes of calculating utility connection fees.
- 1) A new or separate utility connection fee can be required for an accessory dwelling unit that is not contained within the existing primary dwelling unit or within an existing accessory building. The connection fee shall be proportionate to the burden of the accessory dwelling unit based on the accessory dwelling unit size and number of plumbing fixtures.
- 2) Conversion of floor space area to an accessory dwelling unit within an existing structure with the appropriate meter size shall not be subject to new water connection fees.
- h) Multifamily Lots. Accessory Dwelling Units on multifamily lots are subject to the following standards:
 - i) Multiple accessory dwelling units are allowed within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted accessory complies with state building standards for dwellings. At least one converted accessory dwelling unit is allowed within an existing

multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.

ii) No more than two detached accessory dwelling units are allowed on a lot that has an existing multifamily dwelling if each detached accessory dwelling unit satisfies the following limitations:

1) The side- and rear-yard setbacks are at least four-feet.

2) The total floor area is 800 square feet or smaller.

i) Additional requirements for all accessory dwelling units.

1) A single-family dwelling must exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.

2) A detached accessory dwelling unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

3) The accessory dwelling unit shall not be sold separately from the primary dwelling.

4) The accessory dwelling unit shall comply with the same building and safety requirements as the primary dwelling unit in accordance with the California Government Code and California Fire Code.

5) An approved permanent foundation shall be required for an accessory dwelling unit.

6) The accessory dwelling unit shall comply with all applicable requirements for onsite wastewater treatment systems.

7) An accessory dwelling unit may not be rented for a period less than 30 consecutive calendar days.

8) The owner of an accessory dwelling unit shall provide information to the city annually, upon request, for reporting to the State as to whether during the prior 12 months the junior accessory dwelling unit was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.

j) Processing

i) An attached accessory dwelling unit or an accessory dwelling unit located inside of an existing accessory structure shall be exempt from obtaining a coastal development permit

pursuant to LIP Section 13.4.1, if it complies with the requirements of this subsection, is consistent with the LCP, and has no potential for adverse effects, either individually or cumulatively, on coastal resources.

ii) A detached accessory dwelling unit shall be processed without a public hearing as an administrative coastal development permit. An administrative coastal development permit for a detached accessory dwelling unit shall be appealable pursuant to LIP Section 13.30.

iii) Applications for an accessory dwelling unit that include a request for a discretionary permit, such as a site plan review, minor modification or variance, shall be processed concurrently with the discretionary permit. The discretionary permit shall be subject to appeal pursuant to LIP Section 13.20.

2. Junior Accessory Dwelling Units

a. One junior accessory dwelling unit may be permitted in conjunction with an existing single-family residence.

b. A junior accessory dwelling unit shall not be sold separately from the primary residence.

c. The property owner shall reside in and maintain the primary residential unit as the property owner's principal place of residence. Owners of lots developed with an accessory junior accessory dwelling unit shall live on the lot as long as the lot is developed with a junior accessory.

d. Development Standards

i. A junior accessory dwelling unit shall not exceed 500 square feet in total floor area. If a bathroom is shared with the remainder of the single-family dwelling, it shall not be included in the square footage calculation.

ii. A junior accessory dwelling unit shall be contained entirely within an existing single-family residence. Except up to 150 square feet is allowed if the expansion is limited to accommodating ingress and egress.

iii. A junior accessory dwelling unit shall have an independent exterior access from the primary dwelling.

iv. An interior connection to the main living area of the primary residence shall be maintained. A second door may be added for sound attenuation. Two (2) doors may be installed within one (1) frame for noise attenuation.

v. The junior accessory dwelling unit may share a bathroom with the primary residence or have its own.

vi. No additional parking shall be required for a junior accessory dwelling unit.

e. Except as provided herein, a junior accessory dwelling unit shall comply with all building and fire code requirements~~requirement~~.

- f. A junior accessory dwelling unit may not be rented for a period less than 30 consecutive calendar days.
- g. The owner of a junior accessory dwelling unit shall provide information to the city annually upon request for reporting to the State as to whether during the prior 12 months the junior accessory dwelling unit was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.
- h. Prior to issuance of a building permit for a junior accessory dwelling unit, a deed restriction shall be recorded that: prohibits the subdivision or sale of the junior accessory dwelling unit separate from the single-family dwelling; specifies that the deed restriction runs with the land and is therefore enforceable against future property owners; restricts the size and features of the junior accessory dwelling unit in accordance with this section; requires owners of record of the property to occupy the primary dwelling unit or the junior accessory dwelling unit; and further that the City shall be a third party beneficiary of the deed restriction with the right to enforce the provisions of the deed restriction.

3. Guest houses

a. Development of a guest house shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.

b. Development Standards

i. Siting. Any permitted guest house shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

ii. Maximum Living Area. The maximum living area of a guest house shall not exceed 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the guest house.

iii. Parking

a) A minimum of one on-site parking space shall be provided for the exclusive use of a guest house.

b) One garage not to exceed 400 square feet in size may be permitted as part of a guest house.

42. Other Accessory Structures

- a. Accessory structures customarily ancillary to single family dwellings including, but not limited to, a stable, workshop, gym, studio, pool cabana, office, sport court, pool, or spa may be permitted as an accessory to a permitted or existing single family dwelling.
- b. Any permitted accessory structure shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.
- c. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.

CHAPTER 13—COASTAL DEVELOPMENT PERMITS

No changes to 13.1 through 13.3

13.4. EXEMPTIONS

The following projects are exempt from the requirement to obtain a Coastal Development Permit.

13.4.1 Improvements to Existing Single-Family Residences

- A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms “Improvements to existing single-family residences” includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained (detached) residential units. 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.
- B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:
1. Improvements to a single-family structure if the structure or improvement is 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.
 2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas.
 3. The expansion or construction of water wells or septic systems.
 4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the City or Coastal Commission, improvement that would result in an increase of 10 percent or more

of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to this section or **Public Resources Code** section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

5. In areas which the City or Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

6. Any improvement to a single-family residence where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or City indicated that any future improvements would require a development permit.

13.4.2 Repair and Maintenance Activities

A. Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities.

B. The exemption in Section 13.4.2 (A) of the Malibu LIP shall not apply to the following extraordinary methods of repair and maintenance which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective works;

c. The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

2. Any method of routine maintenance dredging that involves:

a. The dredging of 100,000 cubic yards or more within a twelve (12) month period;

b. The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

c. The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the City or the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

C. All repair and maintenance activities governed by Section 13.4.2 (B) shall be subject to the LCP permit regulations, including but not limited to the regulations governing administrative and emergency permits. The provisions of Section 13.4.2 (B) shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

D. Unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, (as measured by 50% of the exterior walls), seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance but instead constitutes a replacement structure requiring a coastal development permit.

13.4.3 Other Improvements

A. Improvements to any structure other than a single-family residence or a public works facility except as noted below in Section 13.4.3 (B) of the Malibu LIP. For purposes of this section, where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

1. All fixtures and other structures directly attached to the structure.
2. Landscaping on the lot.

B. The exemption in 13.4.3 (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policies of the LCP.

1. Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; or within 50 feet of the edge of a coastal bluff;
2. Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, or in an environmentally sensitive habitat area;
3. The expansion or construction of water wells or septic systems;
4. On property not included in subsection 13.4.3 (B)(1) of the Malibu LIP above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the LUP, an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to section (A) above or [Public Resources Code](#) section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

5. In areas which the City or the Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;
6. Any improvement to a structure where the coastal development permit issued for the original structure by the City or the Coastal Commission indicated that any future improvements would require a development permit;
7. Any improvement to a structure which changes the intensity of use of the structure;
8. Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

13.30 ACCESSORY DWELLING UNIT COASTAL DEVELOPMENT PERMITS

13.30.1 Applicability

These regulations shall apply to all applications for an Accessory Dwelling Unit (ADU) as defined in Chapter 2 of the Malibu LIP (Definitions) that are not exempt pursuant to LIP Section 13.4.1. An application for an Accessory Dwelling Unit Coastal Development Permit (ADU CDP) shall be made to the Planning Director.

A. Applications for ADU CDPs shall be to the Planning Director on forms provided by the Planning Department.

B. The Planning Director shall refer the application to the City's Biologist (except when the ADU is located entirely within the existing primary dwelling unit) and the Environmental Health Administrator for review and verification of the facts in the application and analysis of the design of the proposed ADU.

C. Public notice for an ADU CDP shall be provided in accordance with LIP Section 13.12.2(B) and 13.13.3.

13.30.2 Findings and Permit Issuance

A. The Planning Director may approve an application for an ADU CDP if all of the following findings can be made:

1. The proposed ADU is consistent with the LCP and all applicable LCP provisions, local laws and regulations regarding ADUs.
2. The dwelling conforms to the development standards and requirements for accessory dwelling units established in LIP Section 3.6(N).
3. Public and utility services including emergency access are adequate to serve both dwellings.
4. The proposed ADU CDP has been conditioned in accordance with the LCP.

B. Upon approving an ADU CDP, the Planning Director shall issue a written document that at a minimum includes the following information:

1. Location of the project;
2. The date of issuance;

3. An expiration date;
4. The scope of work to be performed;
5. Terms and conditions of the permit; and
6. Findings.

13.30.3 Reporting of ADU CDPs

The Planning Director shall report in writing to the Planning Commission at each meeting the ADU CDP permits approved under this section in the same manner as for an administrative permit, consistent with LIP Section 13.13.6, except that the ADU CDP shall not be eligible for treatment as a regular coastal development permit requiring a public hearing. The ADU CDP shall become effective 5 days after the Planning Commission meeting unless the approval is rescinded by the Planning Director before that date.

13.11. PUBLIC HEARING REQUIRED AND PUBLIC COMMENT

A. At least one public hearing shall be required on all appealable development as defined in Chapter 2 of the Malibu LIP (Definitions), except for accessory dwelling units as defined in Section 3.6 N.2.

1. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13.12 of the Malibu LIP. The public hearing may be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

2. If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 13.12 of the Malibu LIP, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565 of the California Code of Regulations.

B. Any person may submit written comments to the Planning Director Manager on an application for a Coastal Development Permit, or on an appeal of a Coastal Development Permit, at any time prior to the close of the public hearing. If no public hearing is required, written comments may be submitted prior to the decision date specified in the public notice. Written comments shall be submitted to the Planning Director Manager who shall forward them to the appropriate person, commission, board or the Council and to the applicant. (Ord. 303 § 3, 2007)

13.13. ADMINISTRATIVE PERMITS

13.13.1 Applicability

A. The Planning ~~Director~~ Manager may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).

1. Improvements to any existing structure;
2. Any single-family dwelling;
3. Lot mergers;
4. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land;
5. Water wells.

B. Notwithstanding any other provisions of the LCP, ~~attached or~~ detached accessory second dwelling units shall be processed as administrative permits, ~~except that~~ the approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone. (Ord. 335 § 3, 2009; Ord. 303 § 3, 2007)

NOTE: Changes are proposed for the Residential land use category only as noted below. No changes are proposed for the other land use categories.

Appendix 1 TABLE B PERMITTED USES

| KEY TO TABLE (In addition to a coastal development permit, the following permits are required.) | |
|---|--|
| P | Permitted use |
| MCUP | Requires the approval of a minor Conditional Use Permit by the Director |
| CUP | Requires the approval of a Conditional Use Permit |
| A | Permitted only as an accessory use to an otherwise permitted use |
| LFDC | Requires the approval of a Large Family Day Care permit |
| WTF | Requires the approval of a Wireless Telecommunications Facility |
| . | Not permitted (Prohibited) |

| USE | RR | SF | MF | MFBF | MHR | CR | BPO | CN | CC | CV-1 | CV-2 | CG | OS | I | PRF | RVP |
|--|----------------|----------------|----------------|----------------|------------|-----------|------------|-----------|-----------|-------------|-------------|-----------|-----------|----------|------------|------------|
| RESIDENTIAL | | | | | | | | | | | | | | | | |
| Single-family residential | P | P | P | P | . | . | . | . | . | . | . | . | . | A | . | . |
| Manufactured homes | P | P | P | P | . | . | . | . | . | . | . | . | . | . | . | . |
| Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments) | . | . | CUP | CUP | . | . | . | . | . | . | . | . | . | . | . | . |
| Second-Accessory dwelling units | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Junior accessory dwelling units | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home parks | . | . | . | . | P | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses) | . | . | . | . | CUP | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home as residence during construction | P | P | P | MCUP | . | . | . | . | . | . | . | . | . | . | . | . |
| Accessory uses (guest units house, garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses) | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Residential care facilities (serving 6 or fewer persons) | P | P | P | . | . | . | . | . | . | . | . | . | . | . | . | . |
| Small family day care (serving 6 or fewer persons) | A | A | A | . | . | . | . | . | . | . | . | . | . | . | . | . |
| USE | RR | SF | MF | MFBF | MHR | CR | BPO | CN | CC | CV-1 | CV-2 | CG | OS | I | PRF | RVP |
| RESIDENTIAL (continued) | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | |
|--|-------------------------|-------------------------|-------------------------|-------------------------|---|---|---|---|---|----------------|----------------|---|---|---|---|---|
| Large family day care (serving 7 to 12 persons) | LFDC | LFDC | LFDC | . | . | . | . | . | . | . | . | . | . | . | . | . |
| Home occupations | P/ MCUP ² | P/ MCUP ² | P/ MCUP ² | P/ MCUP ² | . | . | . | . | . | . | . | . | . | . | . | . |
| Barber shops, beauty salons | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |
| Laundry, dry cleaners | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |
| Miscellaneous services including travel agencies, photocopy services, photographic processing and supplies, mailing services, appliance repair, and similar uses | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |

Notes:

1. Subject to Residential Development Standards (Section 3.6).
2. Subject to Home Occupations Standards [(Section 3.6(O))].
3. Use Prohibited in Environmentally Sensitive Habitat Areas.
4. This commercial use may be permitted only if at least 50% of the total floor area of the project is devoted to visitor serving commercial use. This floor area requirement shall not apply to the Civic Center Wastewater Treatment Facility.
5. CUP for veterinary hospitals.
6. Maximum interior occupancy of 125 persons.
7. If exceeding interior occupancy of 125 persons.
8. By hand only.
9. Use permitted only if available to general public.
10. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.
11. Sports field lighting shall be limited to the main sports field at Malibu High School and subject to the standards of LIP Sections 4.6.2 and 6.5(G).
12. Limited to public agency use only (not for private use).
13. Accessory uses when part of an educational or non-profit (non-commercial) use. However, residential care facilities for the elderly are limited to operation by a non-profit only.
14. CUP for facilities within a side or rear yard when adjacent to a residentially-zoned parcel.
15. Conditionally permitted only when facilities are ancillary to the Civic Center Wastewater Treatment Facility, including, but not limited to, injection wells, generators, and pump stations.
16. This use is conditionally permitted in the Civic Center Wastewater Treatment Facility Institutional Overlay District and only when associated with the existing wastewater treatment facility or with the Civic Center Wastewater Treatment Facility.

(Ord. 393 § 4, 2015; Ord. 373 § 3, 2013; Ord. 366 §§ 3(A) and (B), 2012; Ord. 303 § 3, 2007)\

EXHIBIT F



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook



Where foundations begin

Updated December 2020

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Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also 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. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

Frequently Asked Questions:

Accessory Dwelling Units¹

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

¹ Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subds. (a)(1)(D)(x)(I) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources



Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from (AB 3182 Accessory Dwelling Units) and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
- (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision 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. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ **and** one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
- (3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
- (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
- (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
- (B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
- (i) Amend the ordinance to comply with this section.
- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
 - (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
 - (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
 - (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
 - (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
 - (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
 - (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
 - (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
 - (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
 - (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
 - (l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
 - (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
 - (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
 - (1) The accessory dwelling unit was built before January 1, 2020.
 - (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
 - (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
- (Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
 - (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
 - (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
 - (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
 - (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
 - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
 - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
 - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
 - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
 - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
 - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
 - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
 - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
 - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions. (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
 - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
 - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision 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. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

4740.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

4741.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.

(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.

(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code ~~is~~ was amended to read (AB 68 (Ting)):
65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units

Effective January 1, 2020 Section 65852.26 ~~is~~ was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
 - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
 - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
 - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
 - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.
- (b) For purposes of this section, the following definitions apply:
 - (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
 - (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 ~~is~~ was added to the Civil Code, to read (AB 670 (Friedman)):

4751.

- (a) 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 accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6

AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

| YES/NO | STATE STANDARD* | GOVERNMENT CODE SECTION |
|--------|---|-------------------------------------|
| | Unit is not intended for sale separate from the primary residence and may be rented. | 65852.2(a)(1)(D)(i) |
| | Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling. | 65852.2(a)(1)(D)(ii) |
| | The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling. | 65852.2(a)(1)(D)(iii) |
| | Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet. | 65852.2(a)(1)(D)(iv), (c)(2)(B) & C |
| | Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet. | 65852.2(a)(1)(D)(v) |
| | Passageways are not required in conjunction with the construction of an accessory dwelling unit. | 65852.2(a)(1)(D)(vi) |
| | Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. | 65852.2(a)(1)(D)(vii) |
| | Local building code requirements that apply to detached dwellings are met, as appropriate. | 65852.2(a)(1)(D)(viii) |
| | Local health officer approval where a private sewage disposal system is being used, if required. | 65852.2(a)(1)(D)(ix) |
| | Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway. | 65852.2(a)(1)(D)(x)(I) |

Attachment 3: Bibliography

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer
Turner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Turner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)
Turner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)
Turner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

EXHIBIT G

Exhibit G



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person 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.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

EXHIBIT H

Exhibit H

Elayne K. Garber, M.D.
Lindsay J. Forbess, M.D., M.Sc.
8631 West Third Street, Suite 700E
Los Angeles, CA 90048
Phone (310) 854-3539 Fax (310) 652-3914

ADDENDUM

Monday April 5, 2021 12:36 PM

RENEE SPERLING (DOB: 10/18/1938 ID: 3706)

Note Type: Addendum

Subject: Letter of ADA accomodation

To Whom It May Condern,

Renee Sperling has been a patient of mine [REDACTED]

[REDACTED] She is diabled. She needs to live near her family to care for her. Please grant her the ADA accomodation for this disability. Thank you.

Elayne K. Garber, M.D.
Clinical Chief, Rheumatology Division
Cedars-Sinai Medical Center
Associate Clinical Professor of Medicine
David Geffen School of Medicine, UCLA
Garber Forbess Rheumatology
8631 West Third Street, Suite 700E
Los Angeles, California 90048
Tel 310.854.3539 Fax 310.652.3914

Elayne Garber, MD
Electronic Signature

EXHIBIT I



March 30th, 2021

Re: Renee Sperling, DOB 10/18/1938

To Whom it May Concern,

Ms. Sperling suffers from [REDACTED]
[REDACTED]
[REDACTED]

Assistance in administering eye drops and adhering to the schedule by a third party is extremely valuable. Thank you for your understanding and any support that can be provided to her.

Sincerely,

Daniel Krivoy, MD

EXHIBIT J

Exhibit J

From: [Elizabeth Riddick](#)
To: [P](#)
Subject: Renees disabled Cert
Date: Friday, March 26, 2021 10:22:22 AM

DEPARTMENT OF MOTOR VEHICLES
DISABLED PERSON
PLACARD IDENTIFICATION
CARD/RECEIPT

PLACARD NUMBER: [REDACTED]
EXPIRES: [REDACTED]
DATE ISSUED: [REDACTED]

STATE OF CALIFORNIA
DMV
DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

This identification card or facsimile copy is to be carried by the placard owner. Present it to any peace officer upon demand. Immediately notify DMV by mail of any change of address. When parking, hang the placard from the rear view mirror, remove it from the mirror when driving.

When your placard is properly displayed, you may park in or on:

- Disabled person parking spaces (blue zones)
- Street metered zones without paying.
- Green zones without restrictions to time limits.
- Streets where preferential parking privileges are given to residents and merchants.

You may not park in or on:

- Red, Yellow, White or Tow Away Zones.
- Crosshatch marked spaces next to disabled person parking spaces.

It is considered misuse to:

- Display a placard unless the disabled owner is being transported.
- Display a placard which has been cancelled or revoked.
- Loan your placard to anyone, including family members.

Misuse is a misdemeanor (section 4461VC) and can result in cancellation or revocation of the placard, loss of parking privileges, and/or fines.

TYPE: N1 TV: 92 CO: 19
DOB: [REDACTED]
ISSUED TO
SPERLING RENEE
[REDACTED]
[REDACTED]

Purchase of fuel
(Business & Professions Code 13660):
State law requires service stations to refuel a disabled person's vehicle at self-service rates, except self-service facilities with only one cashier.

THE GREAT SEAL OF THE STATE OF CALIFORNIA

008
DPP002 Rev(4/10)

Sent from my iPhone

EXHIBIT 3

HCD – Ordinance RE: Request for a Reasonable Accommodation

MODEL ORDINANCE FOR PROVIDING REASONABLE ACCOMMODATION UNDER FEDERAL AND STATE FAIR HOUSING LAWS

The following documents have been prepared for use by cities and counties to provide a process for making reasonable accommodation to land use and zoning decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities.

Developed by Mental Health Advocacy Services, Inc.
September 2003

For More Information, Contact:
Kim Savage, Senior Attorney
Mental Health Advocacy Services, Inc.
3255 Wilshire Blvd., Suite 902
Los Angeles, California 90010
(213) 389-2077

This document may not be reproduced, in whole or in part, without appropriate attribution to Mental Health Advocacy Services, Inc. For additional information, contact Mental Health Advocacy Services, Inc., 3255 Wilshire Blvd., #902, Los Angeles, CA 90010, (213) 389-2077.

Introduction

Jurisdictions have become increasingly aware of their obligations under fair housing laws and federal and state housing planning documents to remove land use and zoning constraints to the development of housing for individuals with disabilities and provide reasonable accommodation to ensure equal access to housing. This introduction explains those legal mandates that require cities and counties to both eliminate fair housing violations and implement a procedure for providing reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.

Federal and State Fair Housing Laws

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act prohibit discrimination against individuals with disabilities in housing and require that cities and counties take affirmative action to eliminate regulations and practices that deny housing opportunities to individuals with disabilities. More specifically, fair housing laws require that cities and counties provide individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, practices and procedures. Local jurisdictions must even waive certain requirements when it is necessary to eliminate barriers to housing opportunities. For example, a family could seek reasonable accommodation from its local jurisdiction for waiver of a residential fence height restriction so their son, who because of his mental disability fears unprotected spaces, may use the backyard. This reasonable accommodation mandate could also provide flexibility in the application of a local zoning code regulation that limits the size of residences in R1 zones. Reasonable accommodation could be provided to allow an individual with a disability to exceed that limit to build a wheelchair ramp.

While fair housing laws intend that all people have equal access to housing, the law also recognizes that individuals with disabilities may need extra tools to achieve equality. Providing reasonable accommodation is one way for local jurisdictions to provide relief from land use and zoning and building regulations and procedures that have the effect of discriminating against the development, siting and use of housing for individuals with disabilities. Adopting a reasonable accommodation ordinance will not, however, cure a zoning ordinance that on its face discriminates against individuals with disabilities. Nor will an offer of reasonable accommodation ever excuse a city or county from liability for intentional discrimination.

Federal and State Mandated Housing Planning Documents

In addition to complying with fair housing laws, a jurisdiction is also required by both federal and state law to develop plans for meeting the housing needs of those in the jurisdiction, including individuals with disabilities. Both the federally mandated Analysis of Impediments to Fair Housing Choice, which is a stand-alone document, and a part of the Consolidated Plan and, California's Housing Element statute require that local governments identify constraints to providing housing for individuals with disabilities and develop strategies for removing those constraints. In addressing the housing needs of individuals with disabilities, the statute now recognizes that local land use and zoning regulations, practices and procedures impose significant barriers to developing much needed housing for individuals with disabilities. Every jurisdiction's housing element must have a program that:

“ . . . remove[s] constraints to, or provide[s] reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.” Cal. Gov. Code § 65583(c)(3).

The most effective way for local governments to comply with the housing element requirement to remove constraints to the development of housing for individuals with disabilities is to undertake an impediments study to identify local barriers to the development of housing for individuals with disabilities, and thereafter revise land use and zoning and building code regulations, practices and procedures that violate fair housing laws. At the same time, cities and counties should adopt a reasonable accommodation ordinance to provide for flexibility in the application of zoning and land use regulations and procedures. If a local government's housing element fails to comply with the housing element requirements that address land use and zoning barriers to the development and siting of housing for individuals with disabilities as set forth above, its planning document will be considered deficient when it is reviewed by the California Department of Housing and Community Development.

California Attorney General Letter

The State Attorney General's recent urging that all California cities and counties implement a fair housing reasonable accommodation procedure for their land use and zoning activities further compels jurisdictions to adopt a reasonable accommodation ordinance for individuals with disabilities. In his May 2001 letter, Attorney General, Bill Lockyer, explained that local governments have an affirmative duty under fair housing laws to provide reasonable accommodation and “[i]t is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently.” The State Attorney General, in rejecting local governments'

use of the variance or conditional use permit process to evaluate requests for reasonable accommodation under fair housing laws, explained:

“Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.” California Attorney General letter, May 2001 (emphasis added).

In response to the State Attorney General's letter, many cities throughout the state have indicated that they are adopting fair housing reasonable accommodation procedures as one way of addressing barriers in land use and zoning regulations and procedures.

We urge cities and counties to take a comprehensive approach to eliminating discrimination and furthering housing opportunities for individuals with disabilities. By reviewing and revising as necessary local zoning and land use regulations, procedures and practices and adopting a reasonable accommodation ordinance, local governments will go a long way in complying with fair housing laws and furthering the housing opportunities of individuals with disabilities.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____
ADDING SECTIONS ____ TO THE MUNICIPAL CODE, PROVIDING A
PROCEDURE FOR REASONABLE ACCOMMODATION IN THE CITY'S LAND
USE AND ZONING AND BUILDING REGULATIONS PURSUANT TO FAIR
HOUSING LAWS.

THE CITY COUNCIL OF THE CITY OF _____ ORDAINS AS FOLLOWS:

Sec. 1. Purpose.

It is the policy of the jurisdiction, pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereafter "fair housing laws"), to provide individuals with disabilities reasonable accommodation in rules, policies, practices and procedures to ensure equal access to housing and facilitate the development of housing for individuals with disabilities. This ordinance establishes a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures of the jurisdiction to comply fully with the intent and purpose of fair housing laws.

Sec. 2. Findings.

The Council of the jurisdiction finds:

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act impose an affirmative duty on local governments to make reasonable accommodation in their land use and zoning regulations and practices when such accommodation may be necessary to afford individuals with disabilities an equal opportunity to housing;

- A. The Housing Element of the jurisdiction must identify and develop a plan for removing governmental constraints to housing for individuals with disabilities including local land use and zoning constraints or providing reasonable accommodation;
- B. The Attorney General of the State of California has recommended that cities and counties implement fair housing reasonable accommodation procedures for making land use and zoning determinations concerning individuals with disabilities to further the development of housing for individuals with disabilities;

- C. A fair housing reasonable accommodation procedure for individuals with disabilities and developers of housing for individuals with disabilities to seek relief in the application of land use, zoning and building regulations, policies, practices and procedures will further the jurisdiction's compliance with federal and state fair housing laws and provide greater opportunities for the development of critically needed housing for individuals with disabilities.

Sec. 3. Applicability.

Reasonable accommodation in the land use and zoning context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities.

An individual with a disability is someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment.

A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to fair housing opportunities.

Sec. 4. Notice to the Public of Availability of Accommodation Process.

Notice of the availability of reasonable accommodation shall be prominently displayed at public information counters in the planning, zoning and building departments, advising the public of the availability of the procedure for eligible individuals. Forms for requesting reasonable accommodation shall be available to the public in the Planning and Building and Safety departments.

Sec. 5. Requesting Reasonable Accommodation.

- A. In order to make housing available to an individual with a disability, any eligible person as defined in Sec. 3 may request a reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures.

B. Requests for reasonable accommodation shall be in writing and provide the following information:

(1) Name and address of the individual(s) requesting reasonable accommodation;

(2) Name and address of the property owner(s);

(3) Address of the property for which accommodation is requested;

(4) Description of the requested accommodation and the regulation(s), policy or procedure for which accommodation is sought; and

(5) Reason that the requested accommodation may be necessary for the individual(s) with the disability to use and enjoy the dwelling.

C. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

E. If an individual needs assistance in making the request for reasonable accommodation, the jurisdiction will provide assistance to ensure that the process is accessible.

Sec. 6. Reviewing Authority.

A. Requests for reasonable accommodation shall be reviewed by the "reviewing authority," using the criteria set forth in Sec. 7.

B. The reviewing authority shall issue a written decision on a request for reasonable accommodation within thirty (30) days of the date of the application and may either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with the required findings set forth in Sec. 7.

C. If necessary to reach a determination on the request for reasonable accommodation, the reviewing authority may request further information from the applicant consistent with fair housing laws, specifying in detail the

information that is required. In the event that a request for additional information is made, the thirty (30) day period to issue a decision is stayed until the applicant responds to the request.

Sec. 7. Required Findings.

The written decision to grant, grant with modifications, or deny a request for reasonable accommodation shall be consistent with fair housing laws and based on the following factors:

- (1) Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws;
- (2) Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under the fair housing laws;
- (3) Whether the requested accommodation would impose an undue financial or administrative burden on the jurisdiction and;
- (4) Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction's land use and zoning or building program.

Sec. 8. Written Decision on the Request for Reasonable Accommodation.

- A. The written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the reviewing authority's findings on the criteria set forth in Sec. 7. All written decisions shall give notice of the applicant's right to appeal and to request reasonable accommodation in the appeals process as set forth below. The notice of decision shall be sent to the applicant by certified mail.
- B. The written decision of the reviewing authority shall be final unless an applicant appeals it to the jurisdiction's planning commission.
- C. If the reviewing authority fails to render a written decision on the request for reasonable accommodation within the thirty (30) day time period allotted by Sec. 6, the request shall be deemed granted.
- D. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

Sec. 9. Appeals.

- A. Within thirty (30) days of the date of the reviewing authority's written decision, an applicant may appeal an adverse decision. Appeals from the adverse decision shall be made in writing.
- B. If an individual needs assistance in filing an appeal on an adverse decision, the jurisdiction will provide assistance to ensure that the appeals process is accessible.
- C. All appeals shall contain a statement of the grounds for the appeal. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.
- D. Nothing in this procedure shall preclude an aggrieved individual from seeking any other state or federal remedy available.

EXHIBIT A

NOTICE OF FAIR HOUSING ACCOMMODATION PROCEDURES FOR PEOPLE WITH DISABILITIES

THIS IS NOT A COMPREHENSIVE EXPLANATION OF YOUR RIGHTS UNDER FEDERAL and STATE FAIR HOUSING LAWS.

You may request a reasonable accommodation to rules, policies, practices and procedures for the siting, development and use of housing, including housing related services or facilities, if you meet all of the following:

- you have a disability* or the housing is for people with disabilities;
- you may need a reasonable accommodation to existing rules and regulations to have equal opportunity to housing AND;
- your request for accommodation would not be an undue burden on the city or county.

If you believe that you satisfy the above criteria and are entitled to a reasonable accommodation under federal and state fair housing laws, you may obtain a Fair Housing Accommodation Request form from the front desk. If you need assistance in applying for a reasonable accommodation, the Department will assist you.

* Under the law, a disability is a physical or mental impairment that limits one or more major life activities; a record of having such an impairment or; being regarded as having such an impairment. Fair housing laws do not protect individuals currently using illegal substances, unless they have a separate disability.

EXHIBIT B

FAIR HOUSING ACCOMMODATION REQUEST **EXPLANATION OF RIGHTS UNDER FAIR HOUSING LAWS**

Before completing the request for a reasonable accommodation, below, please read the following information about who is protected by federal and state fair housing laws and what accommodation may be available under the law. This is not a comprehensive explanation of your rights under federal and state fair housing laws.

Do the protections of federal and state fair housing laws apply to me?

You are protected by the federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act if you have a disability or the housing is for people with disabilities. "Disability" means any one of the following: a physical or mental impairment that limits one or more major life activities or a record of having such an impairment or being regarded by others as having such an impairment. Federal and state fair housing laws do not protect an individual currently using illegal substances, unless that person has a separate disability.

What kind of accommodation may I request under federal and state fair housing laws?

If you have a disability or the housing is for people with disabilities, both federal and state fair housing laws require that the city or county provide you with reasonable accommodation in rules, policies, practices and procedures that may be necessary for people with disabilities to have equal opportunity to use and enjoy a dwelling. More specifically, the city or county must provide you with reasonable accommodation in decisions and procedures regulating the siting, funding, development or use of housing, including housing related services or facilities.

How do I request reasonable accommodation from the City or County?

To make a request for reasonable accommodation, answer the questions on the attached one page request form, sign and date the form and return it to the Department. If you need help in answering the questions on the request form, you may ask for assistance from the Department. Your accommodation request will be reviewed by the reviewing authority who will issue a written decision on your request within thirty (30) days of the date of the request. If the reviewing authority does not issue a written decision within 30 days, your request will automatically be granted. If the reviewing authority needs additional information consistent with fair housing laws to consider your request, the 30 day time period will stop running until you respond to the request.

What if my request for reasonable accommodation is denied?

If your request for accommodation is denied, you may appeal the adverse decision by filing a Notice of Appeal with the appeals designee within thirty (30) days of the decision. You may request reasonable accommodation in the procedure by which an appeal may be conducted. You may also contact your local fair housing or disability rights organization or legal services office for further assistance. Nothing in this accommodation request procedure limits your right to any other available state or federal remedy.

APPLICATION FOR REQUEST FOR REASONABLE ACCOMMODATION

NOTE: If you need help in completing this request form, the Department will assist you. Please contact the person at the counter where you received this request form for assistance.

1. Name of Applicant

Telephone Number

2. Address

3. Address of Housing At Which Accommodation Is Requested

4. Describe the accommodation you are requesting and the specific regulation(s) and/or procedure(s) from which accommodation is sought.

5. Give the reason that the reasonable accommodation may be necessary for you or, the individuals with disabilities seeking the specific housing, to use and enjoy the housing. You do not need to tell us the name or extent of your disability or that of the individuals seeking the housing.

6. If we have questions about your request for reasonable accommodation and you would like us to contact someone assisting you with this request, instead of you, please give us that person's name, address and telephone number.

7. Signature of Applicant _____ Date _____

**PLEASE ATTACH ANY DOCUMENTS THAT YOU THINK SUPPORT
YOUR REQUEST FOR REASONABLE ACCOMMODATION AND WOULD
ASSIST US IN CONSIDERING YOUR REQUEST.**

EXHIBIT C

NOTICE OF DECISION ON FAIR HOUSING ACCOMMODATION REQUEST

1. Date of Application: _____
2. Date of Decision: _____
3. The request for a Fair Housing Accommodation is:
_____ Granted _____ Denied (See Notice below re right to appeal decision.)

4. The reasons for this decision are as follows:

5. The facts relied on in making this decision:

Signature of Designee _____ Date _____

NOTICE: If your request for accommodation was denied, you may appeal the reviewing authority's decision to the Planning Commission within thirty (30) days of the date of this decision. To file an appeal, complete and file an Appeal of Denial of Fair Housing Accommodation Request form with the Department. You may request reasonable accommodation in the procedure by which an appeal may be conducted.

EXHIBIT D

APPEAL OF DENIAL OF FAIR HOUSING ACCOMMODATION REQUEST

NOTICE: PLEASE ATTACH TO THIS APPEAL FORM (1) A COPY OF YOUR FAIR HOUSING ACCOMMODATION REQUEST ALONG WITH ANY ATTACHMENTS SUBMITTED WITH THE REQUEST AND (2) THE NOTICE OF THE DECISION DENYING YOUR ACCOMODATION REQUEST.

1. Date of Adverse Decision: _____

2. Date Appeal Filed: _____

3. State why you think the denial of your request for accommodation was wrongly decided:

4. Provide any new information, facts or documents that support your request for accommodation:

5. Signature _____ Date _____

GUIDELINES FOR REGULATIONS GOVERNING REQUESTS FOR REASONABLE ACCOMMODATION

Sec. 1. Purpose.

The federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act ("fair housing laws") prohibit local government from impeding housing opportunities for people with disabilities through discriminatory land use and zoning decisions. These fair housing laws also create an affirmative duty to "make reasonable accommodations in rules, policies, practices, or services when accommodation may be necessary to afford such person[s] equal opportunity to use and enjoy a dwelling."¹

When the jurisdiction applies its land use and zoning and building regulations, policies, practices and procedures to the development, siting or use of housing for individuals with disabilities, it must comply with federal and state fair housing laws and administer those regulations, policies, practices, and procedures in a manner that affirmatively furthers those laws.²

While the federal legislative history identifies historic discrimination through local land use and zoning regulations, California's fair housing law explicitly prohibits discriminatory "public or private land use practices, decisions and authorizations" including, but not limited to, "zoning laws, denials of use permits, and other [land use] actions . . . that make housing opportunities unavailable" to people with disabilities.³

Sec. 2. Findings.

Both federal and state fair housing laws mandate that cities and counties provide reasonable accommodation.⁴

All California jurisdictions are required to prepare and adopt a housing element as part of their general plan. The housing element must include; an identification and analysis of existing and projected housing needs, including the needs of individuals with disabilities; an identification of resources and constraints to address needs and goals and; a schedule for the development of needed housing for the community. The housing element statute was recently amended to further specify that the element must include programs that remove land use and zoning constraints or provide reasonable accommodation for housing for individuals with disabilities.⁵

The Attorney General of the State of California, Bill Lockyer, recently urged cities and counties throughout the state to adopt reasonable accommodation procedures for land use and zoning decision-making for housing for individuals with disabilities.⁶ The Attorney General has cautioned against using existing conditional use permit or variance procedures for reviewing requests for

reasonable accommodation because the criteria for planning determinations differs from those which govern fair housing decision-making.⁷

Sec. 3. Applicability.

The Act protects any of the following: an individual with a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having any such impairment; or anyone who has a record of having such an impairment.⁸

Individuals in recovery from drug or alcohol abuse are protected by federal and state fair housing laws.⁹ However, individuals currently using illegal substances are not protected under the law, unless they have a separate disability.

The protections afforded people with disabilities under federal and state fair housing laws extend to those who are associated with them, including providers and developers of housing for people with disabilities.¹⁰

Sec. 4. Notice to the Public of Availability of Accommodation Process.

Under federal and state fair housing laws, a jurisdiction has an affirmative duty to make reasonable accommodations in rules, policies, practices and procedures where accommodation may be necessary to ensure that people with disabilities have equal access to housing.¹¹ By providing the public with notice of the availability of its procedure for requesting accommodation, the jurisdiction takes an affirmative step in accordance with the federal and state mandates to make accommodation available to people with disabilities.¹² To reach all individuals who may need to request accommodation, notice should be posted in the planning, zoning and building departments where decisions are made regulating the siting, development and use of housing. Accommodation request forms should be available in those same departments.

Sec 5. Requesting Reasonable Accommodation.

- A. A request for accommodation may be made by any eligible person as defined in Sec. 3 for the purpose of making housing available to individuals with disabilities. For example, a reasonable accommodation request may be made by an individual with a disability, a family member or friend of a person with a disability, or a developer of housing for people with disabilities.
- B. A jurisdiction in its reasonable accommodation procedure may seek information from the applicant that explains the need for the accommodation based on the disability and will allow for the reviewing authority to make a determination on the request in accordance with the factors articulated in Sec. 7 of the ordinance. The jurisdiction cannot, however, seek confidential information as to the nature or severity of the disability of the applicant or those individuals with disabilities intending to

occupy the housing that is the subject of the request for reasonable accommodation.¹³

- C. A jurisdiction must establish a procedure to safeguard any confidential information that an applicant has voluntarily provided to the jurisdiction in a request for reasonable accommodation.¹⁴
- D. The Regulations provide flexibility in the time to request an accommodation because unforeseen circumstances often arise in the approval process for the siting, funding, development or use of housing. For example, a developer seeking initial approval of building plans for housing specifically designed for people with disabilities might need an accommodation on a side yard requirement. Or, a project already approved may need to be modified to accommodate an additional change due to state licensing requirements.
- E. The process for making a reasonable accommodation request must be accessible to an individual with a disability. Therefore, a jurisdiction must provide assistance to an individual who needs help in requesting accommodation and offer flexibility in the procedure set forth in existing regulations. For example, a jurisdiction might record on the application form information provided by an individual who because of a disability is unable to complete the form alone.¹⁵

Sec. 6. Review of Requests for Reasonable Accommodation.

- A. The reviewing authority may request additional information necessary for making a determination on the request for reasonable accommodation that complies with the fair housing law protections and the privacy rights of the individual with a disability to use the specific housing. See confidentiality discussion, Sec. 5, above.
- C. If the reviewing authority requests additional information from the applicant consistent with fair housing law protections and privacy rights, the 30-day time period for making a determination on the request stops running until the additional information is provided to the reviewing authority. This procedure is intended to expedite the information gathering process and facilitate the issuance of a timely decision by the reviewing authority. It is in the best interest of the applicant seeking accommodation to provide the requested information as soon as possible to obtain a speedy decision.

Sec. 7. Required Findings.

Factor 1: Whether the housing, which is the subject of the request for reasonable accommodation, will be used by an individual with disabilities protected under fair housing laws?

An individual is protected under fair housing laws if he or she meets the definition of disability set forth in Sec. 3, above. If the housing that is the subject of the request for reasonable accommodation is intended for people with disabilities, this prerequisite is met.¹⁶

Factor 2: Whether the requested accommodation is necessary to make housing available to an individual with disabilities protected under fair housing laws?

Under fair housing laws, jurisdictions have an affirmative duty to provide individuals with disabilities reasonable accommodations to “rules, policies, practices, or services, when such accommodation may be necessary to afford such persons equal opportunity to use and enjoy a dwelling. . .”¹⁷ Whether an accommodation is necessary requires a “fact-specific inquiry regarding each such request.”¹⁸ Failure to make reasonable accommodation is a violation of federal and state fair housing laws.¹⁹

Factor 3: Whether the requested accommodation would impose an undue financial or administrative burden on a jurisdiction?

Once an individual establishes that an accommodation is necessary for equal access to housing, a jurisdiction must provide the requested accommodation unless it presents evidence that granting the accommodation would impose an undue financial or administrative burden on the jurisdiction.²⁰ Here again, the analysis is a fact-specific inquiry. If the jurisdiction establishes an undue burden, then the accommodation is not reasonable and should not be granted. In the land use and zoning context, many requests for accommodation will be a request to modify or waive a regulation or procedure. It costs a jurisdiction nothing to waive a rule, meaning that “. . . the accommodation request amounts to nothing more than a request for non-enforcement of a rule.” In those instances, a jurisdiction would not be likely to demonstrate undue burden.²¹

Factor 4: Whether the requested accommodation would require a fundamental alteration in the nature of the jurisdiction’s land use and zoning or building program?

In addition to not imposing an undue financial or administrative burden, a reasonable accommodation must also not result in the fundamental alteration in the nature of a program.²² “Fundamental alteration” has been defined as, “(1) a substantial change in the primary purpose or benefit of a program or activity; or (2) a substantial impairment of necessary or practical components required to achieve a program or activity’s primary purpose or benefit.”²³ In the land use and zoning context, “fundamental alteration in the nature of the program” means an alteration so far reaching that it would undermine the basic purpose of maintaining the character of the neighborhood. The case law indicates that in most instances granting a request to modify or waive a zoning policy or procedure, does not result in a fundamental alteration in the nature of a program.²⁴

Sec. 8. Written Decision on the Request for Reasonable Accommodation.

- A. The reviewing authority's written decision is to be based on a consideration of the four factors set forth in Sec. 7. The reviewing authority shall not rely on discriminatory stereotypes.²⁵
- B. This provision encourages prompt decision-making on requests for reasonable accommodation as delays may cause an individual with disabilities to lose a housing opportunity or a developer of housing for individuals with disabilities faced with extensive delays may be harmed by increases in development costs or risk the future of a project.

Sec. 9. Appeals.

- A. An individual denied a requested reasonable accommodation has 30 days from the date of the written decision to file an appeal.
- B. As with the filing of the original appeal, a jurisdiction must make efforts to ensure that the appeals process is accessible to individuals with disabilities.²⁶
- C. The statement of the grounds for appeal is necessary for the Planning Commission to review the appeal and reconsider the individual's request for accommodation.
- D. A jurisdiction's procedure for requesting accommodation and the appeals process in no way limits an individual's right to any other available remedy including, but not limited to, filing a complaint with the Department of Housing and Urban Development, the jurisdiction's Department of Fair Employment and Housing or commencing an action in state or federal court.

Environmental Determination

Jurisdictions with a certified Local Coastal Plan may need to amend their Plan to reflect a zoning amendment adding a reasonable accommodation procedure. The Coastal Commission does not, however, have the authority to make a determination under its own rules which conflicts with or undercuts the protections of the Fair Housing Amendments Act of 1988.

¹ 42 U.S.C. §§ 3601 *et seq.*, § 3604(f)(3)(B) (reasonable accommodation); Cal. Gov. Code §§ 12955 *et seq.*, § 12927(c)(1) (reasonable accommodation). In addition to federal and state fair housing laws, two other significant federal anti-discrimination laws offer protection against discrimination to people with disabilities, including land use and zoning activities. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, prohibits discrimination on the basis of disability in any program or activity that is conducted by the federal government or that receives federal financial assistance. The Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12101 *et seq.*, prohibits discrimination against individuals with disabilities in a number of areas, including all public services – irrespective of federal financial assistance. Both § 504 and the ADA require

reasonable accommodation and the accommodation analysis under these federal laws is very similar to that of the fair housing laws.

² The federal regulations that implement the Fair Housing Amendments Act of 1988 state that its fundamental purpose is to prohibit practices that “restrict the choices” of people with disabilities to live where they wish or that “discourage or obstruct choices in a community, neighborhood or development. 24 C.F.R. § 100.70(a)(1994). The legislative history is precise in identifying discriminatory land use practices:

The Act is intended to prohibit the application of restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals to live in the residence of their choice in the community.

54 Fed. Reg. 3246 citing House of Representatives Report No. 100-711, 100th Congress, 2d Session at 24.

³ In a statement of legislative intent that accompanied the amendments, the following findings were made:

- a. That public and private land use practices, decisions, and authorizations have restricted, in residentially zoned areas, the establishment and operation of group housing, and other uses
- b. That people with disabilities. . . are significantly more likely than other people to live with unrelated people in group housing.
- c. That this act covers unlawful discriminatory restrictions against group housing for these people.

Stats. 1993 ch 1277, § 18 (emphasis added).

⁴ See note 1, *supra*.

⁵ Gov. Code § 65583(c)(3), Chapter 671, Statutes of 2001 (Senate Bill 520) effective January 1, 2001, amended housing element law and Gov. Code § 65008. See also www.hcd.ca.gov.

⁶ Letter from California Attorney General Bill Lockyer to California cities and counties (May 2001). A copy of the letter is available from Mental Health Advocacy Services, Inc.

⁷ In addition to different governing criteria, the Attorney General further cautions against using the variance or conditional use permit process for considering reasonable accommodation requests because the public notice and hearing process may “encourage community opposition to projects involving desperately needed housing for the disabled.” Attorney General letter at 3-4.

⁸ The definition of disability under the California Fair Employment and Housing Act while similar to federal law, is broader requiring that an individual have an impairment that limits a major life activity. Cal. Gov. Code § 12955.3. The Fair Housing Amendments Act requires that an individual have an impairment that “substantially limits” a major life activity to be considered disabled under the law. 42 U.S.C. § 3602(h); 24 CFR § 100.201. The Fair Housing Act provides that nothing in the Act “shall be construed to invalidate or limit any law of the State . . . that grants, guarantees, or protects the same rights as are granted by [the Fair Housing Act].” 42 U.S.C. § 3615. Hence, California’s definition of disability is controlling.

⁹ 24 C.F.R. § 100.201. See City of Edmonds v. Washington State Building Code Council, 18 F. 3d 802, 804 (stating that “participation in a drug rehabilitation program, coupled with non-use, meets the definition of handicapped.”); United States v. Southern Management Corp., 955 F.2d 914 (4th Cir. 1992); Oxford House v. Town of Babylon, 819 F.Supp.1179 (E.D.N.Y. 1993).

¹⁰ See Epicenter of Steubenville, Inc. v. City of Steubenville, 924 F.Supp. 845, 849 (S.D. Ohio 1996) (operators of adult care facilities have standing to challenge a city's moratorium on new facilities where the operator couldn't get a permit to open a new facility; "Congress granted the right to sue under the statute to a broad group of persons so as to ensure that the FHAA would be enforced. Under the statute, any "aggrieved person" may sue to enforce its provisions."); Simovits v. Chanticleer Condominium Ass'n, 933 F.Supp. 1394 (N.D. Ill. 1996) (a fair housing agency may sue under the Act if it shows deflection of the agency's time and money from counseling to legal efforts directed against discrimination); Judy B. v. Borough of Tioga, 889 F.Supp. 792 (M.D. Pa 1995) (a person who is not himself handicapped, but who is prevented from providing housing for handicapped persons by a municipality's discriminatory acts, has standing to sue under the Act).

¹¹ See note 1, *supra*. Turning Point, Inc. v. City of Caldwell, 74 F. 3d 941 (9th Cir. 1996) (cities have an affirmative duty to provide reasonable accommodation).

¹² The Department of Housing and Urban Development (HUD) has promulgated regulations under both § 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 that require a notice of rights under federal law. Under § 504, which is looked to for interpretation of the Act, HUD requires "initial and continuing steps to notify program participants, beneficiaries, applicants" . . . of its policy of nondiscrimination under the law. 24 CFR § 8.54. Under fair housing regulations, HUD requires that a fair housing poster be displayed at any place of business where a dwelling is offered for sale or rent, real estate-related transactions are conducted and brokerage services are provided to the public. 24 CFR § 110.10. Additionally, under federal assisted housing programs, HUD requires notice of the availability of reasonable accommodation at the time of the prospective tenant's application interview for housing and in any written letter of rejection. Handbook 4350.3, par. 12-23j; par. 12-30c; HUD Notice H 01-02(HUD)(addressing compliance with Section 504 and the Fair Housing Act of 1988).

¹³ It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is so sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such person. 24 CFR § 100.202.

¹⁴ The Washington D.C. reasonable accommodation ordinance provides a mechanism for safeguarding confidential information voluntarily provided to it in a request for reasonable accommodation. The information is placed in a separate file marked "confidential" and access to confidential files is restricted to personnel involved in the reasonable accommodation determination process.

¹⁵ Title II of the Americans With Disabilities Act requires that state and local governments provide program access for individuals with disabilities to the whole range of city services and programs. 42 U.S.C. § 12131; 28 C.F.R. § 35.150(a)(3). If an action would result in a fundamental alteration to the nature of the services or result in an undue administrative or financial burden, the state or local government must take any other action that it can to ensure that individuals with disabilities receive the services of the program.

¹⁶ See notes 8 and 10, *supra*.

¹⁷ See note 1, *supra*.

¹⁸ U.S. v. California Mobile Home Park Mgmt Co., 107 F.3d 1374 (9th Cir. 1997)(reaffirming Mobile Home Park, 29 F. 3d 1413 (9th Cir. 1994), that the reasonable accommodation inquiry is highly fact-specific, requiring a case-by-case determination; Department of Justice Memorandum to National League of Cities, March 4, 1996 at 6.

¹⁹ Oxford House-C v. City of St. Louis, 843 F.Supp. 1556 (E.D. Mo. 1994) (forcing a group home to use the variance process was not a reasonable accommodation where compliance would have a discriminatory effect and the process, which required a public hearing and notice, stigmatized the prospective residents, increased their stress and evidence showed that any attempt to obtain a variance would be futile); United States v. City of Philadelphia, 838 F.Supp. 223 (E.D.Pa. 1993), aff'd w/o opinion, 30 F.3d 1488 (3d Cir. 1994) (the City of Philadelphia violated the Act by refusing to allow substitution of a side yard for the zoning requirement that a building have a rear yard for a home for chronically homeless people with mental disabilities); Oxford House v. Babylon, 819 F.Supp.1179 (E.D.N.Y. 1993) (group home established as reasonable their request that the town accommodate them by modifying its interpretation under the ordinance of the term "family"); Parish of Jefferson v. Allied Health Care, Inc., C.A. No.91-1199, (E.D.La., June 10, 1992), 1992 WL 142574 (E.D. La.1992) (allowing six individuals with mental retardation to reside in a dwelling was a reasonable accommodation to a zone restricting single family dwellings to a maximum of four unrelated persons).

²⁰ The "undue financial or administrative burden" standard for determining whether an accommodation is reasonable under the Fair Housing Amendments Act of 1988 is borrowed from case law interpreting Section 504 of the Rehabilitation Act. Southeastern Community College v. Davis, 442 U.S. 397, 99 S.Ct. 2361, 60 L.Ed. 2d 980 (1979); H.R. Rep.No.711, 100th Cong.,2d Sess. 25 (1988).

²¹ Proviso Ass'n v. Village of Westchester, 914 F.Supp. 1555 (N.D. Ill. 1996).

²² The "fundamental alteration" test, like "undue financial or administrative burden," derives from Section 504 of the Rehabilitation Act and is also explained in Southeastern Community College v. Davis, 442 U.S. 397. See note 20, *supra*.

²³ Robert Burgdorf, "Equal Access to Public Accommodations," in West, Jane, ed., *The Americans with Disabilities Act, From Policy to Practice*, Milbank Memorial Fund (1991) at 190. Elaborating on what constitutes a fundamental alteration, Professor Burgdorf explains:

Lower court have further outlined the concept: reasonable accommodations are not mandated if they would endanger a program's viability; massive changes are not required; nor are modifications that would 'jeopardize the effectiveness' of the program or would involve a 'major restructuring' of an enterprise; and modifications that would so alter an enterprise as to create, in effect, a new program are not required.

²⁴ Smith & Lee Assoc. v. City of Taylor, 102 F.3d 781 (6th Cir. 1996) (allowing a 9-person adult foster care home to locate in a single family residential zone is fundamentally consistent with the single family uses surrounding the proposed home and would not constitute an undue burden or a fundamental alteration of the city's master plan); Martin v. Constance, 843 F.Supp. 1321 (E.D. Mo. 1994)(it would be neither an undue burden nor undermine the basic purpose of maintaining the residential character of a neighborhood to not enforce a restrictive covenant against a state operated home for individuals with developmental disabilities); Oxford House v. Babylon, 819 F.Supp. 1179 (E.D.N.Y. 1993) (modifying city's interpretation under the ordinance of the term "family" was reasonable where the group home had no adverse effect on the residential character of the neighborhood and neither the operation of the group home nor the residents caused any financial or administrative burdens on the town); United States v. Marshall, 787 F.Supp. 872 (W.D. Wis. 1992) (granting a variance under state law to allow a group home for people with mental disabilities to locate within 2500 feet of a group home for the elderly would not "undermine the basic purpose which the requirement seeks to achieve" where the homes would not be separated by a wide portion of a river with no bridge connection).

²⁵ United States v. Borough of Audubon, 797 F.Supp. 353 (D.N.J. 1991) aff'd 968 F.2d 14 (3d Cir. 1992) (the Court sanctioned the Borough and permanently enjoined it from interfering with the

living arrangements of the residents of the home and held that when acts are undertaken with improper discriminatory motive, the Act may be violated even though those acts may have otherwise been justified under state law); A.F.A.P.S. v. Regulations & Permits Admin., 740 F.Supp. 95 (D.P.R. 1990) (the denial of an application for a special use permit to operate a residence for persons with AIDS violated the Act where the intent and effect of the denial discriminated against AIDS patients and the asserted reason for the denial was pretextual).

²⁶ See note 15, *supra*.



**PACIFIC LEGAL
FOUNDATION**

June 28, 2021



City Council
City of Malibu
Attn: Kelsey Pettijohn, Acting City Clerk
23825 Stuart Ranch Road
Malibu, CA 90265

VIA HAND DELIVERY

RE: Malibu Coastal Development Permit No. 20-034 and Request for Reasonable Accommodation No. 21-001; Appeal of Planning Commission Resolution No. 21-51

Mr. Mayor and Honorable Council Members:

On June 7, 2021, the City of Malibu Planning Commission voted by a 3-2 margin to accept staff's recommendation to deny Coastal Development Permit (CDP) No. 20-034 and to deny Request for Reasonable Accommodation (RRA) No. 21-001. The proposed project, which is both specifically allowed and encouraged by state housing law, is a modest addition of an accessory dwelling unit (ADU) onto the existing home of Jason and Elizabeth Riddick to accommodate Elizabeth's mother, Renee Sperling, a disabled senior citizen.

As representative for the Riddick Family, Pacific Legal Foundation respectfully submits this appeal pursuant to Local Implementation Plan (LIP) § 13.20.1 and Malibu Municipal Code (MMC) § 17.04.220, requesting that the City Council approve the applications.

SPECIFIC GROUNDS FOR APPEAL

Jason and Elizabeth Riddick seek to add a small, attached ADU onto their existing single-family home in order to provide Elizabeth's aging and disabled mother, Renee Sperling, a safe and private place to live. Ms. Sperling is 82 years old and suffers from numerous ailments, including glaucoma, arthritis, asthma, osteoporosis, and immunodeficiency. The proposed ADU would permit Ms. Sperling to safely age in place with her family while maintaining a modicum of privacy and the distance required to reduce the risk of

contracting ordinary illnesses. The Riddicks have the written support of their HOA and all of their surrounding neighbors.

Background—California’s Housing Crisis and the Legislature’s Statewide Program for By-Right Development of ADUs by Owners of Existing Single-Family Homes

California faces a severe housing shortage. The situation is nowhere more dire than on the coast. The state’s impoverished have suffered under these conditions for decades, and now the crisis has progressed to impact middle-class households as well. Public subsidies and rent control have not mitigated or even arrested these conditions.

As numerous academic and government studies have recently reported, two of the most significant obstacles to increasing housing supply in California are the complexity of the local government development approval process and the related resistance of local governments to new housing developments. *See, e.g.,* Legislative Analyst’s Office, *California’s High Housing Costs: Causes and Consequences* (Mar. 17, 2015);¹ The White House, *Housing Development Toolkit* (Sept. 2016).² The authors of these studies generally recommend that the development permitting process must be simplified and that by-right housing development opportunities must be expanded. Another of the major impediments to increased housing supply in coastal California is the scarcity of land available or new development—a scarcity that is often due only to regulatory restrictions on otherwise available and buildable land. *See generally* *California’s High Housing Costs* at 12-13.

Given these constraints, housing policy experts have identified an important potential reservoir of new housing to address California’s needs: ADUs. With a market potentially as large as the state’s entire fleet of existing single-family homes, construction costs that are often a fraction of the cost of building new units in apartment buildings, and freedom from regulatory constraints on the scarce supply of undeveloped residential land, the only significant constraints on the production of a robust supply of ADUs are the twin obstacles of permitting complexity and local resistance. *See generally*, Laura Bliss, *Portland’s*

¹ Available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>.

² Available at https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf.

'Granny Flats' Get an Affordable Boost, CityLab, Mar. 12, 2018;³ Cierra Bailey, *Are Granny Units the Next Big Thing in Housing?*, Paolo Alto Online, June 28, 2019.⁴

In order to address these obstacles, the California Legislature established a mandatory statewide framework for owners of existing single-family homes to obtain by-right permits to construct ADUs.

In 2016, the California Legislature made the following findings:

- Accessory dwelling units are a valuable form of housing in California.
- Accessory dwelling units provide housing for family members, students, **the elderly**, in-home health care providers, **the disabled**, and others, at **below market prices within existing neighborhoods**.
- Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.
- California faces a severe housing crisis.
- The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.
- Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.
- Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.
- Accessory dwelling units are, therefore, an essential component of California's housing supply.

Senate Bill 1069 (2016), *codified at* Cal. Gov't Code § 65852.150(a).

To realize this "essential component" of the housing supply, the Legislature passed a slew of bills in 2016, *see* Senate Bill 1069 (2016); Assembly Bill 2299 (2016); Assembly Bill 2406

³ Available at <https://www.citylab.com/equity/2018/03/portlands-granny-flats-get-an-affordable-boost/555083/>.

⁴ Available at <https://www.paloaltoonline.com/news/2019/06/28/are-granny-units-the-next-big-thing-in-housing>.

(2016), and again in 2019, all of which aimed to simplify and streamline the design requirements and permitting process for ADUs. *See* Assembly Bill 68 (2019); Assembly Bill 881 (2019); Senate Bill 13 (2019). These statutes are generally codified at Cal. Gov't Code §§ 65852.150 through 65852.22.

Together, these important state laws establish criteria under which permit applications to add an ADU must receive ministerial approval, *see* Cal Gov't Code § 65852.2(a)(3), (e)(1), and require local governments either to adopt their own ordinances to achieve this result or else implement the statewide criteria. *Id.* § (a)-(b). As relevant to this matter, the statewide criteria for ministerial approval of ADUs include a maximum floor space of 50% of the existing primary dwelling for attached units, *id.* § (a)(1)(D)(iv), and **setback requirements of no more than four feet from the side and rear lot lines**, *id.* § (a)(1)(D)(vii). State law also **prohibits local governments from imposing any limits on lot coverage that would not permit at least an 800 square-foot ADU with four-foot side and rear yard setbacks**. *Id.* § (c)(2)(C). These criteria represent “the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that contains an existing single-family dwelling.” *Id.* § (a)(6).

These provisions establish a statewide framework for homeowners to add ADUs to their existing single-family homes on a by-right basis so long as they meet statewide standards, which preempt local ordinances that impose more restrictive conditions.

Facts & Procedural History

The Riddicks submitted their initial application for a permit to construct an attached ADU and minor alterations to their existing home on July 10, 2020. The proposed ADU is of modest scope, measuring only 469 square feet. (Exh. B). It is set back from the rear yard by 14 feet and nine inches, and is set back from the side yard at five feet, with a cumulative side yard setback of 13 feet. *Id.* Because a portion of the proposed ADU would intrude on the existing residence, the Riddicks also seek to offset the reduction of their home's square footage by adding 157 square feet onto the main residence. *Id.* According to the staff report, the project will not negatively impact coastal resources or public access. *Id.* The proposal enjoys support from the homeowner's association and from all five surrounding neighbors (Exhs. H-I).

The ADU application unquestionably complies with State law and should be approved as a matter of right. At issue, however, is Assistant Planner David Eng's conclusion that,

regardless of recent changes to state law, the Riddicks' ADU application should be characterized as a coastal development subject to Malibu's more restrictive Local Coastal Program (LCP). According to Eng, the Riddicks' proposal did not comply with the LCP's "setbacks and maximum allowed Total Development Square Footage (TDSF) area," (Exhs. C & D)—restrictions that directly conflict with state ADU law. *See* Cal. Gov't Code § 65852.2(c)(2)(A)-(C).

Mr. Riddick wrote a letter to the City Attorney on December 7, 2020, explaining that Eng was mistaken and the ADU project is expressly exempt from the requirement to obtain a Coastal Development Permit (CDP) because it is an improvement to an existing single-family residence, citing LIP § 13.4.1(A). (Exh. E). Planning Director Richard Mollica, with input from Assistant City Attorney Trevor Rusin, responded to this letter on February 4, 2021, but critically did not address Mr. Riddick's argument that the project is exempt from the requirement to obtain a CDP by the plain terms of Malibu's LCP. (Exh. F). Instead, Director Mollica merely reiterated the Planning Department's position that the state's ADU law does not preempt application of the City's LCP, and made the conclusory assertion that "[n]othing in the LCP relieves you or the city of the obligation to ensure compliance with the standards in the certified LCP." *Id.*

In April 2021, sensing that their permit was unlikely to issue as proposed, the Riddicks submitted a request for a reasonable disability accommodation (RRA) under Malibu LIP § 13.30. (Exh. G). Pursuant to state and federal law, § 13.30 outlines procedures for requesting reasonable accommodation for persons with disabilities seeking equal access to housing. This modest request for accommodation was supported by state housing policy, which recognizes the importance of ADUs in providing affordable, accessible, and safe housing for elderly and disabled persons. Senate Bill 1069 (2016), *codified at* Cal. Gov't Code § 65852.150(a).

The Riddicks did not receive any communication or information from the City regarding their request until June 4, 2021, just three days before the date set for hearing on the Riddicks' application, when Planning Department Staff issued its eleventh-hour recommendation that both the ADU application and the request for accommodation be denied. (Exh. B).

The Planning Commission denied both the CDP and the RRA at its June 7, 2021, meeting by a 3-2 vote.⁵ (Exh. A). As expected, the Commission denied the CDP because, although the proposed ADU complied with the state’s mandatory setback and size requirements, the project could not be configured to comply with the LCP’s more restrictive setback and TDSF requirements. It also accepted its staff’s determination that the request did not meet the standards for reasonable accommodation to provide housing for a disabled person. In particular, staff determined that the accommodation was not necessary because the Riddicks had “reasonable alternatives” for housing their disabled mother—a wholly speculative assertion that was not supported on the record. For example, staff speculated that the Riddicks could reconfigure existing floor space of their small home (which the Riddicks share with three children) into an ADU without adding additional square footage. Of course, staff’s speculation failed to address the fact that Ms. Sperling’s immunodeficiency precludes her from sharing a small home with so many people—which was one of the primary, stated bases supporting the need for a separate, safe living space.⁶

Staff additionally—and rather hyperbolically—speculated that this one-time minor variance of the TDSF and setback requirements to comply with state disability and housing law would effect a fundamental alteration in the nature of their LCP, and in a remarkably attenuated argument, staff additionally suggested that the project could adversely impact coastal resources if others took advantage of the ADU law. Commenting on this latter determination, Assistant Planner David Eng stated:

“While we don’t believe that the project will impact things like public access or environmental resources, again, the approval of the request . . . would allow for higher amounts of development in this neighborhood, and also set a precedent⁷ for pursuing requests for reasonable accommodation to achieve higher levels of development in the city.”

Perhaps most puzzlingly, staff determined that the RRA would impose an undue burden on the City because approval of the ADU “would require monitoring by the Planning

⁵ A video recording of the meeting is available at <https://youtu.be/CP7exIPZMJs?t=1823>.

⁶ A note from Ms. Sperling’s physician, explaining this medical reality, is submitted as an attachment to this statement.

⁷ Later in the meeting, Planning Director Richard Mollica clarified that this was the first RRA ever sought in the City.

Director and periodic confirmation that a person with a disability is a resident at that ADU.” Again, staff included nothing in the record supporting the legal basis for this claim or demonstrating what such a “monitoring” requirement would entail and/or cost the City in terms of dollars or staff hours.

Making matters worse, some Planning Commission members throughout the hearing displayed an open hostility to state housing policy and ADUs, and an ignorance of state law on the subject. For example, Commissioner John Mazza stated: “Staff keeps mentioning ADUs, and as far as I can tell, there is no such thing as an ADU in Malibu because we haven’t passed an ADU ordinance or amended our LCP. So can we use that term?”⁸

ARGUMENT

I. **The Riddicks’ proposal for an attached ADU is exempt from the requirement to obtain a CDP under the Malibu LCP.**

The Planning Commission’s decision is based on a clear error of law. By its plain terms, Malibu’s LCP exempts certain categories of development from the requirement to obtain a Coastal Development Permit. LIP § 13.4. Among other categories, it exempts:

(A). Improvements to existing single-family residences except as noted below in (B).⁹ For purposes of this section, the terms **“Improvements to existing single-family residences” includes all fixtures and structures directly attached to the residence** and those structures normally associated with a single-family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained residential units.

Id. § 13.4.1. Here, the Riddicks’ proposal is exempt from the need to obtain a CDP because it is a “structure[] directly attached to the residence[.]”

⁸ See *supra*, note 5.

⁹ Subsection (B) contains a list of classes of development “which require a coastal development permit because they involve a risk of adverse environmental impact[.]” None are at issue here.

Although the Riddicks claimed an exemption under this provision on several occasions, the staff report does not even mention the possibility or explain their basis for rejecting this exemption. Instead, the first time staff explained their position was at the Planning Commission hearing, where Attorney Rusin argued that the proposal did not fall within the exemption provision, since that provision specifically excludes “guest houses or accessory self-contained residential units.” That explanation, however, constitutes clear error because it cherry picks one phrase out of context—violating basic rules of statutory construction—and overlooks the California Coastal Commission’s (CCC) guidance on the issue.

A guidance memo from the CCC makes clear that the phrase “guest houses or accessory self-contained residential units” **applies only to detached structures**. Memorandum from John Ainsworth to Planning Directors of Coastal Cities and Counties Re: Implementation of New ADU Laws 5 (April 21, 2020).¹⁰

Critically, the memo is intended to do precisely what the Planning Commission failed to do: it “is meant to . . . provide guidance on how to harmonize [the new ADU] requirements with Local Coastal Program (“LCP”) and Coastal Act policies.” *Id.* at 1; *see also Stone St. Cap., LLC v. California State Lottery Com.*, 165 Cal. App. 4th 109, 118 (2008) (“If two seemingly inconsistent statutes conflict, the court’s role is to harmonize the law.”); *People v. Pieters*, 52 Cal. 3d 894, 899 (1991) (“[W]e do not construe statutes in isolation, but rather read every statute ‘with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.’”).

The CCC memo, therefore, lays out a “Basic Guide” for reviewing ADU applications, apparently intended to prioritize avoiding the application of conflicting Coastal Act policies wherever legally permissible. Directly relevant to this matter, the memo states that, after determining whether a previously issued CDP controls, local agencies should next determine whether the proposed ADU qualifies as development at all. Memorandum from John Ainsworth to Planning Directors of Coastal Cities and Counties Re: Implementation of New ADU Laws at 4. If it does, then agencies should check whether it is exempt from the requirement to obtain a CDP. *Id.* If it is not, then agencies must next assess whether a CDP waiver is appropriate. *Id.* at 5. Only then, if the project

¹⁰ Available at <https://documents.coastal.ca.gov/assets/rflg/California%20Coastal%20Commission%20ADU%20Memo%20dated%20042120.pdf>.

is non-exempt development for which a waiver is not appropriate, should the agency review the project for consistency with the LCP. *Id.*

In addressing whether an ADU is exempt from the CDP requirement, the memo interprets language substantially identical to that found in LIP § 13.4.1(A):

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).)

Thus, the CCC indicates that a proposal like the Riddicks’, which contemplates only an attached ADU, is exempt as an improvement to a single-family residence.

Several factors support the correctness of the CCC’s interpretation in this matter. First, the language in LIP § 13.4.1 can be traced directly to language from 14 Cal. Code Regs. § 13250. That regulation implements Cal. Pub. Res. Code § 30610(a), which provides that “no coastal development permit shall be required” for, among other things, “[i]mprovements to existing single-family residences[.]” While LIP § 13.4.1 is structured as a single paragraph composed of two sentences, 14 Cal. Code Regs. § 13250 is structured in separate paragraphs, as follows:

- (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.

Thus, the original language from the statewide regulations, which was adopted in substantially similar form by the City of Malibu, structurally separates the category of attached structures in subdivision (1) from the exclusion of “guest houses or self-contained residential units” in subdivision (2). Application of the *noscitur a sociis* doctrine suggests that the exclusion only applies to items which might otherwise appear in the same list in subdivision (2). See, e.g., *Kaatz v. City of Seaside*, 143 Cal. App. 4th 13, 40 (2006) (“*Noscitur a sociis* (‘it is known by its associates’) is the principal that the meaning of a word may be enlarged or restrained by reference to the object of the whole clause in which it is used.”) (cleaned up).¹¹ Because the Riddicks proposed ADU is attached and therefore falls unambiguously into subdivision (1), and not (2), it is not the type of detached guest house or residential unit covered by the exclusion.

Second, and relatedly, where a statute is adopted from another jurisdiction or from a commission’s proposed language, courts give “substantial weight” to the interpretation of the originating jurisdiction or commission. *Brewer v. Carter*, 218 Cal. App. 4th 1312, 1318 n.5 (2013) (quoting *Smith v. Superior Court*, 68 Cal. App. 3d 457, 463 (1977)). Thus, because LIP § 13.4.1 was adopted directly from regulations promulgated by the CCC, the CCC’s interpretation of its language should be given substantial weight.

Finally, as discussed above, the CCC’s guidance on this matter is intended to harmonize Coastal Act policies with the new statewide ADU law and policy. Given the California Legislature’s finding that ADUs are “an essential component of California’s housing supply,” Cal. Gov’t Code § 65852.150(a)(8), and the development of such housing is a

¹¹ See also *id.* at 36-37 (“It is a fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. That intent may be revealed from a review of both the legislative history of the statute and the wider historical circumstances of its enactment. The words of the statute must be construed in context, keeping mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. **And the contextual framework of a clause or sentence is particularly important when the statute contains a list or catalog of items, in which case a court determines the meaning of each by reference to the others, giving preference to an interpretation that makes the items similar in nature and scope.** And in the case of uncertainty, the court should consider the consequences that will flow from a particular interpretation.”) (cleaned up) (emph. added).

matter of critical importance for the elderly and disabled, it is appropriate to defer to a state agency on a question of statutory interpretation which potentially conflicts with “essential” statewide policy. *Cf. Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 12 (1998) (deference to agency interpretation is “fundamentally situational,” and courts must “consider complex factors material to the substantive legal issue before it, the particular agency offering the interpretation, and the comparative weight the factors ought in reason to command”). The CCC is the ultimate agency tasked with protection of California’s coastal resources; it is in the best position to determine whether the state’s interest in coastal resources conflicts with the liberal policy toward ADUs.

II. California’s ADU law preempts the local lot coverage and setback requirements.

Because the Riddicks’ proposal is exempt from the requirement to obtain a CDP, approval of the project need not conform with the more restrictive setback and TDSF requirements of Malibu’s LCP. Instead, the state’s ADU law controls. Cal. Gov’t Code § 65852.2(b).

State law permits local governments to promulgate their own ADU ordinances provided they are not more restrictive than state law. Cal. Gov’t Code § 65852.2(a)(1), (6). The failure to adopt an updated ADU ordinance, however, cannot provide a basis for denial, as was suggested by a Commission member during the hearing. Instead, where a local agency has not yet done so, as is the case here, then the provisions of the state law apply directly to an ADU application. *Id.* § (b). And under state law, the Riddicks are entitled to approval.

The state law sets out the “maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot zoned for residential use that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed[.]” Cal. Gov’t Code § 65852.2(a)(6). Among other things, those standards include the following:

- The ADU must either be attached to, or located within, the primary dwelling, or detached from the primary dwelling and located on the same lot as the primary dwelling. *Id.* § 65852.2(a)(1)(D)(iii).
- If there is an existing primary dwelling, the total floor area of an attached ADU shall not exceed 50 percent of the existing primary dwelling. *Id.* § 65852.2(a)(1)(D)(iv).

- A setback of no more than four feet from the side and rear lot lines shall be required for an ADU that is not converted from an existing structure. *Id.* § 65852.2(a)(1)(D)(vii).
- No other local ordinance, policy, or regulation, aside from one created pursuant to this subdivision, shall be the basis for the denial of a building permit or a use permit application made under this subdivision. *Id.* § 65852.2(a)(5).

The Riddicks' modest proposal fits well within these parameters. It is attached to the main residence; measures less than 20 percent of the main residence's floor area; and is set back from the rear and side yards by greater than four feet. The City is prohibited from imposing stricter standards, and must therefore approve the application. *See id.* § 65852.2(b).

In addition to prescribing maximum standards for evaluation, state law also specifically prohibits local agencies from establishing, among other things, any of the following:

- A maximum square footage requirement for either an attached or detached ADU that is less than 850 square feet, or 1,000 square feet for an ADU that provides more than one bedroom. *Id.* § 65852.2(c)(2)(B)(i)-(ii).
- Any other minimum or maximum size for an ADU, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot ADU that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards. *Id.* § 65852.2(c)(2)(C).

Again, the Riddicks' application easily meets these criteria. The proposed ADU measures only 469 square feet, a mere 55% of the mandatory maximum 850 square footage requirement that the City may legally impose. As stated, its rear and side setbacks exceed the mandatory four-foot minimum. The City is therefore prohibited from imposing any size requirements that would prevent the project's approval, including any total development square footage or impervious lot coverage requirements.

Compliance with state law in this regard is not only legally mandatory, it is "essential" to addressing the state's housing crisis. Cal. Gov't Code § 65852.150(a)(8). At the Housing

Element Workshop on June 23,¹² the City's consultant John Douglas observed, "ADUs are a much more important piece of this puzzle than they ever have been in the past." The City has the opportunity to do the right thing and issue the approvals necessary to advance state housing law and policy.

III. Alternatively, the Riddicks are entitled to a Reasonable Disability Accommodation under the Malibu Local Coastal Program.

Even if the City Council were to disagree with the CCC (and applicable canons of statutory interpretation) to determine that the Riddicks' proposal is not exempt from the requirement to obtain a CDP, then they are still entitled to a "Reasonable Accommodation" by the terms of Malibu's LCP and under state and federal law. Before discussing this issue in detail, it is important to emphasize that the only accommodations requested are minor variances in Malibu's setback and TDSF requirements that would (1) bring the City's LIP into compliance with state housing law and policy in order to (2) provide safe and affordable housing for an elderly and disabled person.

Pursuant to the federal and state Fair Housing Acts, local governments have an affirmative duty to make reasonable accommodations in zoning and other land use regulations that "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." Letter Re: Adoption of a Reasonable Accommodation Procedure from Bill Lockyer, Cal. Atty. Gen., to All California Mayors (May 15, 2001) (citing 42 U.S.C. § 3604(f)(3)(B); Cal. Gov't Code §§ 12927(c)(1), 12955(1)).¹³ LIP § 13.30 therefore provides procedures for requesting and obtaining a "reasonable accommodation for persons with disabilities seeking equal access to housing[.]"

The Planning Commission, however, rejected the Riddicks' application for a reasonable disability accommodation based on its unsupported and wildly speculative conclusions that the requested accommodation was not necessary; that it would impose an undue burden on the City; that it would require a fundamental alteration in the nature of the LCP; and that it will adversely impact coastal resources. The Commission is wrong.

¹² A video recording of this event is available at <https://www.youtube.com/watch?v=udjPkGWUkX8>.

¹³ Available at <https://www.sfautismsociety.org/uploads/1/1/7/4/11747519/attygeneralhousingreasonableaccommodation.pdf>.

a. *Necessity*

Binding law obligates local governments to provide a reasonable accommodation where it “may be necessary to afford [disabled persons] equal opportunity to use and enjoy a dwelling.” *Giebler v. M & B Assocs.*, 343 F.3d 1143, 1147 (9th Cir. 2003). To establish the necessity of an accommodation, the applicant must show that “but for the accommodation, they will likely be denied an equal opportunity to enjoy the housing of their choice.” *Id.* at 1155 (quoting *Smith & Lee Assocs. v. City of Taylor, Mich.*, 102 F.3d 781, 795 (6th Cir. 1996)).

The Riddicks satisfied this requirement by providing documentation indicating that Ms. Sperling is immunodeficient and cannot safely share the same living space with the Riddicks’ three children. The RRA demonstrated that Malibu’s LIP was being interpreted and applied in a manner that prevents a disabled person from living in a dwelling that they otherwise could use and enjoy, thus establishing that a reasonable accommodation may be necessary. *See id.* To illustrate, in *Giebler*, the disabled plaintiff could not meet the minimum financial qualifications to rent at an apartment complex due to his inability to earn a salary as the result of AIDS-related disabilities. *Id.* at 1144. Although the plaintiff’s mother offered to rent the apartment for her son, the owners of the complex refused based on a company policy against cosigners. *Id.* The court observed that the necessity requirement “poses little hurdle in a case such as this one,” where the policy sought to be modified “entirely prevents a tenant from living in a dwelling.” *Id.* at 1155. It therefore held that the accommodation’s necessity was “obvious.” *Id.* Here, as in *Giebler*, staff and Commission members have stated on the record that the ADU project would have to be approved but for the LIP’s setback and TDSF provisions. Thus, the Riddicks have satisfied the necessity prong.

Lest there be any doubt, the reasonable accommodation rule applies to land use and zoning ordinances that “directly interfere with use and enjoyment” by “prevent[ing] the housing from being built.” *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1381 n.3 (9th Cir. 1997) (*Mobile Home II*). In the *Mobile Home II* case, for example, the court rejected a Fair Housing Act suit challenging a mobile home park’s failure to provide a reasonable accommodation. *Id.* at 1376. The plaintiff’s daughter had a respiratory illness which required a home health care aide. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 29 F.3d 1413, 1415 (9th Cir. 1994) (*Mobile Home I*). The park refused the plaintiff’s request to waive guest and parking fees for the aide. *Mobile Home II*, 107 F.3d at 1376. The court

held that the plaintiff failed to establish necessity. *Id.* at 1381. It observed that the requested accommodation was “not for [the plaintiff] herself, but for a caregiver[.]” *Id.* Plaintiff had not explained why the aide could not park across the street and still provide care, or why the aide’s employer—the State of California—could not take care of the parking fees. *Id.*

Importantly, the *Mobile Home II* court distinguished the “vast majority of reported cases brought under” the Reasonable Accommodation Provision of the FHA, which “involve developers’ requests for variances of zoning ordinances that would allow them to build housing for handicapped persons.” *Id.* at 1381 n. 3. In those cases, a showing of necessity “poses no independent hurdle” since “[t]he city policies directly interfere with use and enjoyment because they prevent the housing from being built.” *Id.*

So too here. The Planning Commission’s application of the TDSF and setback requirements in the LCP directly interfere with Ms. Sperling’s use and enjoyment by preventing her housing unit from being built. The suggested alternative—that the Riddicks convert and reconfigure their existing floor area to create a space for Ms. Sperling, (Exh. B)—is wholly unsatisfactory in the context of an RRA because it does not address the nexus between Ms. Sperling’s disability and the requested accommodation. As explained in the RRA application, Ms. Sperling’s immunocompromised status requires her to keep a healthy distance from her three young grandchildren. (Exh. G). The staff’s suggestion that the Riddicks reconfigure their home to add another living space is frankly tone deaf to Ms. Sperling’s disability and contrary to state, federal, and local disability laws. Requiring the entire family to bunch up together in the existing home’s floor space is contrary to her demonstrated needs, would pose a significant health risk to her, and cannot, as a matter of law, provide a “reasonable alternative” for denying an accommodation.

b. Undue Burden

The Commission also failed to articulate a legally and factually supported “undue burden” that is sufficient to justify its decision to deny a disabled person equal access to housing. At the hearing, Assistant Planner David Eng stated that the requested accommodation would impose an undue burden on the City because it “would require monitoring by the

Planning Director and periodic confirmation that a person with a disability is a resident at that ADU.” The Commission adopted this baseless claim.

There is no factual basis for Eng’s claim, however. Would “monitoring” involve an annual postcard inquiring about the residency status costing the City less than a dollar? Or would it involve costly daily surveillance by a team of staff members? We don’t know because, to our knowledge, the City has never imposed a residency monitoring requirement on a homeowner and Eng, when making this assertion, chose not to explain what a “monitoring” requirement would entail. Nor did Eng present any evidence of cost or staff hours necessary to “monitor” Ms. Sperling’s use of the proposed ADU. Thus, the record contains no factual basis to support the conclusion that the requested accommodations would place any measurable burden on the City—let alone a burden so “undue” as to deny an elderly disabled person access to housing.

Nor is there any legal basis for Eng’s claim. Although the party granting an accommodation may, in some circumstances, inquire about the continuing need for an accommodation, *see Peklun v. Tierra Del Mar Condo. Ass’n, Inc.*, No. 15-CIV-80801, 2015 WL 8029840, at *13 (S.D. Fla. Dec. 7, 2015), such inquiry is not mandatory. Thus, even if the City could show that monitoring would impose a burden on staff, it has the discretion to not impose such a requirement. It therefore cannot claim that the speculative burden is undue.

Besides, as a matter of common sense, the bare argument that some undefined monitoring requirement would result in an undue burden on the City proves too much to accept because that unsupported claim could theoretically be applied to deny *any* request for disability accommodation. Disability and fair housing law is made of much sturdier stuff than that.

In truth, the request for accommodation here poses no burden because it merely seeks to adjust the City’s TDSF and setback rules to comply with state housing law. Such an adjustment costs the jurisdiction nothing. *See Proviso Ass’n of Retarded Citizens v. Village of Westchester, Ill.*, 914 F. Supp. 1555, 1562 (N.D. Ill. 1996), *abrogated on other grounds by Hemisphere Bldg. Co., Inc. v. Village of Richton Park*, 171 F.3d 437 (7th Cir. 1999); *see also* Mental

Health Advocacy Services, *Model Ordinance for Providing Reasonable Accommodation Under Federal and State Fair Housing Laws* (September 2003) (hereinafter *Model Ordinance*).¹⁴

a. Fundamental Alteration

Planning Assistant Eng also opined that the requested accommodation could effect a fundamental alteration in the nature of the LCP because the regulations sought to be waived “are in place to preserve a certain type of character with development in the City.” This conclusory claim is patently not true.

The facts of this case establish that the proposed ADU was carefully designed to preserve neighborhood character and was, as a result, supported by the HOA and all immediate neighbors. The City placed no facts into the record showing that the proposed ADU would result in any disruption of neighborhood character—let alone the City’s character.

Eng’s conclusion in this regard is also unsupported by law. Case law from several jurisdictions makes clear that an accommodation seeking a project-specific waiver does not work a fundamental alteration. *See Model Ordinance*.¹⁵

¹⁴ Made available as a “Sample Program Implementation” by the California Department of Housing and Community Development at https://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints/docs/model_reasonable_accommodation_ordinance.pdf.

¹⁵ Collecting the following cases: *Smith & Lee Assoc. v. City of Taylor*, 102 F.3d 781 (6th Cir. 1996) (allowing a nine-person adult foster care home to locate in a single-family residential zone is fundamentally consistent with the single-family uses surrounding the proposed home and would not constitute an undue burden or a fundamental alteration of the city’s master plan); *Martin v. Constance*, 843 F. Supp. 1321 (E.D. Mo. 1994) (it would be neither an undue burden nor undermine the basic purpose of maintaining the residential character of a neighborhood to not enforce a restrictive covenant against a state-operated home for individuals with developmental disabilities); *Oxford House v. Babylon*, 819 F. Supp. 1179 (E.D.N.Y. 1993) (modifying city’s interpretation under the ordinance of the term “family” was reasonable where the group home had no adverse effect on the residential character of the neighborhood and neither the operation of the group home nor the residents caused any financial or administrative burdens on the town); *United States v. Marshall*, 787 F. Supp. 872 (W.D. Wis. 1991) (granting a variance under state law to allow a group home for people with mental disabilities to locate within 2,500 feet of a group home for the elderly would not “undermine the basic purpose which the requirement seeks to achieve” where the homes would not be separated by a wide portion of a river with no bridge connection).

For example, in *Smith & Lee Assocs., Inc. v. City of Taylor, Mich.*, 102 F.3d 781 (6th Cir. 1996), the court held that “an additional three residents” in a single-family zone generally permitting only six residents to live in an adult foster care facility would not “fundamentally alter the nature of” the neighborhood even though generally applicable land use rules limited the number of unrelated persons that can live in a residence. *Id.* at 796; see also *Oxford House-C v. City of St. Louis*, 77 F.3d 249, 251 (8th Cir. 1996) (“The Supreme Court recently held [that the FHA’s exemption provision] only exempts total occupancy limits intended to prevent overcrowding in living quarters, not ordinances like the City’s that are designed to promote the family character of a neighborhood.”) (citing *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725, 728 (1995)).

d. Impact on Coastal Resources

Finally, Mr. Eng opposed disability accommodation based on rank speculation that, if similar accommodations are granted in the future, it could “allow for higher amounts of development in this neighborhood, and also set a precedent for pursuing requests for reasonable accommodations to achieve higher levels of development in the City.”

This conclusion, too, is unsupportable and cannot bar the requested accommodations. Indeed, in his report, Eng admitted that “we don’t believe that the [Riddicks’] project would impact things like public access or environmental resources.” Along similar lines, the staff report explains that 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.”

Again, there is simply no support in the record for Eng’s fear that approval of the applied-for accommodations in this matter may encourage enough other people to use disability law to vary the LIP’s setback and TDSF requirements in a sufficient number as to alter the City’s character. This claim defies common sense. First, it is undisputed that the LIP’s setback and TDSF requirements conflict with state ADU law. Second, during the hearing,

not “undermine the basic purpose which the requirement seeks to achieve” where the homes would not be separated by a wide portion of a river with no bridge connection).

Commission members commented that the City will be updating its local codes to bring its regulations into compliance with state ADU law. Third, once the updated ADU code is enacted, similarly situated ADU applicants will follow that path and will not need to apply for an accommodation. Fourth, the manner in which ADU applications are to be approved is wholly within the City's control (had the City followed CCC guidance or updated its code, there would be no need for a disability accommodation). And fifth, the facts supporting the Riddicks' RRA application are unique and rare, which is why Malibu had never considered an RRA application prior to this matter. The City's historical experience with the RRA process and common sense, therefore, refutes Eng's speculation.

Moreover, there is no legal authority suggesting that concerns about "setting a precedent," *i.e.*, concerns about what third parties may try to achieve in the future, has any bearing on a determination whether to grant a reasonable disability accommodation. The only precedent set here by granting the Riddicks' request for reasonable disability accommodation will be that of following the law as written in the City's LCP and as required by state and federal housing law.

Conclusion

The Riddicks wish to thank the Malibu City Council in advance for its time and consideration of this appeal. We respectfully request that the Council reverse Resolution No. 21-51 and allow the Riddicks to proceed with their modest proposal for an ADU to house Ms. Sperling.

Best Regards,
David J. Deerson



Attorney

EXHIBIT A

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-51

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, DENYING A REQUEST FOR REASONABLE ACCOMMODATION NO. 21-004 PURSUANT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN 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 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 ZONING DISTRICT AT 6255 PASEO CANYON DRIVE (RIDDICK)

The Planning Commission 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.

SECTION 2. Environmental Review.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 3. Findings for Denial.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) including Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and denies RRA No. 21-001 and CDP 20-034 for the partial demolition of, and development of a new 469 square foot attached ADU and 157 square foot addition to, the existing primary residence in the single-family (SFL) zoning district located at 6255 Paseo Canyon Drive.

The proposed project has been determined to be inconsistent with all applicable requirements of the LCP, specifically LIP Sections 3.6(F), 3.6(H), and 3.6(I), in that the proposed accessory dwelling unit and addition to the primary residence will encroach into the rear and side yard setbacks, and exceed the maximum allowed total development square footage and (TDSF) and total impervious lot coverage (TILC) for the parcel. The required findings for denial of the RRA and CDP 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 environmental sensitive habitat area (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 RRA 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 RRA 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 RRA by meeting the findings required above.

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

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)

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

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

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)

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 4. Planning Commission Action.

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

SECTION 5. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 7th day of June 2021.

JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-51 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 7th day of June 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHLEEN STECKO, Recording Secretary

EXHIBIT B



Supplemental Commission Agenda Report

Planning Commission
Meeting
06-07-21

Item 5.A.

To: Chair Jennings and Members of the Planning Commission

Prepared by: David Eng, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: June 4, 2021

Meeting date: June 7, 2021

Subject: Coastal Development Permit No. 20-034 and Request for Reasonable Accommodation No. 21- 0001 – An application to allow a new 469 square foot attached accessory dwelling unit and additions and alterations to an existing one-story, single-family residence

Location: 6255 Paseo Canyon Drive, not within the appealable coastal zone

APN: 4469-033-013

Owners: Elizabeth and Jason Riddick

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 21-51 (Attachment 1) denying a Request for Reasonable Accommodation (RRA) No. 21-001 pursuant to Local Coastal Program (LCP) 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 denying Coastal Development Permit No. 20-034 which would allow the aforementioned development to encroach into the required rear and side yard setbacks and exceed the maximum allowed total development square footage (TDSF) and total impervious lot coverage (TILC) for the parcel, located in the Single Family (SFL) zoning district at 6255 Paseo Canyon Drive (Riddick).

DISCUSSION: This agenda report provides a project overview, a summary of the surrounding land uses and project setting, description of the proposed project, staff's analysis of the proposed project's consistency with Malibu Local Coastal Program (LCP) provisions, and environmental review pursuant to California Environmental Quality Act (CEQA). The analysis and findings contained herein demonstrate the proposed project is inconsistent with the LCP.

In 2017 and 2019, the State of California amended Government Code Section 65852.2 and added Government Code Section 65852.22 that eases development standards related to the construction of ADUs and Junior Accessory Dwelling Units (JADUs). These are accessory units with complete independent living facilities that are either attached to or detached from a primary dwelling and can be created through new square footage or conversion of existing space.

Local governments, such as the City of Malibu, are required to comply with new State provisions for ADUs/JADUs and the Coastal Act. However, per the statutes themselves and technical guidance dated April 21, 2020 from the California Coastal Commission to Coastal Cities and Counties (Attachment 3 – California Coastal Commission Memorandum), “currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to requirements of the Certified LCP for ADUs until an LCP amendment is adopted.” The City of Malibu is currently undergoing an effort to amend the Local Coastal Program and Malibu Municipal Code (MMC) Title 17 (Zoning Ordinance) to create a new local ADU ordinance. Until the City Council adopts and the California Coastal Commission certifies a new ADU ordinance, the LCP’s existing regulations concerning ADUs apply.

On July 10, 2020, the property owners, Elizabeth and Jason Riddick, submitted an application for a new attached ADU and other additions and alterations to their residence. As explained in the owners’ application and letter for a request for reasonable accommodation (Attachment 5), the owners claim the proposed ADU and associated development are intended to accommodate a family member with a physical disability. Planning staff reviewed the application and determined that the proposal does not comply with the existing zoning regulations of the LIP with respect to required rear and side yard setbacks and the maximum allowed TDSF and TILC for the parcel.

Pursuant to LCP LIP Section 13.30, and in accordance with the Federal Housing Act and the California Fair Employment and Housing Act, a request for reasonable accommodation may be made by any person with a disability, his/or her representative, or any property owner, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. Because the project could not be approved under existing LIP zoning regulations, on April 19, 2021, the property owners submitted an application for a request for reasonable accommodation for relief from existing LIP zoning regulations pertaining to required rear and side yard setbacks, TDSF and TILC, as these relate to the proposed project.

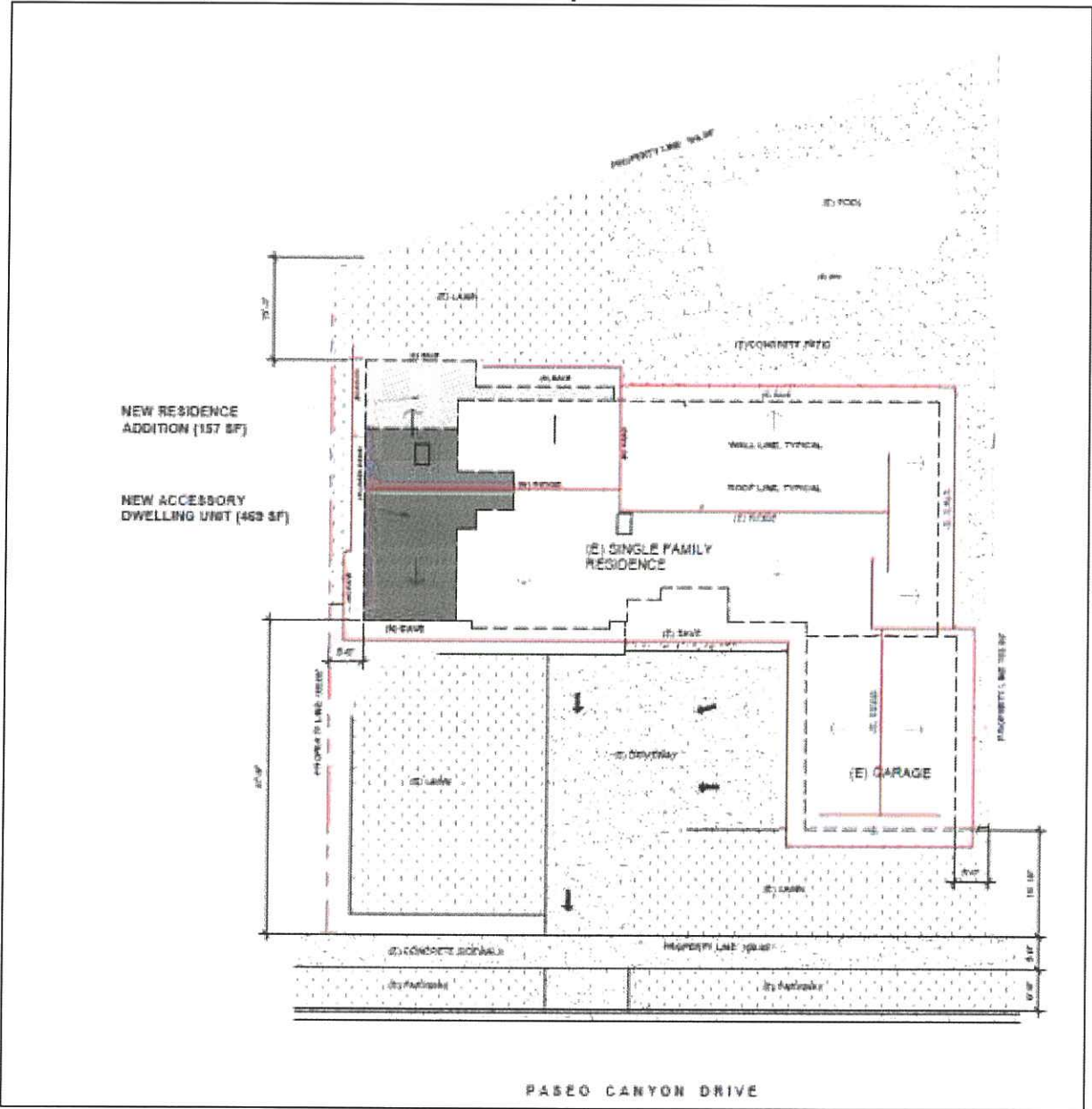
Pursuant to LIP Section 13.30(D), the Planning Director is referring the request for a reasonable accommodation to the Planning Commission for consideration, as the proposed development associated with the relief is permanent and will have a material effect on surrounding properties. The applicant has requested that the changes which include exceeding the TDSF limit remain in perpetuity. Per LIP Section 13.30(J) the rights

granted are supposed to terminate if the person with disability does not occupy the structure for a period of 180 days or more unless the three findings listed there can be made. This would require the Planning Director to determine that the ADU continues to be occupied by a person with a disability. A condition could be added requiring a deed restriction or other measures to ensure compliance but such condition would be difficult to enforce and technically require demolition of the ADU if it is not occupied by a person with a disability.

Project Overview

The project proposes partial demolition and additions and alterations to an existing 3,000 square foot, one-story, single-family residence with an attached garage and a 43 square foot porch that counts towards TDSF, given its dimensions. The project includes the demolition of 55 square feet of the existing dwelling and the rebuild and addition of 626 square feet (net increase of 571 square feet) (Attachment 2 – Project Plans). Of that 626 square feet, 469 square feet will be dedicated to the attached ADU (Figure 1). The ADU and the addition to the house's main living area do not conform to the zoning requirements of the LIP with respect to required rear and side yard setbacks, maximum allowed TDSF, and TILC. The applicant is requesting reasonable accommodation for relief from the requirements of the LCP and its zoning requirements to allow construction of the ADU for a disabled family member. However, the request for the reasonable accommodation also includes a 157 square foot addition that will go towards the relocation and expansion of the master bathroom and an addition to the master bedroom. A 15.3 percent reduction of the 17'-5" rear yard setback and 47 percent reduction of the 9'-6" side yard setback are required for this master bathroom/bedroom addition.

Figure 1 – Site Plan with Proposed ADU and Additions



Source: Project Plans, dated June 7, 2020

Surrounding Land Uses and Project Setting

As shown on Figure 2, the subject property is located on the westerly side of Paseo Canyon Drive, between Manzano Drive and Principio Drive, in the Malibu West neighborhood. The parcel is currently developed with a one-story, single-family residence with an attached garage, swimming pool, patio, and associated screened pool equipment in the rear yard.

Figure 2 – Aerial Map



Source: City GIS

The property is located in an area developed primarily with one- and two-story single-family residences with accessory development and is zoned SFL. The property is an infill lot bordered to the north, south, east, and west by single-family residences (Attachment 6 – Site Photos). Table 1 provides a summary of the neighboring surrounding land uses and lot sizes.

| Table 1 – Surrounding Land Uses | | | | |
|--|-----------------------|-----------------|---------------|-------------------------|
| Direction | Address | Lot Size | Zoning | Land Use |
| North | 6247 Paseo Canyon Dr. | 0.3 acre | SFL | Single-Family Residence |
| South | 6267 Paseo Canyon Dr. | 0.3 acre | SFL | Single-Family Residence |
| West | 30717 El Pequeno Dr. | 0.25 acre | SFL | Single-Family Residence |
| | 30710 El Pequeno Dr. | 0.26 acre | SFL | Single-Family Residence |
| East | Paseo Canyon Dr. | -- | -- | Public Right-of-Way |

Source: City GIS

Table 2 provides a summary of the lot dimensions and lot area of the subject parcel.

| Table 2 – Total Property Data | |
|--------------------------------------|---------------------------|
| Lot Depth | 115 feet |
| Lot Width | 50 feet |
| Gross Lot Area | 14,780 square feet |
| Area Comprised of 1:1 Slopes | 0 |
| Access Easements | 3,000 |
| Net Lot Area* | 11,780 square feet |

*Net Lot Area = Gross Lot Area minus the area of access easements and 1 to 1 slopes.

Project Description

The proposed scope of work is as follows:

- a. Request for Reasonable Accommodation and Coastal Development Permit for the following development:
 - i. Demolition of 55 square feet of the existing primary dwelling; Addition and conversion of 469 square feet of floor area into a new attached ADU;
 - ii. Addition of 157 square feet to the primary dwelling;
 - iii. Reconfiguration and remodel of interior spaces;
 - iv. New roof shingles; and
 - v. New plaster, siding, and exterior finishes to match existing.

LCP Analysis

The LCP consists of the Land Use Plan (LUP) and the LIP. The LUP contains programs and policies implementing the Coastal Act in Malibu. The LIP contains provisions to carry out the policies of the LUP to which every project requiring a coastal development permit must adhere, including ADUs.

There are 14 LIP chapters that potentially apply depending on the nature and location of the proposed project. Of these, five are for conformance review only and contain no findings: 1) Zoning, 2) Grading, 3) Archaeological/Cultural Resources, 4) Water Quality, and 5) onsite wastewater treatment system (OWTS). These chapters are discussed in the *LIP Conformance Analysis* section.

The nine remaining LIP chapters contain required findings: 1) Coastal Development Permit; 2) ESHA; 3) Native Tree Protection; 4) Scenic, Visual and Hillside Resource Protection; 5) Transfer of Development Credits; 6) Hazards; 7) Shoreline and Bluff Development; 8) Public Access; and 9) Land Division. For the reasons described in this report, including the project site, the scope of work and substantial evidence in the record, only findings in the following chapters are applicable to the proposed project: Coastal Development Permit (including the required findings for the RRA), and Hazards.¹ These chapters are discussed in the *LIP Findings* section of this report.

LIP Conformance Analysis

The proposed project has been reviewed by the Planning Department, City Public Works Department, City geotechnical staff, and the Los Angeles County Fire Department (LACFD) (Attachment 4 – Department Review Sheets). The project, as proposed and conditioned, has been found to be consistent with all applicable LCP codes, standards, goals and policies, inclusive of the requested RRA.

Zoning (LIP Chapter 3)

The proposed project is subject to development and design standards set forth under LIP Sections 3.5 and 3.6. Table 3 provides a summary and indicates the proposed project meets those standards, inclusive of the requested RRA.

¹ The ESHA, Native Tree Protection, Scenic, Visual and Hillside Resource Protection, Transfer of Development Credits, Shoreline and Bluff Development, Public Access, and Land Division findings are neither applicable nor required for the proposed project.

| Table 3 – Zoning Conformance | | | |
|---|------------------------------|------------------------------|-----------------|
| Development Requirement | Allowed/ Required | Proposed | Comments |
| SETBACKS (ft.) | | | |
| Front Yard | 23'-2" | 47" | Complies |
| Rear Yard | 17'-5" | 14'-9" | RRA |
| Side Yard (Minimum 10%) | 9'-6" | 5' | RRA |
| Total Side Yard (Cumulative 25%) | 23'-9" | 13' | RRA |
| PARKING SPACES | | | |
| Enclosed (10 ft. x 18 ft.) | 2 | 2 | Complies |
| Unenclosed (10 ft. x 18 ft.) | 2 | 3 | Complies |
| Total Development Square Footage (TDSF) (sq.ft.) | | | |
| TDSF | 3,085 ² | 3,614 | RRA |
| Single-Family Residence | | 2,581 | |
| Attached Garage | | 619 | |
| Accessory Dwelling Unit | | 469 | |
| HEIGHT (ft.) | | | |
| Single-Family Residence | 18 | 16 | Complies |
| IMPERMEABLE COVERAGE (sq.ft.) | 4,127 | >4,127 | RRA |
| NON-EXEMPT GRADING (cu.yd.) | 1,000 | 0 | Complies |
| CONSTRUCTION ON SLOPES | 4 to 1 and flatter | 4 to 1 and flatter | Complies |
| FENCES/WALLS/HEDGES | | | |
| Retaining Walls | 6 ft. max. 12 ft. cumulative | 6 ft. max. 12 ft. cumulative | Complies |
| Front Yard | | | |
| Impermeable | 42 in. | NA | Complies |
| Permeable | 6 ft. | 42 in. | Complies |
| Rear & Side Yard | 6 ft. | 6 ft. | Complies |

As shown in Table 3, the proposed project conforms to the development standards as set forth under LIP Chapter 3, excepting the rear and side yard setbacks and the maximum allowed TDSF and TILC. Unless a reasonable accommodation is granted, the proposed project has been determined to be inconsistent with applicable LCP codes, standards, goals, and policies.

² The existing home is currently 3,043 square feet and complies with the TDSF.

Grading (LIP Chapter 8)

LIP Section 8.3 ensures that new development minimizes the visual resource impacts of grading and landform alteration by restricting the amount of non-exempt grading to a maximum of 1,000 cubic yards for a residential parcel. As no non-exempt grading is proposed with this application, the proposed project complies with grading requirements set forth under LIP Section 8.3.

Archaeological / Cultural Resources (LIP Chapter 11)

LIP Chapter 11 requires certain procedures be followed to determine potential impacts on archaeological resources. Per the Building Official, the subject property and surrounding parcels have been graded and disturbed during the creation of the subdivision.

Nevertheless, a condition of approval is included in the resolution which states that in the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources, and until the Planning Director can review this information.

Water Quality (LIP Chapter 17)

The City Public Works Department reviewed and approved the proposed project for conformance to LIP Chapter 17 requirements for water quality protection. A standard condition of approval for this project requires that prior to the issuance of any development permit, a Local Storm Water Pollution Prevention Plan incorporating construction-phase Erosion and Sediment Control Plan and Best Management Practices, must be approved by the City Public Works Department.

Wastewater Treatment Systems Standards (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. As the subject property is served by the Trancas wastewater treatment plant, no onsite wastewater treatment system exists onsite and is not required for the property.

LIP Findings

A. Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

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.

Finding 2. If the project is located between the first public road and the sea, that the project is in conformity to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

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.

Finding 3. The project is the least environmentally damaging alternative.

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.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area (ESHA) pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not

conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

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)

LIP Section 13.30(E) requires that the City make six findings in consideration and approval of a request for reasonable accommodation. Based on the foregoing evidence contained in the record, the required findings for RRA No. 21-001 are made as follows:

Finding 1. The housing, which is the subject of the request, will be occupied by a person with a disability as defined in LIP Subsection 13.30(B)(3).

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.

Finding 2. The approved reasonable accommodation is necessary to make housing available to a person with a disability as defined in LIP Subsection 13.30(B)(3).

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.

Finding 3. The approved reasonable accommodation would not impose an undue financial or administrative burden on the City.

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.

Finding 4. The approved reasonable accommodation would not require a fundamental alteration in the nature of the LCP.

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 RRA 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 RRA as an incentive.

Finding 5. The approved reasonable accommodation would not adversely impact coastal resources.

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.

Finding 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.

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 RRA by meeting the findings required above.

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

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)

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

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

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)

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:

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

Based on review of the project plans and associated reports by the 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.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

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.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on 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. It has been determined that the proposed project does not impact site stability or structural integrity.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

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.

ENVIRONMENTAL REVIEW: Pursuant to CEQA Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves. Nonetheless, the Planning Director analyzed the proposed project and found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. The proposed project is also categorically exempt from the provisions of CEQA pursuant to Sections 15301(a) - Existing Facilities and 15305 – Minor Alterations in Land Use Limitations. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

CORRESPONDENCE: As of the date of this report, four letters of correspondence (Attachment 7) in support of the project have been received

PUBLIC NOTICE: On May 27, 2021, staff published a Notice of Public Hearing in a newspaper of general circulation within the City of Malibu and mailed the notice to the property owners and occupants within 500 feet of the subject property (Attachment 9 – Public Hearing Notice). Staff also mailed property owners and occupants of the 10 closest lots as required for the reasonable accommodation.

SUMMARY: The required findings cannot be made that the proposed project complies with the LCP. Further, the Planning Department's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report and the accompanying Planning Commission Resolution No. 21-51, staff recommends denial of this project.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-51
2. Project Plans
3. California Coastal Commission Memorandum to Coastal Cities and Counties
4. Department Review Sheets
5. Applicant Request for Reasonable Accommodation and Exhibits
6. Site Photos
7. Public Correspondence
8. 500-foot Radius Map
9. Public Hearing Notice

EXHIBIT C

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](#)

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

EXHIBIT D



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-3356 · www.malibucity.org

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 strengthen 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

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 E

Jason and Elizabeth Riddick

6255 Paseo Canyon Drive

Malibu, California 90265

Telephone: [REDACTED]

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 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).¹

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.)²

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

¹ 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.”

² “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.

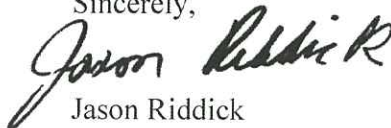
Sincerely,

Jason Riddick

EXHIBIT F



Exhibit C

City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · 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 G

Jason and Elizabeth Riddick

6255 Paseo Canyon Drive

Malibu, California 90265

Telephone: [REDACTED]
[REDACTED]
[REDACTED]

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.

ATTACHMENT 5

001

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.¹ 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

¹ 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.² 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).³

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).)”⁴

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.”⁵ 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.⁶

² 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.]

³ 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]

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

⁵ See Ex. C [February 24, 2020 Response Ltr. From City]

⁶ 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, 2019.⁷**

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

⁷ 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.”⁸

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.”⁹ 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.¹⁰

Ms. Sperling is 82-year-old, and suffers from Glaucoma, Arthritis, Asthma and Osteoporosis.¹¹ Accordingly, Ms. Sperling carries a handicap placard issued by the California State Department of Motor Vehicles.¹² 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].

⁸ 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.

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

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

¹¹ Ex. H [Doctors Note 1] and Ex. I [Doctor’s Note 2]

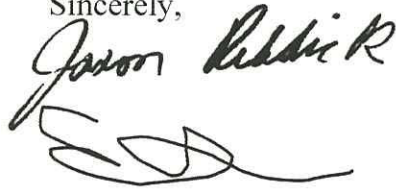
¹² Ex. J [Picture of Handicap Placard]

Mr. Richard Mollica
April 13, 2021
Page 6 of 6

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,

Handwritten signature of Jason Riddick in black ink.

Jason and Elizabeth Riddick

A large black rectangular redaction box covering the address information.

EXHIBIT H

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Simon & Vickie Barret
6267 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6267 Paseo Cyn. Dr

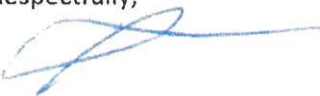
**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Roy and Janet Ettinger
30717 El Pequeno Drive
Malibu, CA 90265

6/2/21

Date

El Pequeno Dr
30717 ~~Paseo Cyn Dr~~

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Mr. & Mrs. Don Fauntleroy
6252 Paseo Canyon Drive
Malibu, CA 90265

6/2/21
Date

6252 Paseo Cyn Dr

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,


Ron Israel

6244 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6244 Paseo Cyn Dr.

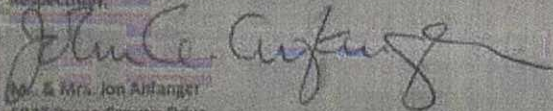
**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255
Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable
Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their
82-year-old mother.

Thank you

Respectfully,



Mr. & Mrs. Jon Airlinger
6247 Paseo Canyon Drive
Malibu, CA 90265

6/17/21
Date

EXHIBIT I



30756 W. PACIFIC COAST HIGHWAY • MALIBU, CALIFORNIA 90265 • TEL: 310-457-9068 • FAX: 310-457-0862

February 3, 2020

Jason and Elizabeth Riddick
6255 Paseo Canyon Drive
Malibu CA 90265

Dear Elizabeth and Jason,

The Malibu West Architectural Committee (Committee) on behalf of the Malibu West Swimming Club (Association) has reviewed your plans to add an addition to your residence and an attached Accessory Dwelling Unit (ADU) to your single-family residence located at the above address. The Committee has approved the architectural plans of John C. Braly dated January 24, 2020 (which are on file at the Association office) subject to the modifications, clarifications and conditions set forth below:

Residence Addition

1. The current residence is 3002 square feet, including garage, the new residence addition will be 189 square feet for a total of 3,189 square feet including the garage.
2. There will be a 185 square foot increase from the original pad area of the residence. The Association grants you a variance for this purpose. No further increase in the pad area is allowed. The variance mentioned herein, is given because it has been determined that the variance will not result in a material detriment, or create an unreasonable nuisance with respect to the common area or any other owner within the surrounding properties.

Accessory Dwelling Unit (ADU)

3. The ADU will be 460 square feet. The new pad will be area 460 square feet. The Association grants you a variance for this purpose. No further increase in the pad area beyond this is allowed. The variance mentioned herein, is given because

it has been determined that the variance will not result in a material detriment, or create an unreasonable nuisance with respect to the common area or any other owner within the surrounding properties.

4. Owner agrees to comply at all times with the Association CC&R's, Architectural Guidelines and any guidelines that the Association enacts regarding the use of ADU's.

The ADUs tenants will comply with the CC&R's and the Association rules.

General Terms and Conditions

5. All work will be completed within 1 year from the start of construction.

6. All rooftop equipment, including HVAC and duct work, is prohibited and a roof deck is not permitted. All pool equipment, if any, will be enclosed and invisible from the surrounding neighbors' properties and any common area. All chimneys, if any, will be the minimum allowable code height.

If there is any change to the drainage pattern, it must conform to the Associations CC&R's section 5.6 and 5.7.

7. Notwithstanding the foregoing, the lot permeability shall not be altered in any manner that could increase the runoff onto a neighboring property or the common area.

8. There will be no fencing/wall forward of the residences front yard string line. All fencing/walls behind this string line and along the property line will not exceed 6 feet in height.

9. To protect neighbors' and common area views as well as construction materials and supplies, it is recommended that put chain link fencing covered with green mesh or solid green fabric screening around the construction site area prior to start of construction.

10. If you choose not to put in construction fencing, any portion of the property visible from the public area or neighbors' residences will be kept clean and neat condition free of construction debris and materials.

11. All coastal live oaks or sycamores on your property, if any, shall not be removed and will be protected from any disturbance during debris removal and

construction. To protect Sycamores and Coastal Live Oaks, if any, fencing will be placed around any Sycamore and Oak trunks with a minimum clearance of 3 feet.

12. The rules concerning dumpsters are attached and are to be adhered to.

13. No grading will take place until a building permit is issued. You will provide us with a copy of the building and grading permit prior to the start of any grading and construction.

14. This approval is contingent upon getting city approval in conformance with this approval letter.

15. Any other changes or future improvements on the property not shown on the above referenced architectural plans will require Architectural Committee approval prior to the start of construction. The roofing, exterior finishes and materials will be the same as the current residence. The color of the residence, addition and the ADU will be pale yellow with white trim. In addition, prior to the completion of construction landscape plans and exterior lighting plans must be submitted and approved by the Architectural Committee as well as any proposed changes to these approved plans. All exterior lighting will conform to the Architectural Guidelines,

16. To insure against damage to the common area during construction a security deposit of \$750 will be paid to the Association prior to start of construction. It will be refunded when your ADU and residence addition is finished if there is no damage to Malibu West's common areas. Please note that you are responsible for all damage to the Streets, Curbs and Sidewalks within Malibu West caused in connection with any work that is done on your property by you or any third party. Notwithstanding the foregoing, any and all damage to the Associations common area will be repaired by the Association and paid for by Owner.

17. You will provide us upon city approval of your plans, the stamped site plan, floor plan, elevation plan and roof plan.

18. All work performed contrary to this approval or any amended approval could subject you to fines and any other remedy the Association deems appropriate including removal of the violation.



June 28, 2021

To: City of Malibu

Re: Renee Sperling

Dear Sir or Madam:

Renee Sperling has been a patient of mine [REDACTED]

[REDACTED] She is disabled. Ms. Sperling needs to live near her family to care for her, but should maintain independent living quarters to protect her from exposure to common illness that children or others may bring into the home. Due to her weakened immune system, even the common cold can have a devastating effect on Ms. Sperling's health. Please grant her the ADA accomodation for this disability. Thank you. Sincerely,

GARBER FORBESS RHEUMATOLOGY

A handwritten signature in blue ink that reads "Elayne K. Garber M.D.".

By: Elayne K. Garber, M.D.

EKG:j

cc: Renee Sperling

Tel (310) 854-3539 • Cedars-Sinai Medical Towers • Fax (310) 652-3914
8631 West Third Street, Suite 700E • Los Angeles, California 90048



Commission Agenda Report

To: Chair Jennings and Members of the Planning Commission

Prepared by: David Eng, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: May 27, 2021

Meeting date: June 7, 2021

Subject: Coastal Development Permit No. 20-034 and Request for Reasonable Accommodation No. 21- 0001 – An application to allow a new 469 square foot attached accessory dwelling unit and additions and alterations to an existing one-story, single-family residence

Location: 6255 Paseo Canyon Road, not within the appealable coastal zone

APN: 4469-033-013

Owners: Elizabeth and Jason Riddick

This item will be distributed under separate cover.



Supplemental Commission Agenda Report

Planning Commission
Meeting
06-07-21

Item 5.A.

To: Chair Jennings and Members of the Planning Commission

Prepared by: David Eng, Assistant Planner

Approved by: Richard Mollica, Planning Director

Date prepared: June 4, 2021

Meeting date: June 7, 2021

Subject: Coastal Development Permit No. 20-034 and Request for Reasonable Accommodation No. 21- 0001 – An application to allow a new 469 square foot attached accessory dwelling unit and additions and alterations to an existing one-story, single-family residence

Location: 6255 Paseo Canyon Drive, not within the appealable coastal zone

APN: 4469-033-013

Owners: Elizabeth and Jason Riddick

RECOMMENDED ACTION: Adopt Planning Commission Resolution No. 21-51 (Attachment 1) denying a Request for Reasonable Accommodation (RRA) No. 21-001 pursuant to Local Coastal Program (LCP) 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 denying Coastal Development Permit No. 20-034 which would allow the aforementioned development to encroach into the required rear and side yard setbacks and exceed the maximum allowed total development square footage (TDSF) and total impervious lot coverage (TILC) for the parcel, located in the Single Family (SFL) zoning district at 6255 Paseo Canyon Drive (Riddick).

DISCUSSION: This agenda report provides a project overview, a summary of the surrounding land uses and project setting, description of the proposed project, staff's analysis of the proposed project's consistency with Malibu Local Coastal Program (LCP) provisions, and environmental review pursuant to California Environmental Quality Act (CEQA). The analysis and findings contained herein demonstrate the proposed project is inconsistent with the LCP.

In 2017 and 2019, the State of California amended Government Code Section 65852.2 and added Government Code Section 65852.22 that eases development standards related to the construction of ADUs and Junior Accessory Dwelling Units (JADUs). These are accessory units with complete independent living facilities that are either attached to or detached from a primary dwelling and can be created through new square footage or conversion of existing space.

Local governments, such as the City of Malibu, are required to comply with new State provisions for ADUs/JADUs and the Coastal Act. However, per the statutes themselves and technical guidance dated April 21, 2020 from the California Coastal Commission to Coastal Cities and Counties (Attachment 3 – California Coastal Commission Memorandum), “currently certified provisions of LCPs are not superseded by Government Code Section 65852.2 and continue to apply to requirements of the Certified LCP for ADUs until an LCP amendment is adopted.” The City of Malibu is currently undergoing an effort to amend the Local Coastal Program and Malibu Municipal Code (MMC) Title 17 (Zoning Ordinance) to create a new local ADU ordinance. Until the City Council adopts and the California Coastal Commission certifies a new ADU ordinance, the LCP’s existing regulations concerning ADUs apply.

On July 10, 2020, the property owners, Elizabeth and Jason Riddick, submitted an application for a new attached ADU and other additions and alterations to their residence. As explained in the owners’ application and letter for a request for reasonable accommodation (Attachment 5), the owners claim the proposed ADU and associated development are intended to accommodate a family member with a physical disability. Planning staff reviewed the application and determined that the proposal does not comply with the existing zoning regulations of the LIP with respect to required rear and side yard setbacks and the maximum allowed TDSF and TILC for the parcel.

Pursuant to LCP LIP Section 13.30, and in accordance with the Federal Housing Act and the California Fair Employment and Housing Act, a request for reasonable accommodation may be made by any person with a disability, his/or her representative, or any property owner, when the application of a zoning law or other land use regulation, policy or practice acts as a barrier to fair housing opportunities. Because the project could not be approved under existing LIP zoning regulations, on April 19, 2021, the property owners submitted an application for a request for reasonable accommodation for relief from existing LIP zoning regulations pertaining to required rear and side yard setbacks, TDSF and TILC, as these relate to the proposed project.

Pursuant to LIP Section 13.30(D), the Planning Director is referring the request for a reasonable accommodation to the Planning Commission for consideration, as the proposed development associated with the relief is permanent and will have a material effect on surrounding properties. The applicant has requested that the changes which include exceeding the TDSF limit remain in perpetuity. Per LIP Section 13.30(J) the rights

granted are supposed to terminate if the person with disability does not occupy the structure for a period of 180 days or more unless the three findings listed there can be made. This would require the Planning Director to determine that the ADU continues to be occupied by a person with a disability. A condition could be added requiring a deed restriction or other measures to ensure compliance but such condition would be difficult to enforce and technically require demolition of the ADU if it is not occupied by a person with a disability.

Project Overview

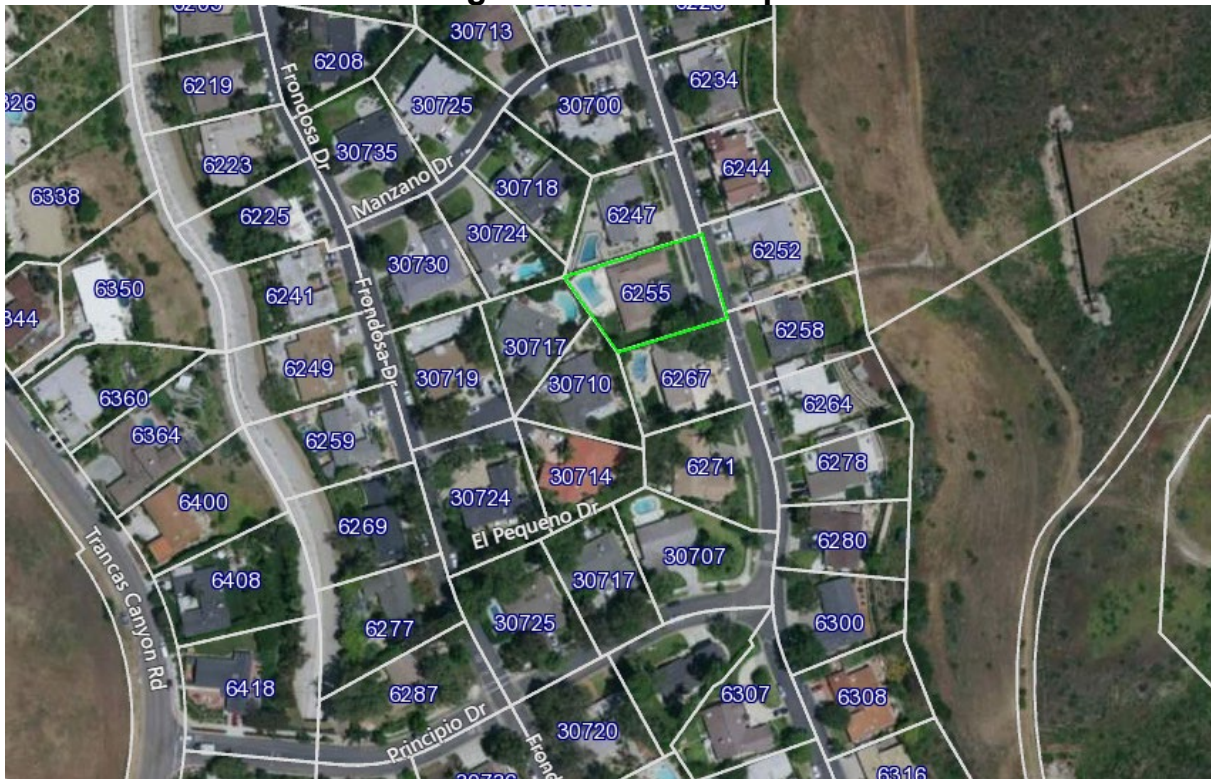
The project proposes partial demolition and additions and alterations to an existing 3,000 square foot, one-story, single-family residence with an attached garage and a 43 square foot porch that counts towards TDSF, given its dimensions. The project includes the demolition of 55 square feet of the existing dwelling and the rebuild and addition of 626 square feet (net increase of 571 square feet) (Attachment 2 – Project Plans). Of that 626 square feet, 469 square feet will be dedicated to the attached ADU (Figure 1). The ADU and the addition to the house's main living area do not conform to the zoning requirements of the LIP with respect to required rear and side yard setbacks, maximum allowed TDSF, and TILC. The applicant is requesting reasonable accommodation for relief from the requirements of the LCP and its zoning requirements to allow construction of the ADU for a disabled family member. However, the request for the reasonable accommodation also includes a 157 square foot addition that will go towards the relocation and expansion of the master bathroom and an addition to the master bedroom. A 15.3 percent reduction of the 17'-5" rear yard setback and 47 percent reduction of the 9'-6" side yard setback are required for this master bathroom/bedroom addition.

[illegible]

Surrounding Land Uses and Project Setting

As shown on Figure 2, the subject property is located on the westerly side of Paseo Canyon Drive, between Manzano Drive and Principio Drive, in the Malibu West neighborhood. The parcel is currently developed with a one-story, single-family residence with an attached garage, swimming pool, patio, and associated screened pool equipment in the rear yard.

Figure 2 – Aerial Map



Source: City GIS

The property is located in an area developed primarily with one- and two-story single-family residences with accessory development and is zoned SFL. The property is an infill lot bordered to the north, south, east, and west by single-family residences (Attachment 6 – Site Photos). Table 1 provides a summary of the neighboring surrounding land uses and lot sizes.

| Table 1 – Surrounding Land Uses | | | | |
|--|-----------------------|-----------------|---------------|-------------------------|
| Direction | Address | Lot Size | Zoning | Land Use |
| North | 6247 Paseo Canyon Dr. | 0.3 acre | SFL | Single-Family Residence |
| South | 6267 Paseo Canyon Dr. | 0.3 acre | SFL | Single-Family Residence |
| West | 30717 El Pequeno Dr. | 0.25 acre | SFL | Single-Family Residence |
| | 30710 El Pequeno Dr. | 0.26 acre | SFL | Single-Family Residence |
| East | Paseo Canyon Dr. | -- | -- | Public Right-of-Way |

Source: City GIS

Table 2 provides a summary of the lot dimensions and lot area of the subject parcel.

| Table 2 – Total Property Data | |
|--------------------------------------|---------------------------|
| Lot Depth | 115 feet |
| Lot Width | 50 feet |
| Gross Lot Area | 14,780 square feet |
| Area Comprised of 1:1 Slopes | 0 |
| Access Easements | 3,000 |
| Net Lot Area* | 11,780 square feet |

*Net Lot Area = Gross Lot Area minus the area of access easements and 1 to 1 slopes.

Project Description

The proposed scope of work is as follows:

- a. Request for Reasonable Accommodation and Coastal Development Permit for the following development:
 - i. Demolition of 55 square feet of the existing primary dwelling; Addition and conversion of 469 square feet of floor area into a new attached ADU;
 - ii. Addition of 157 square feet to the primary dwelling;
 - iii. Reconfiguration and remodel of interior spaces;
 - iv. New roof shingles; and
 - v. New plaster, siding, and exterior finishes to match existing.

LCP Analysis

The LCP consists of the Land Use Plan (LUP) and the LIP. The LUP contains programs and policies implementing the Coastal Act in Malibu. The LIP contains provisions to carry out the policies of the LUP to which every project requiring a coastal development permit must adhere, including ADUs.

There are 14 LIP chapters that potentially apply depending on the nature and location of the proposed project. Of these, five are for conformance review only and contain no findings: 1) Zoning, 2) Grading, 3) Archaeological/Cultural Resources, 4) Water Quality, and 5) onsite wastewater treatment system (OWTS). These chapters are discussed in the *LIP Conformance Analysis* section.

The nine remaining LIP chapters contain required findings: 1) Coastal Development Permit; 2) ESHA; 3) Native Tree Protection; 4) Scenic, Visual and Hillside Resource Protection; 5) Transfer of Development Credits; 6) Hazards; 7) Shoreline and Bluff Development; 8) Public Access; and 9) Land Division. For the reasons described in this report, including the project site, the scope of work and substantial evidence in the record, only findings in the following chapters are applicable to the proposed project: Coastal Development Permit (including the required findings for the RRA), and Hazards.¹ These chapters are discussed in the *LIP Findings* section of this report.

LIP Conformance Analysis

The proposed project has been reviewed by the Planning Department, City Public Works Department, City geotechnical staff, and the Los Angeles County Fire Department (LACFD) (Attachment 4 – Department Review Sheets). The project, as proposed and conditioned, has been found to be consistent with all applicable LCP codes, standards, goals and policies, inclusive of the requested RRA.

Zoning (LIP Chapter 3)

The proposed project is subject to development and design standards set forth under LIP Sections 3.5 and 3.6. Table 3 provides a summary and indicates the proposed project meets those standards, inclusive of the requested RRA.

¹ The ESHA, Native Tree Protection, Scenic, Visual and Hillside Resource Protection, Transfer of Development Credits, Shoreline and Bluff Development, Public Access, and Land Division findings are neither applicable nor required for the proposed project.

| Table 3 – Zoning Conformance | | | |
|---|------------------------------|------------------------------|-----------------|
| Development Requirement | Allowed/ Required | Proposed | Comments |
| SETBACKS (ft.) | | | |
| Front Yard | 23'-2" | 47" | Complies |
| Rear Yard | 17'-5" | 14'-9" | RRA |
| Side Yard (Minimum 10%) | 9'-6" | 5' | RRA |
| Total Side Yard (Cumulative 25%) | 23'-9" | 13' | RRA |
| PARKING SPACES | | | |
| Enclosed (10 ft. x 18 ft.) | 2 | 2 | Complies |
| Unenclosed (10 ft. x 18 ft.) | 2 | 3 | Complies |
| Total Development Square Footage (TDSF) (sq.ft.) | | | |
| TDSF | 3,085 ² | 3,614 | RRA |
| Single-Family Residence | | 2,581 | |
| Attached Garage | | 619 | |
| Accessory Dwelling Unit | | 469 | |
| HEIGHT (ft.) | | | |
| Single-Family Residence | 18 | 16 | Complies |
| IMPERMEABLE COVERAGE (sq.ft.) | 4,127 | >4,127 | RRA |
| NON-EXEMPT GRADING (cu.yd.) | 1,000 | 0 | Complies |
| CONSTRUCTION ON SLOPES | 4 to 1 and flatter | 4 to 1 and flatter | Complies |
| FENCES/WALLS/HEDGES | | | |
| Retaining Walls | 6 ft. max. 12 ft. cumulative | 6 ft. max. 12 ft. cumulative | Complies |
| Front Yard | | | |
| Impermeable | 42 in. | NA | Complies |
| Permeable | 6 ft. | 42 in. | Complies |
| Rear & Side Yard | 6 ft. | 6 ft. | Complies |

As shown in Table 3, the proposed project conforms to the development standards as set forth under LIP Chapter 3, excepting the rear and side yard setbacks and the maximum allowed TDSF and TILC. Unless a reasonable accommodation is granted, the proposed project has been determined to be inconsistent with applicable LCP codes, standards, goals, and policies.

² The existing home is currently 3,043 square feet and complies with the TDSF.

Grading (LIP Chapter 8)

LIP Section 8.3 ensures that new development minimizes the visual resource impacts of grading and landform alteration by restricting the amount of non-exempt grading to a maximum of 1,000 cubic yards for a residential parcel. As no non-exempt grading is proposed with this application, the proposed project complies with grading requirements set forth under LIP Section 8.3.

Archaeological / Cultural Resources (LIP Chapter 11)

LIP Chapter 11 requires certain procedures be followed to determine potential impacts on archaeological resources. Per the Building Official, the subject property and surrounding parcels have been graded and disturbed during the creation of the subdivision.

Nevertheless, a condition of approval is included in the resolution which states that in the event that potentially important cultural resources are found in the course of geologic testing or during construction, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources, and until the Planning Director can review this information.

Water Quality (LIP Chapter 17)

The City Public Works Department reviewed and approved the proposed project for conformance to LIP Chapter 17 requirements for water quality protection. A standard condition of approval for this project requires that prior to the issuance of any development permit, a Local Storm Water Pollution Prevention Plan incorporating construction-phase Erosion and Sediment Control Plan and Best Management Practices, must be approved by the City Public Works Department.

Wastewater Treatment Systems Standards (LIP Chapter 18)

LIP Chapter 18 addresses OWTS. As the subject property is served by the Trancas wastewater treatment plant, no onsite wastewater treatment system exists onsite and is not required for the property.

LIP Findings

A. Coastal Development Permit (LIP Chapter 13)

LIP Section 13.9 requires that the following four findings be made for all coastal development permits.

Finding 1. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

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.

Finding 2. If the project is located between the first public road and the sea, that the project is in conformity to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

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.

Finding 3. The project is the least environmentally damaging alternative.

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.

Finding 4. If the project is located in or adjacent to an environmentally sensitive habitat area (ESHA) pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not

conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

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)

LIP Section 13.30(E) requires that the City make six findings in consideration and approval of a request for reasonable accommodation. Based on the foregoing evidence contained in the record, the required findings for RRA No. 21-001 are made as follows:

Finding 1. The housing, which is the subject of the request, will be occupied by a person with a disability as defined in LIP Subsection 13.30(B)(3).

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.

Finding 2. The approved reasonable accommodation is necessary to make housing available to a person with a disability as defined in LIP Subsection 13.30(B)(3).

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.

Finding 3. The approved reasonable accommodation would not impose an undue financial or administrative burden on the City.

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.

Finding 4. The approved reasonable accommodation would not require a fundamental alteration in the nature of the LCP.

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 RRA 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 RRA as an incentive.

Finding 5. The approved reasonable accommodation would not adversely impact coastal resources.

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.

Finding 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.

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 RRA by meeting the findings required above.

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

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)

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

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

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)

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:

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

Based on review of the project plans and associated reports by the 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.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

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.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

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

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on 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. It has been determined that the proposed project does not impact site stability or structural integrity.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

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.

ENVIRONMENTAL REVIEW: Pursuant to CEQA Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves. Nonetheless, the Planning Director analyzed the proposed project and found that this project is listed among the classes of projects that have been determined not to have a significant adverse effect on the environment. The proposed project is also categorically exempt from the provisions of CEQA pursuant to Sections 15301(a) - Existing Facilities and 15305 – Minor Alterations in Land Use Limitations. The Planning Director has further determined that none of the six exceptions to the use of a categorical exemption apply to this project (CEQA Guidelines Section 15300.2).

CORRESPONDENCE: As of the date of this report, four letters of correspondence (Attachment 7) in support of the project have been received

PUBLIC NOTICE: On May 27, 2021, staff published a Notice of Public Hearing in a newspaper of general circulation within the City of Malibu and mailed the notice to the property owners and occupants within 500 feet of the subject property (Attachment 9 – Public Hearing Notice). Staff also mailed property owners and occupants of the 10 closest lots as required for the reasonable accommodation.

SUMMARY: The required findings cannot be made that the proposed project complies with the LCP. Further, the Planning Department's findings of fact are supported by substantial evidence in the record. Based on the analysis contained in this report and the accompanying Planning Commission Resolution No. 21-51, staff recommends denial of this project.

ATTACHMENTS:

1. Planning Commission Resolution No. 21-51
2. Project Plans
3. California Coastal Commission Memorandum to Coastal Cities and Counties
4. Department Review Sheets
5. Applicant Request for Reasonable Accommodation and Exhibits
6. Site Photos
7. Public Correspondence
8. 500-foot Radius Map
9. Public Hearing Notice

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-51

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, DENYING A REQUEST FOR REASONABLE ACCOMMODATION NO. 21-004 PURSUANT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN 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 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 ZONING DISTRICT AT 6255 PASEO CANYON DRIVE (RIDDICK)

The Planning Commission 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.

SECTION 2. Environmental Review.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 3. Findings for Denial.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) including Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and denies RRA No. 21-001 and CDP 20-034 for the partial demolition of, and development of a new 469 square foot attached ADU and 157 square foot addition to, the existing primary residence in the single-family (SFL) zoning district located at 6255 Paseo Canyon Drive.

The proposed project has been determined to be inconsistent with all applicable requirements of the LCP, specifically LIP Sections 3.6(F), 3.6(H), and 3.6(I), in that the proposed accessory dwelling unit and addition to the primary residence will encroach into the rear and side yard setbacks, and exceed the maximum allowed total development square footage and (TDSF) and total impervious lot coverage (TILC) for the parcel. The required findings for denial of the RRA and CDP 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 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 for 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 environmental sensitive habitat area

(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 RRA would allow the limitations of the LCP 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 on applications for ADUs. It would create a process that favors those with the resources to pursue RRA 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 RRA by meeting the findings required above.

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

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)

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

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

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)

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 and 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 4. Planning Commission Action.

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

SECTION 5. The Planning Commission shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 7th day of June 2021.

JEFFREY JENNINGS, Planning Commission Chair

ATTEST:

KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-51 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 7th day of June 2021 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

KATHLEEN STECKO, Recording Secretary

GENERAL NOTES

1. THE CITY OF MALIBU ADOPTED THE 2019 CALIFORNIA BUILDING CODES, AS AMENDED BY THE COUNTY OF LOS ANGELES, AS AMENDED BY THE CITY OF MALIBU. REFER TO MALIBU MUNICIPAL CODE CHAPTER 15 FOR ANY MODIFICATIONS.
2. APPLICATIONS FOR WHICH NO PERMIT IS ISSUED WITHIN 180 DAYS FOLLOWING THE DATE OF APPLICATION SHALL AUTOMATICALLY EXPIRE.
3. EVERY PERMIT ISSUED SHALL BECOME INVALID UNLESS WORK AUTHORIZED IS COMMENCED WITHIN 180 DAYS AFTER ITS ISSUANCE OR IF THE WORK AUTHORIZED IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS. A SUCCESSFUL INSPECTION MUST BE OBTAINED WITHIN 180 DAYS.
4. DRAWINGS ARE NOT TO BE SCALED. WORK SHALL BE GOVERNED BY DIMENSION ONLY. DISCREPANCIES BETWEEN THE DRAWINGS AND/OR THE EXISTING SITE CONDITIONS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER AND ENGINEER IMMEDIATELY.
5. THE STRUCTURAL DESIGN AND DETAILS ARE IN CONFORMANCE WITH THE STRUCTURAL REQUIREMENTS OF THE CALIFORNIA BUILDING CODE.
6. SUBMITTAL DOCUMENTS FOR DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED TO THE ENGINEER OF RECORD WHO SHALL REVIEW THEM AND FORWARD THEM TO THE BUILDING OFFICIAL WITH A NOTATION INDICATING THAT THE DEFERRED SUBMITTAL DOCUMENTS HAVE BEEN REVIEWED AND THAT THEY HAVE BEEN FOUND TO BE IN GENERAL CONFORMANCE WITH THE DESIGN OF THE BUILDING. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE BUILDING OFFICIAL.
7. REINFORCING STEEL OR STRUCTURAL FRAMEWORK OF ANY PART OF THE BUILDING OR STRUCTURE SHALL NOT BE COVERED OR CONCEALED WITHOUT FIRST OBTAINING THE APPROVAL OF THE BUILDING OFFICIAL.
8. ALL RE-ROOFING SHALL COMPLY WITH THE REQUIREMENTS OF THE 2020 COUNTY OF LOS ANGELES BUILDING CODE, CHAPTERS 7A AND 15. ROOFS SHALL HAVE A ROOFING ASSEMBLY INSTALLED IN ACCORDANCE WITH ITS LISTING AND THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
PERMITS: ALL ROOFING INSTALLATIONS, EITHER AS A NEW ROOF OR RE-ROOF, WILL REQUIRE A BUILDING PERMIT ISSUED PRIOR TO THE COMMENCEMENT OF WORK. THE APPROPRIATE I.C.C., U.L., E.T.L., LISTING OR OTHER APPROVED TESTING LAB REPORT MUST BE SUBMITTED WITH EACH APPLICATION. INSPECTIONS: ALL RE-ROOFING INSTALLATIONS SHALL REQUIRE A MINIMUM OF 2 INSPECTIONS. NEW ROOF COVERING MATERIALS SHALL NOT BE APPLIED WITHOUT FIRST OBTAINING AN INSPECTION AND WRITTEN APPROVAL FROM THE CITY OF MALIBU. THE PRE-ROOFING INSPECTION WILL SURVEY THE ROOF AREA FOR EVIDENCE OF WATER ACCUMULATION, ROOF DRAINAGE, CONDITION OF FLASHINGS AND THE SOUNDNESS AND SERVICEABILITY OF THE STRUCTURAL SUBSTRATE OR THE EXISTING ROOFING MATERIALS. A FINAL INSPECTION AND APPROVAL SHALL BE OBTAINED FROM THE CITY OF MALIBU WHEN THE RE-ROOFING HAS BEEN COMPLETED. ACCESS TO THE ROOF MUST BE PROVIDED FOR ALL INSPECTIONS
MATERIALS: THE CITY OF MALIBU IS LOCATED IN A "VERY HIGH FIRE HAZARD SEVERITY ZONE", AS CLASSIFIED BY THE LOS ANGELES COUNTY FIRE DEPARTMENT. AS SUCH, ALL ROOFING MATERIAL MUST BE RATED CLASS A. NO EXCEPTIONS WILL BE ALLOWED.
9. ALL CONSTRUCTION OR WORK FOR WHICH A BUILDING PERMIT IS REQUIRED SHALL BE SUBJECT TO INSPECTION BY THE BUILDING OFFICIAL AND ALL SUCH CONSTRUCTION OR WORK SHALL REMAIN ACCESSIBLE AND EXPOSED FOR INSPECTION PURPOSES UNTIL APPROVED BY THE BUILDING OFFICIAL.
10. A SURVEY OF THE LOT MAY BE REQUIRED BY THE BUILDING OFFICIAL TO VERIFY COMPLIANCE OF THE STRUCTURE WITH APPROVED PLANS.



RIDDICK RESIDENCE

SITE DEVELOPMENT DATA

| | | | |
|-------------------|---------|----------|------|
| LOT(GROSS) | 14780 | (0.34AC) | |
| SLOPES > 1 : 1 | 0 | | |
| S.D. EASEMENT | (-3000) | | |
| LOT(NET) | 11780 | | |
| HOUSE | 2381 | 157 | 2538 |
| COVERED PORCH | 43 | 0 | 43 |
| GARAGE(ATTACHED) | 619 | 0 | 619 |
| ADU | (-55) | 469 | 414 |
| TOTAL DEVELOPMENT | | | 3614 |

EXISTING(SF) NEW NEW TOTAL(SF)

SHEET INDEX

- CS PROJECT INFORMATION COVER SHEET
A1 SITE PLAN / ROOF PLAN
A2 EXISTING FLOOR PLAN / DEMOLITION PLAN
A3 PROPOSED NEW FLOOR PLAN
A4 EXTERIOR ELEVATIONS
A5 EXTERIOR ELEVATIONS
A6 BUILDING CROSS-SECTIONS
A7 FOUNDATION PLAN
A8 ROOF FRAMING PLAN
A9 ELECTRICAL LIGHTING RCP
A10 SPECIFICATIONS SCHEDULES
A11 STRUCTURAL NOTES
A12 DETAILS
A13 DETAILS



PROJECT DATA

PROJECT: NEW ACCESSORY DWELLING UNIT

SITE ADDRESS : 6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

OWNER: ELIZABETH AND JASON RIDDICK
(310) 490 - 2777

LEGAL: LOT 44
TRACK NO. 26956
APN 4469-033-013

USE TYPE: SINGLE FAMILY RESIDENTIAL

ZONING: SFL

SPECIFIC PLAN: MALIBU WEST

CODES: 2019 California Building Code
2019 California Residential Code
2019 California Electrical Code
2019 California Mechanical Code
2019 California Plumbing Code
2019 California Fire Code
2019 California Energy Code
2019 Calgreen Code
2020 County of Los Angeles Building Code
2020 Existing Building Code

OCCUPANCY: R-3/U

CONSTRUCTION: TYPE VB

STORIES: ONE

FIRE SPRINKLERS: NO

| REVISIONS |
|--------------------|
| REVISION 1 2/19/19 |

CONSULTANTS

SCOTT CHRISTENSEN, P.E.
SCOTT CHRISTENSEN, P.E.
SANTA MONICA, CA 90401
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PLANS BY:
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JOHN C. BRALY, Assoc. AIA
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OWNER
ELIZABETH AND JASON RIDDICK
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

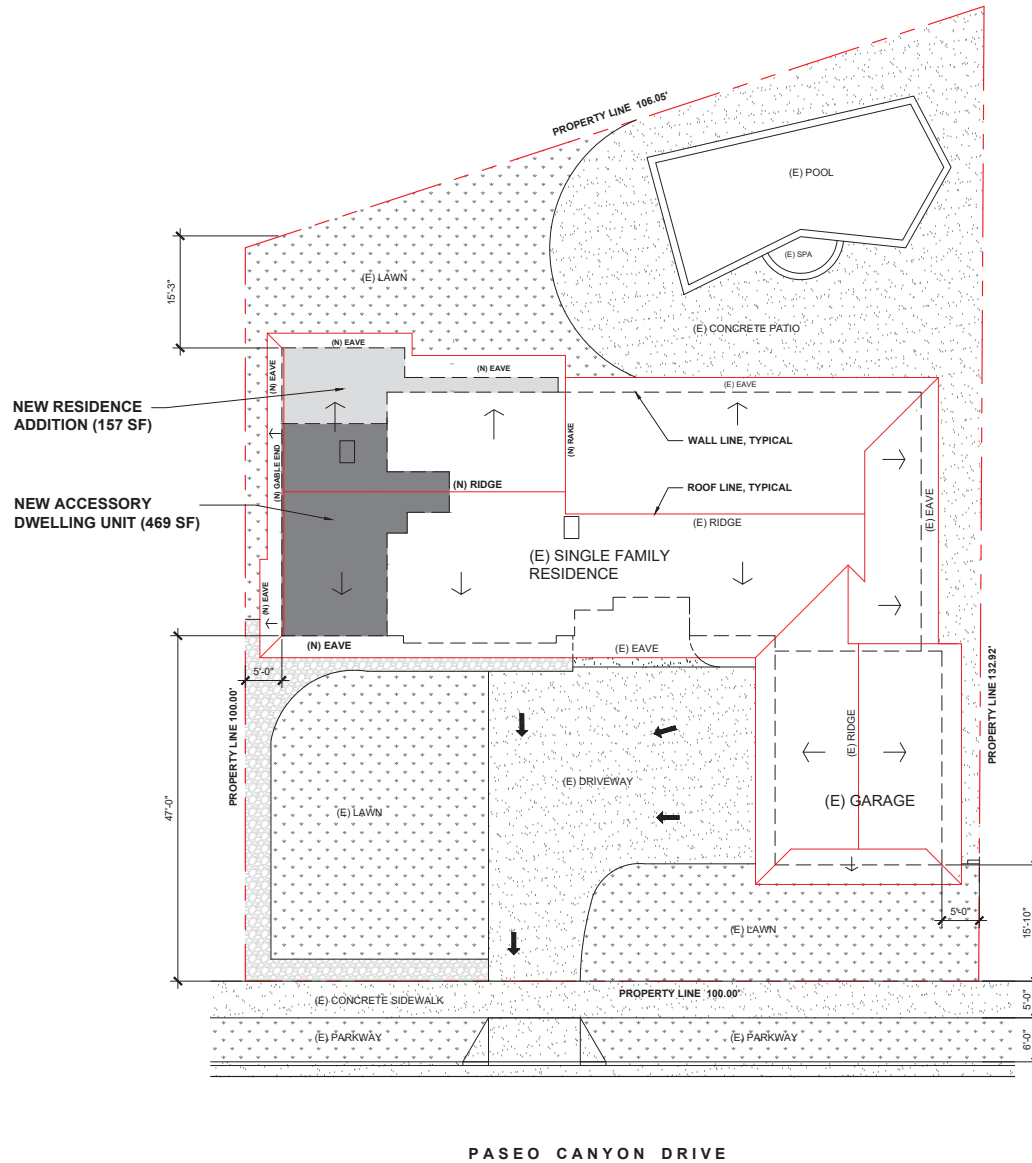
PROJECT
ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

6/7/20

COVER SHEET

Received
JUL 10 2020
Planning Dept.

| REVISIONS |
|--|
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SITE PLAN NOTES

1. NO NEW LANDSCAPING IS PROPOSED FOR THIS PROJECT.
2. PROVISIONS SHALL BE MADE FOR CONTRIBUTORY DRAINAGE AT ALL TIMES.
3. OWNER WILL MAINTAIN DRAINAGE DEVICES AND KEEP THEM FREE OF DEBRIS.
4. THE FINISHED SLAB OF THE BUILDING SHALL BE AT LEAST 8" ABOVE THE ADJACENT FINISHED GRADE.

LEGEND

- INDICATES ROOF SLOPE DIRECTION
- ➔ INDICATES DRAINAGE SLOPE DIRECTION
- +E.L. 000' SPOT ELEVATION HT.

SITE PLAN / ROOF PLAN
SCALE: 1/8" = 1'-0"



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(310) 395-7841

OWNER
ELIZABETH AND JASON RIDDICK
1000 PASO CANYON DRIVE
MALIBU, CA 90265

PROJECT
ACCESSORY DWELLING UNIT
1000 PASO CANYON DRIVE
MALIBU, CA 90265



EXISTING FLOOR PLAN / DEMOLITION PLAN
SCALE: 1/4" = 1'-0"

CONSULTANTS

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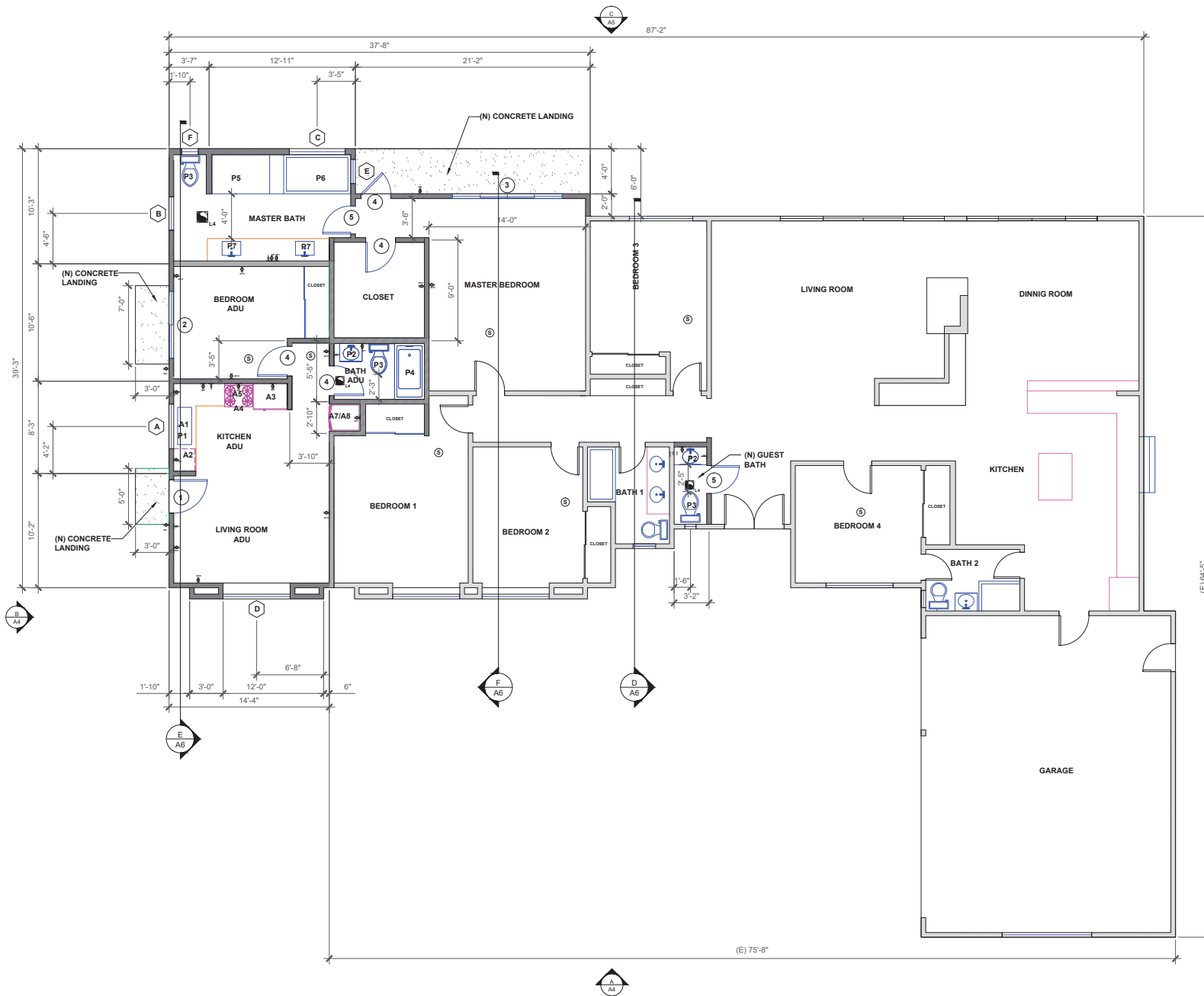
OWNER
ELIZABETH AND JASON RIDDICK
6255 PASEO CANYON DRIVE
MALIBU, CA 90265

PROJECT
ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA 90265

6/7/20

SHEET 2 OF 13

A2



LEGEND

- EXISTING WALLS
- NEW 2x4 WALLS
- NEW 1-HOUR FIRE RATED 2x4 WALLS
- DUPLEX RECEPTACLE
- GROUND FAULT INTERRUPTION
- WATERPROOF
- AND FAULT INTERRUPTION
- LIGHTSWITCH
- SMOKE / CARBON MONOXIDE ALARM
- 100 CFM VENT FAN/LIGHT COMBO w/ HUMIDITY CONTROL
- VENTED TO EXTERIOR w/ DAMPER
- NEW WINDOW, SEE SCHEDULE ON SHT. A10
- NEW DOOR, SEE SCHEDULE ON SHT. A10
- NEW FUTURE, SEE SCHEDULE ON SHT. A10
- NEW APPLIANCE, SEE SCHEDULE ON SHT. A10

PROPOSED NEW FLOOR PLAN
SCALE: 1/4" = 1'-0"



| REVISIONS |
|--------------------|
| 1.000 PROJECT |
| 2.000 SHEET 1 OF 1 |

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OWNER
ELIZABETH AND JASON RIDDICK
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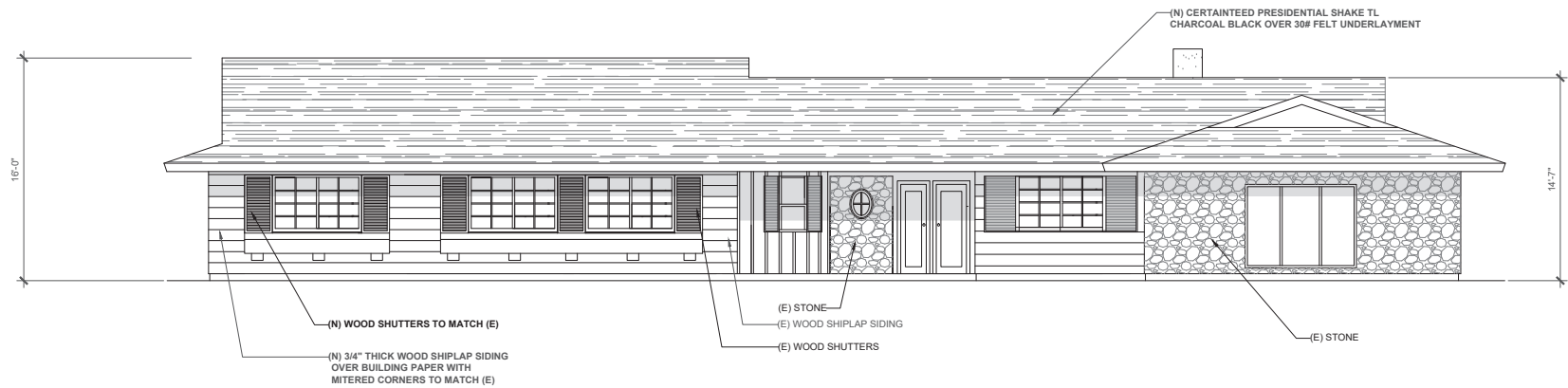
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ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA 90265

6/7/20

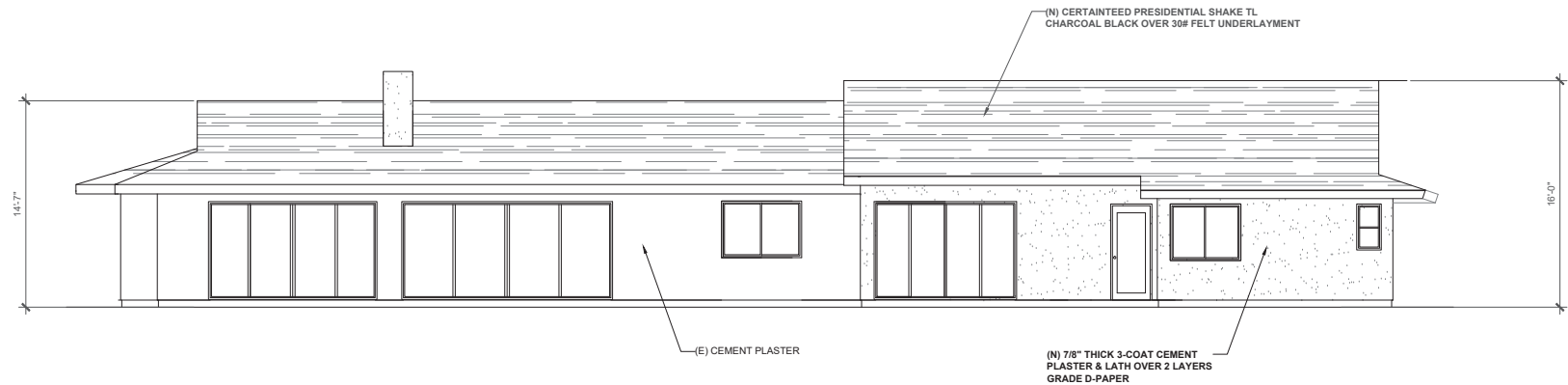
SHEET 3 OF 13

A3

| REVISIONS |
|---------------------------------------|
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A EAST (FRONT)



C WEST (REAR)

EXTERIOR FINSH SCHEDULE

| | MATERIAL | COLOR |
|---|---|-------------------------|
| 1 | EXTERIOR STUCCO | SW ALABASTER MATT |
| 2 | WINDOW TRIMS | SW HIGH GLOSS ALABASTER |
| 3 | FACIA-8" STANDARD | SW IRON ORE |
| 4 | SHUTTERS | SW HIGH GLOSS IRON ORE |
| 5 | DOOR TRIMS- STANDARD SQUARE BRICK MOLDING | SW HIGH GLOSS ALABASTER |
| 6 | HARDWARE TYPICAL | BRUSHED NICKEL |
| 7 | GUTTERS AND DOWN SPOUTS TYPICAL | SW IRON ORE |
| 8 | CERTAINTED PRESIDENTIAL SHAKE TL | CHARCOAL BLACK |

SW- SHERWIN WILLIAMS

EXTERIOR ELEVATIONS
SCALE: 1/4" = 1'-0"

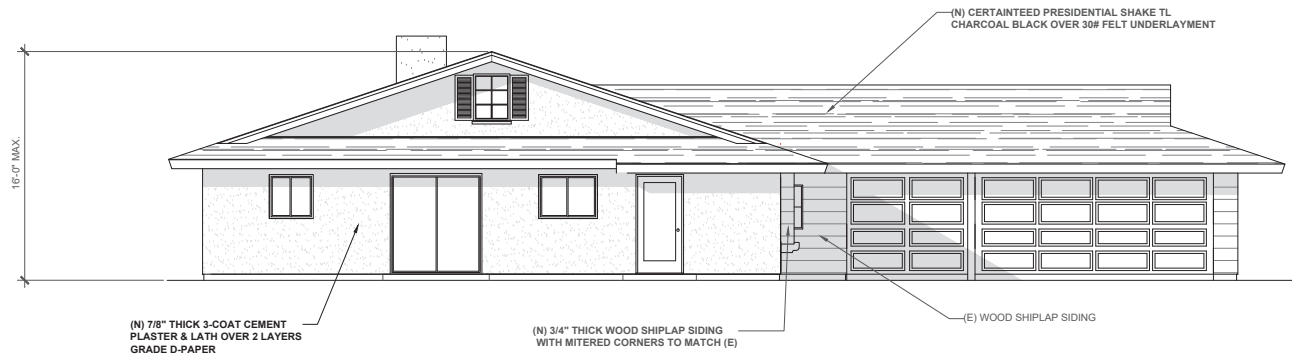
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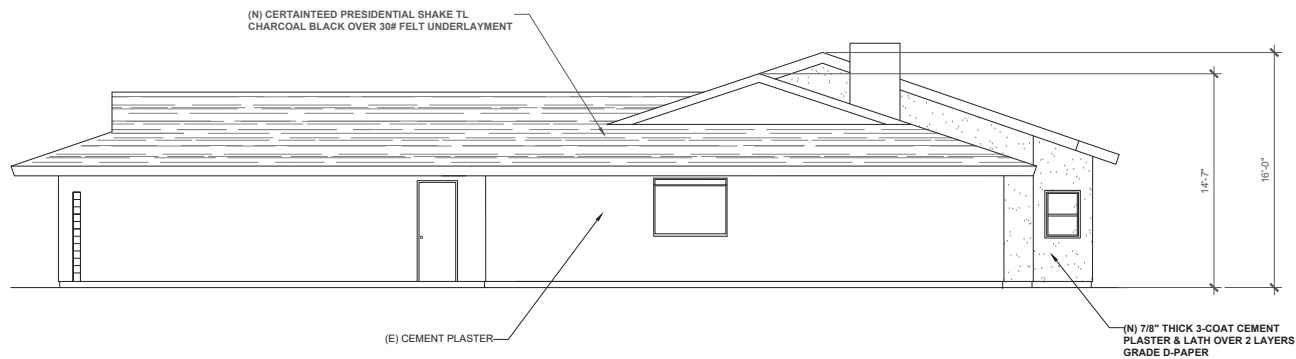
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OWNER
ELIZABETH AND JASON RIDDICK
6265 PASO CANYON DRIVE
MALIBU, CA 90265

PROJECT
ACCESSORY DWELLING UNIT
6265 PASO CANYON DRIVE
MALIBU, CA 90265



B SOUTH



D NORTH

EXTERIOR FINSH SCHEDULE

| | MATERIAL | COLOR |
|---|---|-------------------------|
| 1 | EXTERIOR STUCCO | SW ALABASTER MATT |
| 2 | WINDOW TRIMS | SW HIGH GLOSS ALABASTER |
| 3 | FACIA-8" STANDARD | SW IRON ORE |
| 4 | SHUTTERS | SW HIGH GLOSS IRON ORE |
| 5 | DOOR TRIMS- STANDARD SQUARE BRICK MOLDING | SW HIGH GLOSS ALABASTER |
| 6 | HARDWARE TYPICAL | BRUSHED NICKEL |
| 7 | GUTTERS AND DOWN SPOUTS TYPICAL | SW IRON ORE |
| 8 | CERTAINTED PRESIDENTIAL SHAKE TL | CHARCOAL BLACK |

SW- SHERWIN WILLIAMS

EXTERIOR ELEVATIONS
SCALE: 1/4" = 1'-0"

| REVISIONS |
|----------------------------------|
| 1. NO PERMIT REQUIRED 1. 2/19/13 |

CONSULTANTS

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OWNER

ELI BAKSHI AND JASON BIRDICK
1235 PACIFIC CANYON DRIVE
MALIBU, CA 90265

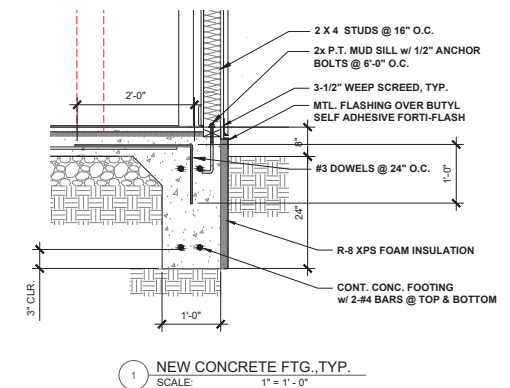
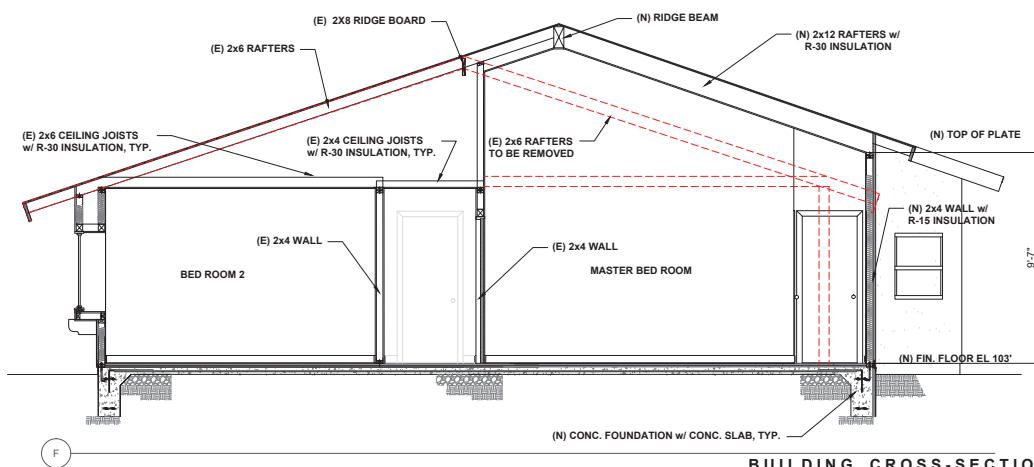
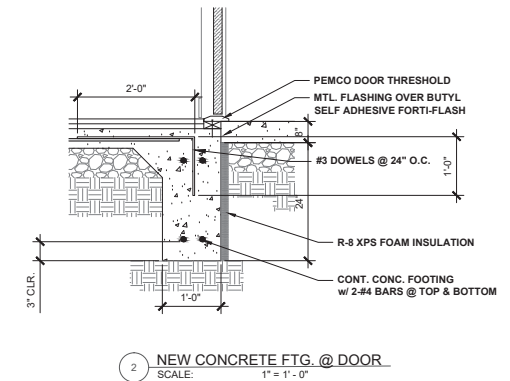
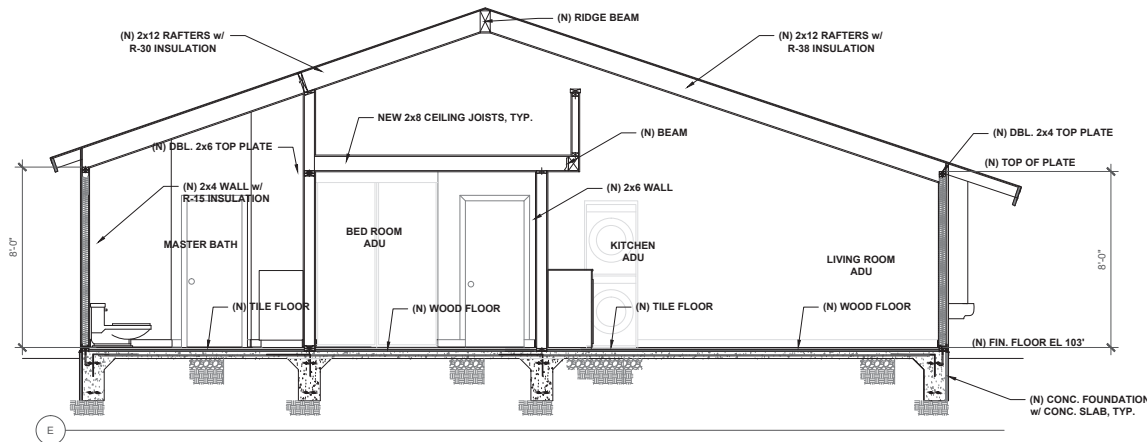
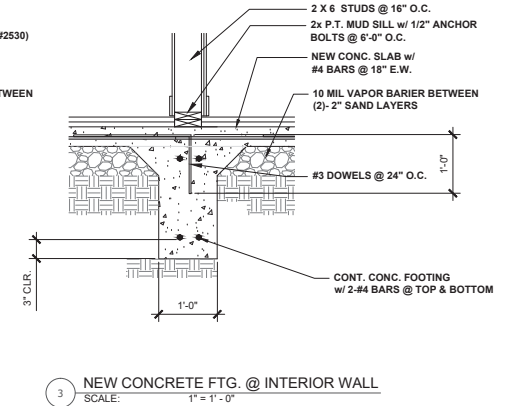
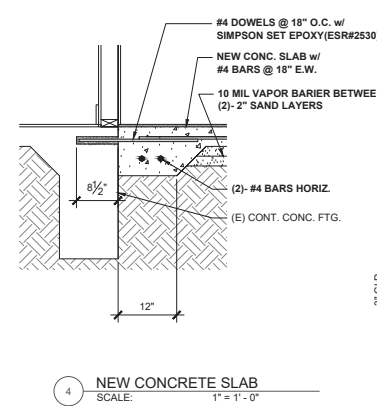
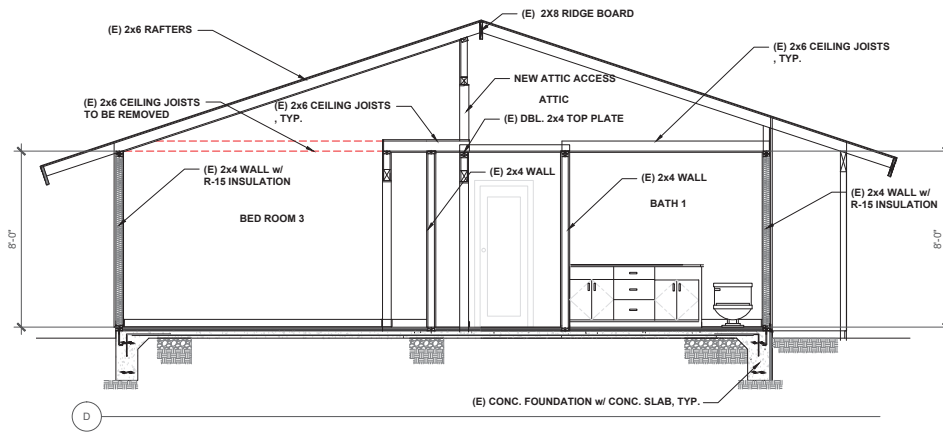
PROJECT

ACCESSORY DWELLING UNIT
1235 PACIFIC CANYON DRIVE
MALIBU, CA 90265

6/7/20

SHEET 5 OF 13

A5



BUILDING CROSS-SECTIONS
SCALE: 3/8" = 1'-0"

DETAILS

| REVISIONS |
|-------------------------|
| 1. REVISED PER COMMENTS |
| 2. REVISED PER COMMENTS |

CONSULTANTS

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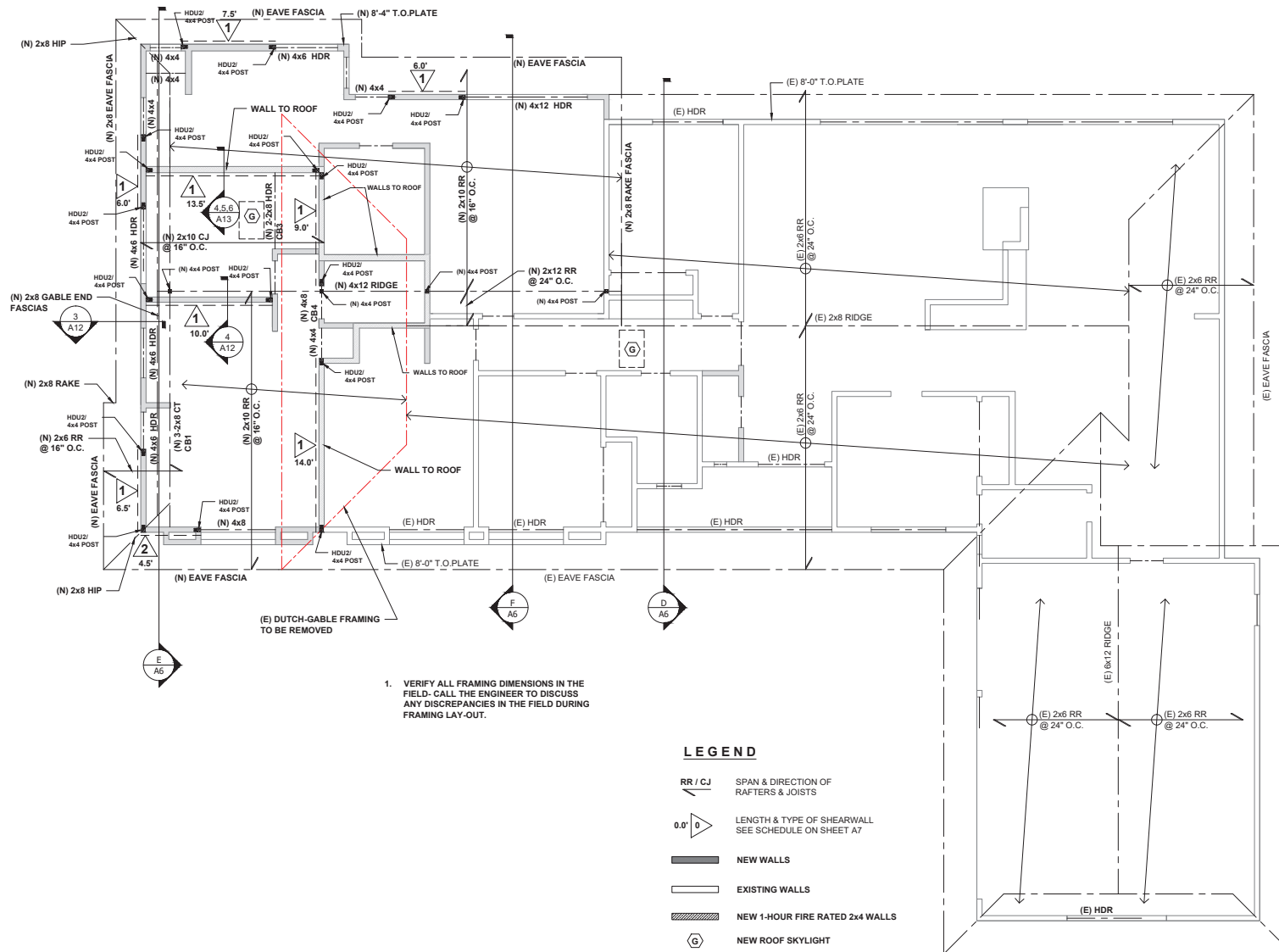
OWNER
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PROJECT
ACCESSORY DWELLING UNIT
1880 CENTURY PARK EAST
SANTA MONICA, CA 90401

6/7/20

SHEET 6 OF 13

A6



ROOF FRAMING PLAN
 SCALE: 1/4" = 1' - 0"



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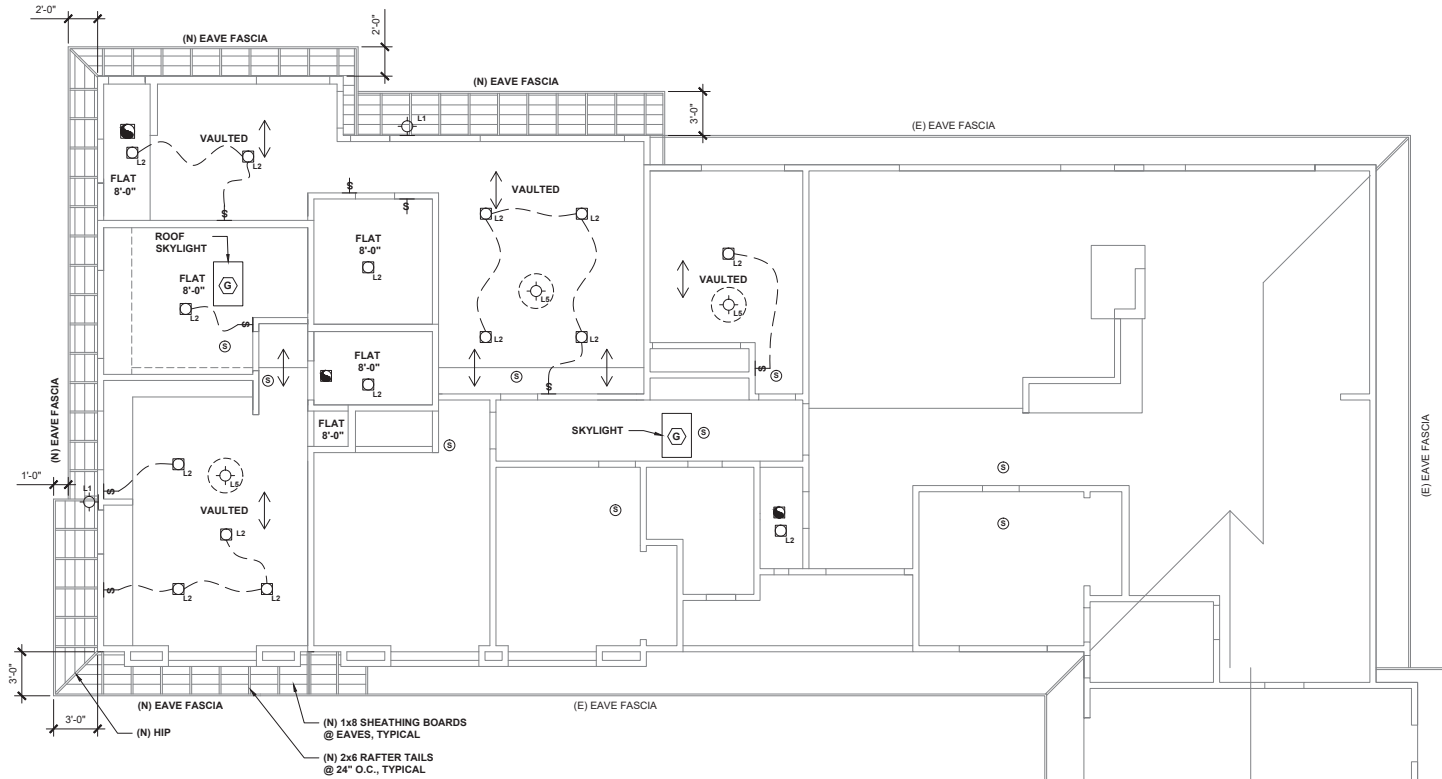
PROJECT

ACCESSORY DWELLING UNIT
 1000 AVENUE 101, SUITE 315
 MALIBU, CA 90265

6/7/20

SHEET 8 OF 13

A8



- LEGEND**
- LIGHTSWITCH
 - CEILING MOUNTED LIGHT
SEE SCHEDULE ON SHT. A10
 - WALL MOUNTED LIGHT
SEE SCHEDULE ON SHT. A10
 - CEILING SLOPE DIRECTION
 - ROOF/CLG. SKYLIGHT
 - CEILING FAN & LIGHT
(SEE SCHEDULE ON SHT. A8)

ELECTRICAL LIGHTING RCP
 SCALE: 1/4" = 1' - 0"



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PROJECT
 ACCESSORY DWELLING UNIT
 6255 PASEO CANYON DRIVE
 MALIBU, CA 90265

6/7/20

SHEET 9 OF 13

A9

STRUCTURAL NOTES:

1.) GENERAL:

- CONTRACTOR SHALL VERIFY ALL DIMENSIONS ON JOB SITE WITH COMPLETE SET OF THE LATEST DRAWINGS, AND DIMENSIONS SHALL BE CHECKED AND VERIFIED WITH THE ARCHITECTURAL DRAWINGS. ANY DISCREPANCIES IN DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING WORK, SO THAT THE PROPER REMEDIAL WORK MAY BE EXECUTED.
- UNLESS SPECIFICALLY DETAILED ON THESE DRAWINGS, CONTRACTOR SHALL FURNISH AND INSTALL ADEQUATE SHORING, BRACING, ETC., REQUIRED TO SAFELY EXECUTE ALL WORK AND SHALL BE FULLY RESPONSIBLE FOR THE SAME.
- DETAILS AND CONDITIONS NOT SPECIFICALLY SHOWN SHALL BE CONSTRUCTED IN ACCORDANCE WITH DETAILS SHOWN FOR SIMILAR CONDITIONS AND MATERIAL.

2.) SITE PREPARATIONS:

3.) CONCRETE:

- ALL CONCRETE SHALL BE OF NORMAL WEIGHT CONC WITH WEIGHT OF 145 PCF AND SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH (AT 28 DAYS) OF 2500 PSI. TYPICAL UNLESS NOTED OTHERWISE.
- MAXIMUM SIZE OF AGGREGATE SHOULD BE 1", 1-1/2" AGGREGATE MAY BE USED.
- PORTLAND CEMENT SHALL BE TYPE I OR II CONFORMING TO A.S.T.M. SPECIFICATION C-150.
- MINIMUM CLEAR SPACING BETWEEN REINFORCING BARS SHALL BE 1.5 TIMES THE BAR DIAMETER, OR 1.5", OR 1-1/3 TIMES THE MAXIMUM AGGREGATE SIZE, WHICHEVER IS GREATER.
- MAXIMUM SLUMP NOT TO EXCEED 5 INCH.

4.) REINFORCING STEEL:

- SHALL BE DEFORMED BARS CONFORMING TO A.S.T.M. A615 REINFORCING STEEL. GRADE 40 - #4 AND SMALLER GRADE 60 - #5 AND GREATER.
- PLACING OF REINFORCING STEEL SHALL BE IN ACCORDANCE WITH CBC 2016.
- ALL BARS SHALL BE BENT COLD. NO BARS PARTIALLY EMBEDDED IN CONCRETE SHALL BE FIELD BENT EXCEPT AS SPECIFICALLY APPROVED BY THE ENGINEER.
- PROVIDE SPACE BARS, SPREADERS, CHAIRS, BLOCKS, ETC., AS REQUIRED TO SECURELY HOLD STEEL IN PLACE AGAINST DISPLACEMENTS WITHIN THE TOLERANCES PERMITTED.

5.) WELDING:

- ALL WELDING SHALL BE DONE IN AN APPROVED FABRICATING SHOP BY A LICENSED FABRICATOR, FIELD WELDING SHALL BE PERFORMED BY A CITY APPROVED LICENSED WELDER. ALL FIELD WELDING SHALL BE CONTINUOUS INSPECTION BY AN APPROVED DEPUTY INSPECTOR.
- WELDING SHALL BE DONE BY ELECTRIC SHIELDED ARC PROCESS USING E-70XX ELECTRODES. ALL WELDS SHALL BE UNIFORM IN SIZE AND APPEARANCE, AND FREE OF PINHOLES, POROSITY, UNDERCUTTING OR OTHER DEFECTS.
- ALL BUTT WELDS SHALL BE FULL PENETRATION. ALL FULL PENETRATION WELDS IN SHOP SHALL BE ULTRASONICALLY TESTED AND APPROVED.

6.) LUMBER:

- ALL LUMBER SHALL CONFORM TO THE W.C.L.I.B. STANDARD GRADING RULE OF THE CALIFORNIA BUILDING CODE.
- ALL STRUCTURAL FRAMING MEMBERS SHALL BE DOUGLAS FIR GRADED AND GRADE STAMPED IN ACCORDANCE WITH STANDARD GRADING RULE NO. 16 F THE W.C.L.I.B.
- LUMBER SHALL BE OF THE FOLLOWING GRADE EXCEPT AS NOTED ON PLAN.
 - STUD, BLOCKING, PLATES: DF-L NO. 2
 - BEAM, JOIST, RAFTER: DF-L NO. 1
- PLYWOOD SHALL BE DOUGLAS FIR SHEATHING CONFORMING TO PS 1-83 UNITED STATES DEPARTMENT OF COMMERCE AND SHALL BE GRADE STAMPED "D.F.P.A." EXTERIOR GLUE OR O.S.B.

7.) SIMPSON CONNECTORS:

- ALL CONNECTORS SHALL BE INSTALLED UNDER MANUFACTURER'S STRICT GUIDELINES AND CONFORMING TO ICC-ES ESR-8.
- SEE MANUFACTURER SPECIFICATION FOR INSTALLATION INSTRUCTION.
- UNLESS OTHERWISE NOTED ON PLANS, ALL CONNECTORS' NAIL SIZE SHALL USE THE SAME SIZE SPECIFIED BY MANUFACTURER SPECIFICATION.
- HOLD-DOWNS SHALL BE RE-TIGHTENED JUST PRIOR TO COVERING THE WALL FRAMING.

8.) NAILS:

- ALL NAILS SHALL BE COMMON NAILS.

9.) COVERT CIA ADHESIVE ANCHORAGE SYSTEM:

- ALL INJECTION ADHESIVE ANCHOR SYSTEM SHALL USE COVERT CIA ADHESIVE ANCHOR SYSTEM WITH ASTM A308 THREADED BOLT INTO PRE-DRILLED HOLE. FILL WITH EPOXY.
- SPECIAL INSPECTION SHALL BE PROVIDED FOR ANCHOR INSTALLATION.
- ALL ANCHORING SYSTEM SHALL BE INSTALLED PER MANUFACTURER'S INSTRUCTION AND CONFORMING TO ICC-ESR-2508.

10.) FOUNDATION NOTES:

- ALLOWABLE SOIL BEARING : 1500 PSF.
- PRIOR TO THE POURING OF CONCRETE, STRUCTURAL OBSERVATION ARE REQUIRED BY STRUCTURAL ENGINEER OF RECORD.
- SATURATE THE SOIL TO A DEPTH OF 18" PRIOR TO CASTING OF CONCRETE.
- ALL HOLD-DOWN HARDWARE IS TO BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.

ADDITIONAL NOTES 1:

- CONTRACTORS RESPONSIBLE FOR THE CONSTRUCTION OF A WIND OR SEISMIC FORCE RESISTING SYSTEM/COMPONENT LISTED IN THE "STATEMENT OF SPECIAL INSPECTION" SHALL SUBMIT A WRITTEN STATEMENT OF RESPONSIBILITY TO THE INSPECTORS AND THE OWNER PRIOR TO THE COMMENCEMENT OF WORK ON SUCH SYSTEM OR COMPONENT PER SEC 1709.1.
- CONTINUOUS SPECIAL INSPECTION BY A REGISTERED DEPUTY INSPECTOR IS REQUIRED FOR FIELD WELDING, CONCRETE STRENGTH $f_c > 2500$ PSI, HIGH STRENGTH BOLTING, SPRAYED-ON FIREPROOFING, ENGINEERED MASONRY, HIGH-LIFT GROUTING, PRE-STRESSED CONCRETE, HIGH LOAD DIAPHRAGMS AND SPECIAL MOMENT-RESISTING CONCRETE FRAMES. (1704 & CHAPTERS 19, 21, AND 22)
- FOUNDATION SILLS SHALL BE NATURALLY DURABLE OR PRESERVATIVE-TREATED WOOD. (2304.11.2.4)
- FIELD WELDING TO BE DONE BY WELDERS CERTIFIED BY THE FOR (STRUCTURAL STEEL)(REINFORCING STEEL)(LIGHT GAUGE STEEL)CONTINUOUS INSPECTION BY A DEPUTY INSPECTOR IS REQUIRED.
- SHOP WELDS MUST BE PERFORMED IN A LICENSED FABRICATOR'S SHOP.
- LICENSED FABRICATOR IS REQUIRED FOR (TRUSSES), (STRUCTURAL STEEL)
- GLUED-LAMINATED TIMBERS MUST BE FABRICATED IN A LICENSED SHOP. IDENTIFY GRADE SYMBOL AND LAMINATION SPECIES PER 2012 NDS SUPPLEMENT TABLE 5-A.
- PROVIDE LEAD HOLE 40% - 70% OF THREADED SHANK DIAMETER AND FULL DIAMETER FOR SMOOTH SHANK PORTION.
- PERIODIC SPECIAL INSPECTION IS REQUIRED FOR WOOD SHEAR WALLS, SHEAR PANELS, AND DIAPHRAGMS, INCLUDING NAILING, BOLTING, ANCHORING, AND OTHER FASTENING TO COMPONENTS OF THE SEISMIC FORCE RESISTING SYSTEM. SPECIAL INSPECTION BY A DEPUTY INSPECTOR IS REQUIRED WHERE THE FASTENER SPACING OF THE SHEATHING IS 4 INCHES ON CENTER OR LESS. (1707.3)
- A COPY OF THE LOS ANGELES RESEARCH REPORT AND/OR CONDITIONS OF LISTING SHALL BE MADE AVAILABLE AT THE JOB SITE.
- IF ADVERSE SOIL CONDITIONS ARE ENCOUNTERED, A SOILS INVESTIGATION REPORT MAY BE REQUIRED.

ADDITIONAL NOTES 2:

- HOLD-DOWN CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE APPROVED PLATE WASHERS; AND HOLD-DOWNS SHALL BE FINGER TIGHT AND 1/4 WRENCH TURN JUST PRIOR TO COVERING THE WALL FRAMING. CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE STEEL PLATE WASHERS ON THE POST ON THE OPPOSITE SIDE OF THE ANCHORAGE DEVICE. PLATE SIZE SHALL BE A MINIMUM OF 0.299 INCH BY 3 INCHES BY 3 INCHES(2305.5)
- ROOF DIAPHRAGM NAILING TO BE INSPECTED BEFORE COVERING. FACE GRAIN OF PLYWOOD SHALL BE PERPENDICULAR TO SUPPORTS. FLOOR SHALL HAVE TONGUE AND GROOVE OR BLOCKED PANEL EDGES. PLYWOOD SPANS SHALL CONFORM WITH TABLE 2304.7.
- ALL DIAPHRAGM AND SHEAR WALL NAILING SHALL UTILIZE COMMON NAILS OR GALVANIZED BOX.
- ALL BOLT HOLES SHALL BE DRILLED 1/32" TO 1/16" OVERSIZED. (11.1.2.2, 2012 NDS)
- HOLD-DOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION

ADDITIONAL FOUNDATION NOTES

- SOIL REPORT : A SOILS REPORT HAS BEEN PREPARED FOR THIS PROJECT BY GEOLABS-WESTLAKE VILLAGE DATED MARCH, 17 2020 AND IS MADE PART OF THE PLANS.
- ALLOWABLE SOIL PRESSURE.
 - 1500 PSF CONTINUOUS FOOTING.
 - 1500 PSF PADS.
- ALL BACK FILL SHALL BE COMPACTED TO A MINIMUM OF 90% OF MAXIMUM RELATIVE DENSITY.
- ALL FOOTINGS EXCAVATIONS SHALL BE INSPECTED AND APPROVED BY THE INSPECTOR PRIOR TO PLACING STEEL. IF THERE IS SOIL REPORT, SOIL ENGINEER SHALL ALSO VERIFY THE FOOTINGS.
- PROVIDE RAIN GUTTERS AND CONVEY RAIN WATER TO THE STREET.
- IF ADVERSE SOIL CONDITION ARE ENCOUNTERED, A SOIL INVESTIGATION REPORT IS REQUIRED.
- CONCRETE STRENGTH FOR FOUNDATION SHALL BE 2500 psi MINIMUM.
- MINIMUM FOOTING REINF. SHALL BE TWO #4 BAR-TOP & TWO #4 BAR-BOTTOM UNLESS NOTED OTHERWISE.
- MINIMUM ANCHOR BOLT SIZE AND SPACING SHALL BE $\frac{3}{4}$ " A.B. @ 48" O.C., WITH 7" EMBEDMENT, AND 3"x3"x $\frac{1}{4}$ " PLATE WASHERS. ANCHOR BOLTS SHALL BE LOCATED A MAXIMUM OF 12" AND 7" MINIMUM FROM THE END OF THE PLATE.

SHEAR WALL SCHEDULE:

| SYMBOL | SHEATHING | EDGE NAILING (FIELD=12" O.C.) | UPPER FLOOR SILL PL. NAILING | BLOCKING TO DOUBLE PL. | SILL PLATE ANCHOR BOLTS | CAPACITY | COMMENT |
|--------|------------|----------------------------------|--------------------------------------|---------------------------|---------------------------------|----------|----------------------------------|
| | 15/32 STR1 | 10d @ 6" O.C. | 16d @ 4" O.C. | SIMPSON A35 @ 24" O.C. | $\frac{3}{4}$ " DIA. @ 32" O.C. | 340 PLF | 2X SILL PLATE |
| | 15/32 STR1 | 10d @ 3" O.C. | $\frac{3}{4}$ " LAG SCREW @ 12" O.C. | SIMPSON A35 @ 12" O.C. | $\frac{3}{4}$ " DIA. @ 24" O.C. | 665 PLF | 3X SILL PLATE 2-2X SILL PLATE |

* $\frac{1}{4}$ " EDGE DISTANCE FROM THE PANEL EDGES AND $\frac{3}{4}$ " FROM THE EDGE OF CONNECTING MEMBERS.
ALL WOOD STRUCTURAL PANEL JOINT AND SILL PLATE NAILING SHALL BE STAGGERED AT ALL PANEL EDGES.

SHEAR WALL REQUIREMENTS:

SEE TYPICAL DETAILS ON SHEET A13

DESIGN LOADS & FACTORS:

- Floor Dead Load = 20 psf
Floor Live Load = 40 psf
 - Roof Dead Load = 15 psf
Roof Live Load = 20 psf
- C.Wind Design Data:
- Basic Wind Speed = 110 M.P.H. (LRFD)
- Occupancy Category = II Wind Importance factor = 1.0
 - Wind Exposure = B
- D.Seismic design data:
- Occupancy Category= II
Seismic Importance factor = 1.0
 - S_s = 2.755 g
 S_1 = 1.003 g
 - Site Class=D
 - SDS =1.837 g
 $SD1$ =1.003 g
 - Seismic Design Category = D
 - Basic Seismic Force Resisting System: Bearing Wall System,
Light-framed walls sheathed w/wood structural panels rated for shear resistance.
 - C_s =0.283
 - R = 6.5
 - Analysis Procedure Used: Equivalent Lateral Force
 - Redundancy factor =1.3

CODE : 2019 LABC

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PROJECT

ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

6/7/20

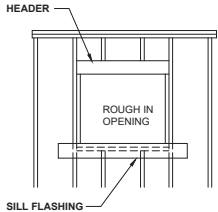
SHEET 11 OF 13

STRUCTURAL NOTES

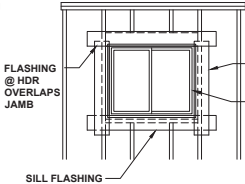
A11

FLASHING OF EXTERIOR WALL OPENINGS

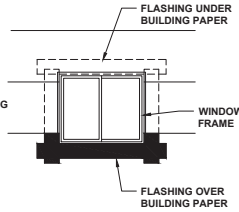
INDIVIDUALLY FLASH ALL EXTERIOR OPENINGS FOR FIXTURES SUCH AS WINDOWS, DOORS AND VENTS TO MAKE THEM WATERPROOF. FLASHING MATERIAL SHALL PROVIDE A FOUR HOUR MINIMUM PROTECTION FROM WATER PENETRATION WHEN TESTED IN ACCORDANCE WITH ASTM D-779. SEALANT SHALL BE PLACED OVER SOLID BACKING. FLASHING MATERIAL AT LEAST 9" WIDE SHALL BE APPLIED IN A WEATHERBOARD FASHION, BEGINNING WITH THE SILL USING A STRIP LONG ENOUGH TO PROTECT BEYOND THE JAMB FLASHING TO BE APPLIED. THE TWO JAMB FLASHING'S ARE THEN APPLIED WITH SUFFICIENT LENGTH TO EXTEND BEYOND THE SILL FLASHING, AND WITH THE SAME DISTANCE AT THE TOP. FOR NAIL-ON FLANGES, INSTALL BY PRESSING FLANGE POSITIVELY INTO A CONTINUOUS BEAD OF SEALANT WHICH EXTENDS AROUND THE BOTTOM AND SIDES OF THE FIXTURE. APPLY THE TOP HORIZONTAL FLASHING LAST WITH SUFFICIENT LENGTH TO EXTEND BEYOND THE JAMB FLASHING'S, OVERLAP AND SEAL AGAINST THE TOP NAILING FLANGE WITH A CONTINUOUS BEAD OF SEALANT. APPLY REMAINING BUILDING PAPER IN A WEATHERBOARD FASHION WITH THE SILL FLASHING LAPPING OVER THE TOP AND THE HEAD AND JAMB FLASHING'S BELOW.



STEP 1

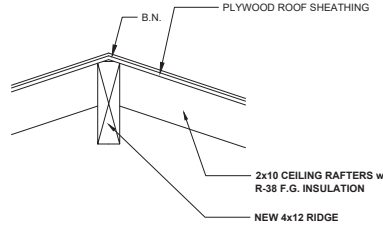


STEP 2

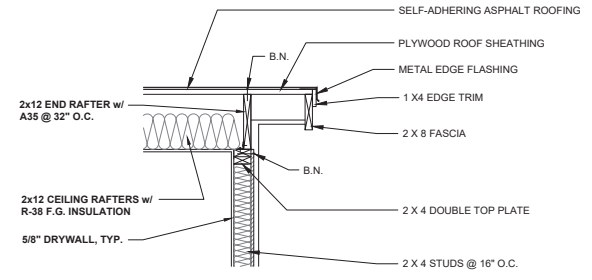


STEP 3

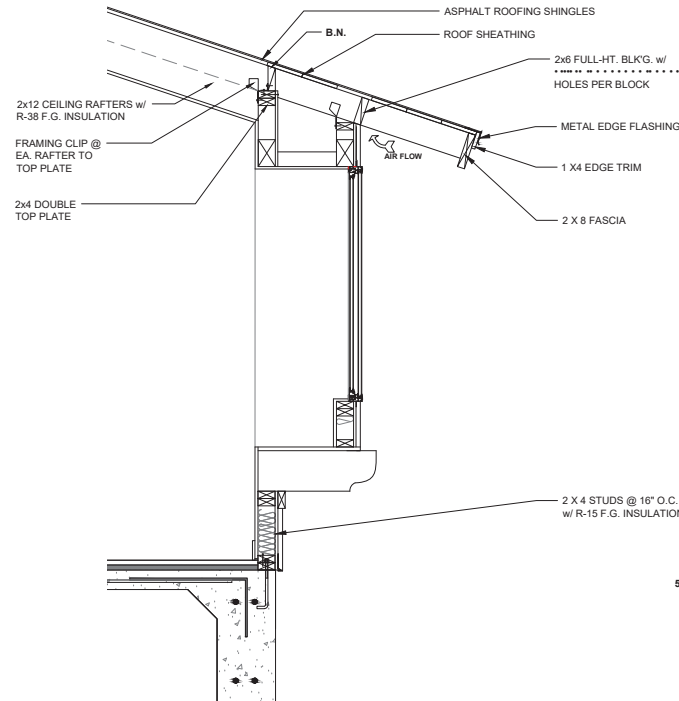
TYP OPENINGS IN EXTERIOR WALLS
SCALE: 1/2" = 1' - 0"



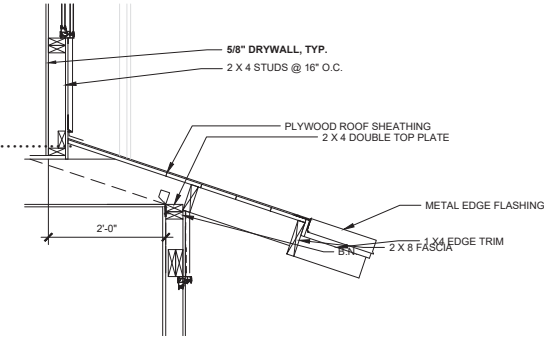
5 SHEAR TRANSFER @ RIDGE
SCALE: 1" = 1' - 0"



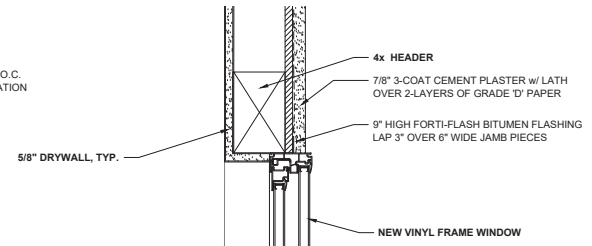
1 SHEAR TRANSFER @ RAKE
SCALE: 1" = 1' - 0"



4 SHEAR TRANSFER @ EAVE
SCALE: 1" = 1' - 0"



2 SHEAR TRANSFER @ EAVE
SCALE: 1" = 1' - 0"



3 WINDOW HEAD (JAMB & SILL SIM.)
SCALE: 1" = 1' - 0"

DETAILS

| REVISIONS |
|-------------------------|
| 1. SUBMITTAL 1. 2/18/18 |

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6/7/20

SHEET 12 OF 13

A12

CALIFORNIA COASTAL COMMISSION

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

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 Legislation¹

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 local 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

¹ 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).)



City of Malibu

23825 Stuart Ranch Road • Malibu, California 90265-4861
(310) 456-2489 • Fax (310) 456-3356 • www.malibucity.org

GEOTECHNICAL REVIEW SHEET

| <u>Project Information</u> | |
|----------------------------|---|
| Date: | September 9, 2020 |
| Site Address: | 6255 Paseo Canyon Drive |
| Lot/Tract/PM #: | Lot 4/Tract 26955 |
| Applicant/Contact: | Elizabeth Reddick, elizabethreddick@hotmail.com |
| Contact Phone #: | 310-490-2777 |
| Project Type: | Remodel, additions to a single-family residence |
| Review Log #: | 4645 |
| Planning #: | CDP 20-034 |
| BPC/GPC #: | |
| Planner: | David Eng |

| <u>Submittal Information</u> | |
|--|--|
| Consultant(s)/Report | Geolabs-Westlake Village (Stark, GE 2772; Schmerling, CEG 1047): |
| Date(s): (Current submittal(s) in Bold .) | 8-24-2020 , 3-17-2020 |
| | Architectural Plans prepared by John C. Braly Associates, AIA dated June 7, 2020. |
| Previous Reviews: | 8-11-2020 |

| <u>Review Findings</u> | |
|---|--|
| <u>Coastal Development Permit Review</u> | |
| <input checked="" type="checkbox"/> | The residential development project is APPROVED from a geotechnical perspective, with the following comments to be addressed prior to building plan check stage approval. |
| <input type="checkbox"/> | The residential development project is NOT APPROVED from a geotechnical perspective. The listed 'Review Comments' shall be addressed prior to approval. |
| <u>Building Plan-Check Stage Review</u> | |
| <input checked="" type="checkbox"/> | <u>Awaiting Building plan check submittal.</u> Please respond to the listed 'Building Plan-Check Stage Review Comments' AND review and incorporate the attached 'Geotechnical Notes for Building Plan Check' into the plans. |
| <input type="checkbox"/> | APPROVED from a geotechnical perspective. Please review the attached 'Geotechnical Notes for Building Plan Check' and incorporate into Building Plan-Check submittals. |
| <input type="checkbox"/> | NOT APPROVED from a geotechnical perspective. The listed 'Building Plan-Check Stage Review Comments' shall be addressed prior to Building Plan-Check Stage approval. |

Remarks

The referenced geotechnical report and Architectural plans were reviewed by the City from a geotechnical perspective. Based on the submitted information, the project comprises the remodel and 157 square foot addition to the existing 3,043 square foot one-story single-family residence and the addition of an attached 469 square foot Accessory Dwelling Unit (ADU). No grading or landscaping is proposed. The residence is serviced by the Trancas Wastewater Treatment Plant.

Building Plan-Check Stage Review Comments:

1. Please submit a fee of \$1,016.00 to City geotechnical staff for final building plan check review.
2. The site lies with a California state-designated Liquefaction Hazard Zone. Thus, the homeowners shall sign and record at the City of Malibu an “*Assumption of Risk and Release*” for liquefaction hazards prior to permit issue.
3. Include the following note on all the Foundation Plans: “*All foundation excavations must be observed and approved by the Project Geotechnical Engineer prior to placement of reinforcing steel.*” Indicate the bearing material for the proposed foundations on the plans.
4. Section 7.4 of the City’s geotechnical guidelines requires a minimum thickness of 10 mils for vapor barriers beneath slabs-on-grade. Building plans shall reflect this requirement.
5. **HARD COPY PLANS:** Three sets of final residence addition and ADU plans (**APPROVED BY BUILDING AND SAFETY**) incorporating the Project Geotechnical Consultant’s recommendations and items in this review sheet must be **reviewed and wet stamped and manually signed by the Project Engineering Geologist and Project Geotechnical Engineer**. City geotechnical staff will review the plans for conformance with the Project Geotechnical Consultants’ recommendations and items in this review sheet over the counter at City Hall. **Appointments for final review and approval of the plans may be made by calling or emailing City Geotechnical staff.**
6. **ELECTRONIC PLANS:** If final foundation and civil plans are digitally signed and stamped by the Project Geotechnical Consultant, as allowed under Board of Registration For Professional Engineers and Land Surveyors (2020 PE & PLS Board Rules (16 CCR §§400-476), the Plan Review Letter must contain the following:
 - Project description – Address, scope, including structures being permitted (e.g. pool, guest house etc.).
 - Plan set information - The date and preparer of the plan set reviewed; this must match the plan set that was submitted to the city for final approval.
 - Report references -All applicable geotechnical or coastal engineering reports need to be referenced.
 - Approval of specific plan sheets reviewed – List all plan sheets approved, e.g. civil (grading and drainage) as well as structural.
 - Licensed Professional signature and stamp - The letter must be signed and stamped by all licensed professionals who signed the reports.

Please direct questions regarding this review sheet to City Geotechnical staff listed below.

Engineering Geology Review by:



Christopher Dean, C.E.G. #1751, Exp. 9-30-20
Engineering Geology Reviewer (310-456-2489, x306)
Email: cdean@malibucity.org

9/9/2020

Date

Geotechnical Engineering Review by:



Ali Abdel-Haq, G.E. #2308, Exp. 12-31-21
Geotechnical Engineering Reviewer (805-496-1222)
Email: ali@geodynamics-inc.com

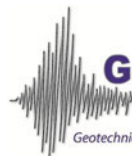
9/9/2020

Date

This review sheet was prepared by representatives of Cotton, Shires and Associates, Inc. and GeoDynamics, Inc., contracted through Cotton, Shires and Associates, Inc., as an agent of the City of Malibu.



COTTON, SHIRES AND ASSOCIATES, INC.
CONSULTING ENGINEERS AND GEOLOGISTS



GeoDynamics, Inc.

Applied Earth Sciences
Geotechnical Engineering & Engineering Geology Consultants



City of Malibu

– GEOTECHNICAL –

NOTES FOR BUILDING PLAN-CHECK

The following standard items should be incorporated into Building Plan-Check submittals, as appropriate:

1. One set of residence addition and ADU plans, incorporating the Geotechnical Consultant's recommendations and items in this review sheet, must be submitted to City geotechnical staff for review. **Additional review comments may be raised at that time that may require a response.**
2. Show the name, address, and phone number of the Project Geotechnical Consultant(s) on the cover sheet of the plans.
3. Please contact the Building and Safety Department regarding the submittal requirements for a grading and drainage plan review.
4. A comprehensive Site Drainage Plan, incorporating the Project Geotechnical Consultant's recommendations, shall be included in the Plans. Show all area drains, outlets, and non-erosive drainage devices on the Plans. Water shall not be allowed to flow uncontrolled over descending slopes.

Grading Plans (as Applicable)

1. Grading Plans shall clearly depict the limits and depths of overexcavation, as applicable.

Retaining Walls (As Applicable)

1. Show retaining wall backdrain and backfill design, as recommended by the Project Geotechnical Consultant, on the Plans.
2. Retaining walls separate from a residence require separate permits. Contact the Building and Safety Department for permit information. One set of retaining wall plans shall be submitted to the City for review by City geotechnical staff. Additional concerns may be raised at that time which may require a response by the Project Geotechnical Consultant and applicant.



City of Malibu

23825 Stuart Ranch Rd., Malibu, California CA 90265-4861
(310) 456-2489 FAX (310) 456-7650

PUBLIC WORKS REVIEW REFERRAL SHEET

TO: Public Works Department

FROM: City of Malibu Planning Department

DATE: 7/10/2020

PROJECT NUMBER: CDP 20-034

JOB ADDRESS: 6255 PASEO CANYON DR

APPLICANT / CONTACT: Elizabeth and Jason Riddick

APPLICANT ADDRESS: 6255 Paseo Canyon Drive
Malibu, CA 90265

APPLICANT PHONE #: (310)490-2777

APPLICANT FAX #:

APPLICANT EMAIL: elizabethriddick@hotmail.com

PROJECT DESCRIPTION: New ADU; remodel/minor addition to existing SFR

TO: Malibu Planning Department and/or Applicant

FROM: Public Works Department

_____ The following items described on the attached memorandum shall be addressed and resubmitted.

X_____ The project was reviewed and found to be in conformance with the City's Public Works and LCP policies and CAN proceed through the Planning process.

Chris Young

Digitally signed by Chris Young
DN: cn=Chris Young,
o=City of Malibu,
email=chris.young@cityofmalibu.com,
c=US
Date: 2020.09.24 09:50:05-07'00'

SIGNATURE

9/24/2020

DATE



City of Malibu

MEMORANDUM

To: Planning Department

From: Public Works Department
Chris Young PE., Assistant Civil Engineer

Date: 9/24/2020

Re: Proposed Conditions of Approval for 6255 Paseo Canyon Drive CDP 20-034

The Public Works Department has reviewed the plans submitted for the above referenced project. Based on this review sufficient information has been submitted to confirm that conformance with the Malibu Local Coastal Plan (LCP) and the Malibu Municipal Code (MMC) can be attained. Prior to the issuance of building and grading permits, the applicant shall comply with the following conditions.

1. A Local Storm Water Pollution Prevention Plan shall be provided prior to the issuance of the Grading/Building permits for the project. This plan shall include an Erosion and Sediment Control Plan (ESCP) that includes, but not limited to:

| | |
|----------------------------|-------------------------------------|
| Erosion Controls | Scheduling |
| | Preservation of Existing Vegetation |
| Sediment Controls | Silt Fence |
| | Sand Bag Barrier |
| | Stabilized Construction Entrance |
| Non-Storm Water Management | Water Conservation Practices |
| | Dewatering Operations |
| Waste Management | Material Delivery and Storage |
| | Stockpile Management |
| | Spill Prevention and Control |
| | Solid Waste Management |
| | Concrete Waste Management |
| | Sanitary/Septic Waste Management |



All Best Management Practices (BMP) shall be in accordance to the latest version of the California Stormwater Quality Association (CASQA) BMP Handbook. Designated areas for the storage of construction materials, solid waste management, and portable toilets must not disrupt drainage patterns or subject the material to erosion by site runoff.

2. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.





City of Malibu

MEMORANDUM

To: Planning Department

From: Public Works Department
Chris Young PE., Assistant Civil Engineer

Date: 9/24/2020

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2. The developer's consulting engineer shall sign the final plans prior to the issuance of permits.



GENERAL NOTES

1. THE CITY OF MALIBU ADOPTED THE 2019 CALIFORNIA BUILDING CODES, AS AMENDED BY THE COUNTY OF LOS ANGELES, AS AMENDED BY THE CITY OF MALIBU. REFER TO MALIBU MUNICIPAL CODE CHAPTER 15 FOR ANY MODIFICATIONS.
2. APPLICATIONS FOR WHICH NO PERMIT IS ISSUED WITHIN 180 DAYS FOLLOWING THE DATE OF APPLICATION SHALL AUTOMATICALLY EXPIRE.
3. EVERY PERMIT ISSUED SHALL BECOME INVALID UNLESS WORK AUTHORIZED IS COMMENCED WITHIN 180 DAYS AFTER ITS ISSUANCE OR IF THE WORK AUTHORIZED IS SUSPENDED OR ABANDONED FOR A PERIOD OF 180 DAYS. A SUCCESSFUL INSPECTION MUST BE OBTAINED WITHIN 180 DAYS.
4. DRAWINGS ARE NOT TO BE SCALED, WORK SHALL BE GOVERNED BY DIMENSION ONLY. DISCREPANCIES BETWEEN THE DRAWINGS AND/OR THE EXISTING SITE CONDITIONS SHALL BE BROUGHT TO THE ATTENTION OF THE DESIGNER AND ENGINEER IMMEDIATELY.
5. THE STRUCTURAL DESIGN AND DETAILS ARE IN CONFORMANCE WITH THE STRUCTURAL REQUIREMENTS OF THE CALIFORNIA BUILDING CODE.
6. SUBMITTAL DOCUMENTS FOR DEFERRED SUBMITTAL ITEMS SHALL BE SUBMITTED TO THE ENGINEER OF RECORD WHO SHALL REVIEW THEM AND FORWARD THEM TO THE BUILDING OFFICIAL WITH A NOTATION INDICATING THAT THE DEFERRED SUBMITTAL DOCUMENTS HAVE BEEN REVIEWED AND THAT THEY HAVE BEEN FOUND TO BE IN GENERAL CONFORMANCE WITH THE DESIGN OF THE BUILDING. THE DEFERRED SUBMITTAL ITEMS SHALL NOT BE INSTALLED UNTIL THEIR DESIGN AND SUBMITTAL DOCUMENTS HAVE BEEN APPROVED BY THE BUILDING OFFICIAL.
7. REINFORCING STEEL OR STRUCTURAL FRAMEWORK OF ANY PART OF THE BUILDING OR STRUCTURE SHALL NOT BE COVERED OR CONCEALED WITHOUT FIRST OBTAINING THE APPROVAL OF THE BUILDING OFFICIAL.
8. ALL RE-ROOFING SHALL COMPLY WITH THE REQUIREMENTS OF THE 2020 COUNTY OF LOS ANGELES BUILDING CODE, CHAPTERS 7A AND 15. ROOFS SHALL HAVE A ROOFING ASSEMBLY INSTALLED IN ACCORDANCE WITH ITS LISTING AND THE MANUFACTURER'S INSTALLATION INSTRUCTIONS.
PERMITS: ALL ROOFING INSTALLATIONS, EITHER AS A NEW ROOF OR RE-ROOF, WILL REQUIRE A BUILDING PERMIT ISSUED PRIOR TO THE COMMENCEMENT OF WORK. THE APPROPRIATE I.C.C., U.L., E.T.L., LISTING OR OTHER APPROVED TESTING LAB REPORT MUST BE SUBMITTED WITH EACH APPLICATION. INSPECTIONS: ALL RE-ROOFING INSTALLATIONS SHALL REQUIRE A MINIMUM OF 2 INSPECTIONS. NEW ROOF COVERING MATERIALS SHALL NOT BE APPLIED WITHOUT FIRST OBTAINING AN INSPECTION AND WRITTEN APPROVAL FROM THE CITY OF MALIBU. THE PRE-ROOFING INSPECTION WILL SURVEY THE ROOF AREA FOR EVIDENCE OF WATER ACCUMULATION, ROOF DRAINAGE, CONDITION OF FLASHING AND THE SOUNDNESS AND SERVICEABILITY OF THE STRUCTURAL SUBSTRATE OR THE EXISTING ROOFING MATERIALS. A FINAL INSPECTION AND APPROVAL SHALL BE OBTAINED FROM THE CITY OF MALIBU WHEN THE RE-ROOFING HAS BEEN COMPLETED. ACCESS TO THE ROOF MUST BE PROVIDED FOR ALL INSPECTIONS
MATERIALS: THE CITY OF MALIBU IS LOCATED IN A "VERY HIGH FIRE HAZARD SEVERITY ZONE", AS CLASSIFIED BY THE LOS ANGELES COUNTY FIRE DEPARTMENT. AS SUCH, ALL ROOFING MATERIAL MUST BE RATED CLASS A. NO EXCEPTIONS WILL BE ALLOWED.
10. A SURVEY OF THE LOT MAY BE REQUIRED BY THE BUILDING OFFICIAL TO VERIFY COMPLIANCE OF THE STRUCTURE WITH APPROVED PLANS.



RIDDICK RESIDENCE

SITE DEVELOPMENT DATA

| | | |
|-------------------|---------|----------|
| LOT(GROSS) | 14780 | (0.34AC) |
| SLOPES > 1 : 1 | 0 | |
| S.D. EASEMENT | (-3000) | |
| LOT(NET) | 11780 | |
| HOUSE | 2381 | 157 |
| COVERED PORCH | 43 | 0 |
| GARAGE(ATTACHED) | 619 | 0 |
| ADU | (-55) | 469 |
| TOTAL DEVELOPMENT | | 3614 |

| EXISTING(SF) | NEW | NEW TOTAL(SF) |
|--------------|----------|---------------|
| 14780 | (0.34AC) | |
| 0 | | |
| (-3000) | | |
| 11780 | | |
| 2381 | 157 | 2538 |
| 43 | 0 | 43 |
| 619 | 0 | 619 |
| (-55) | 469 | 414 |
| | | 3614 |

SHEET INDEX

- CS PROJECT INFORMATION COVER SHEET
A1 SITE PLAN / ROOF PLAN
A2 EXISTING FLOOR PLAN / DEMOLITION PLAN
A3 PROPOSED NEW FLOOR PLAN
A4 EXTERIOR ELEVATIONS
A5 EXTERIOR ELEVATIONS
A6 BUILDING CROSS-SECTIONS
A7 FOUNDATION PLAN
A8 ROOF FRAMING PLAN
A9 ELECTRICAL LIGHTING RCP
A10 SPECIFICATIONS SCHEDULES
A11 STRUCTURAL NOTES
A12 DETAILS
A13 DETAILS
F1 FIRE APPARATUS ACCESS PLAN
FUEL MODIFICATION PLAN



PROJECT DATA

| | |
|------------------|---|
| PROJECT: | NEW ACCESSORY DWELLING UNIT |
| SITE ADDRESS : | 6255 PASEO CANYON DRIVE MALIBU, CA. 90265 |
| OWNER: | ELIZABETH AND JASON RIDDICK (310) 490 - 2777 |
| LEGAL: | LOT 44 TRACK NO. 26956 APN 4469-033-013 |
| USE TYPE: | SINGLE FAMILY RESIDENTIAL |
| ZONING: | SFL |
| SPECIFIC PLAN: | MALIBU WEST |
| CODES: | 2019 California Building Code 2019 California Residential Code 2019 California Electrical Code 2019 California Mechanical Code 2019 California Plumbing Code 2019 California Fire Code 2019 California Energy Code 2019 Calgreen Code 2020 County of Los Angeles Building Code 2020 Existing Building Code |
| OCCUPANCY: | R-3/U |
| CONSTRUCTION: | TYPE VB |
| STORIES: | ONE |
| FIRE SPRINKLERS: | NO |

| REVISIONS |
|--------------------|
| REVISION 1 2/19/19 |

CONSULTANTS

PLANS BY:
JOHN C. BRALY, Assoc. AIA
SCOTT CHRISTENSEN, P.E.
SCOTT CHRISTENSEN, P.E.
SANTA MONICA, CA 90401
(310) 386-7841

OWNER
ELIZABETH AND JASON RIDDICK
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265
PROJECT
ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

9/8/20
COVER SHEET

FUEL MODIFICATION NOTES

CLEARANCE OF BRUSH AND VEGETATIVE GROWTH SHALL BE MAINTAINED PER FIRE CODE 325

VEGETATION SHALL BE MAINTAINED AS APPROVED. THE FOLLOWING NOTES SHALL BE ADHERED TO:

MAINTENANCE OF ZONE A: FROM EDGE OF THE STRUCTURE TO A DISTANCE OF 30 FEET

-PROVIDE FOR 5FT FIRE DEPARTMENT WALK AROUND WITH HERBACEOUS PLANTS

-RECOMMENDED TO PLACE WALKWAYS, PATIOS, SPORTS COURTS ETC. ABUTTING STRUCTURE

-AVOID PLANTING WOODY PLANTS WITHIN 10 FEET OF STRUCTURE

-USE HERBACEOUS PLANTS, SUCCULENTS, LOW GROWING GRASSES AND GRASS LIKE PLANTS

-USE INORGANIC MULCHES SUCH AS GRAVEL WITHIN 10 FEET OF THE STRUCTURE. DO NOT USE RECYCLED RUBBER

-SMALL TREE SPECIES (15'-25' IN HEIGHT) MAY BE PLANTED 10' FROM STRUCTURE IF USED SPARINGLY

-NO CLIMBING VINES ON STRUCTURES

-REMOVE DEAD AND DOWN PLANT MATERIAL, WOOD PILES, PATIO FURNITURE, ETC.

NOTE: ALL FUEL MODIFICATION ZONES ARE TERMINATED AT THE SUBJECT PARCEL/TRACT BOUNDARY

MAINTENANCE: YEAR ROUND

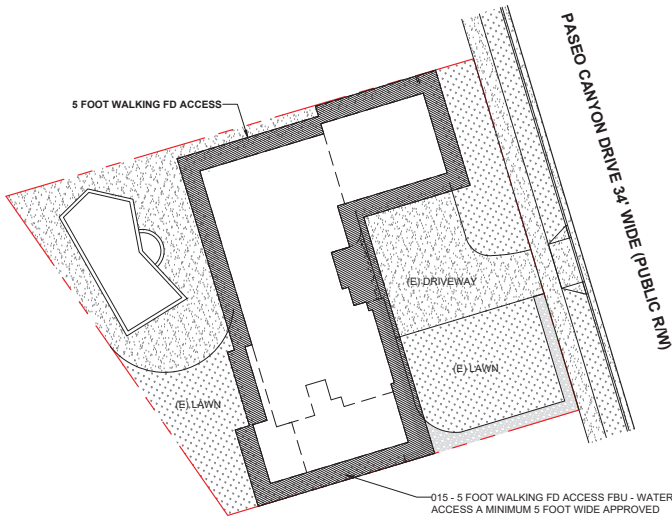
-CLEAR ALL LEAVES, LITTER AND DEBRIS FROM RAIN GUTTERS, ROOFS AND ACCUMULATIONS AGAINST STRUCTURES

-REGULARLY REMOVE ALL DEAD VEGETATION, FLAMMABLE DEBRIS, FLAMMABLE PATIO FURNITURE FROM LANDSCAPE

-STORE WOOD PILES, COMPOST BINS, MULCH BINS, ETC. 30' FROM STRUCTURES

-CUT AND REMOVE ANNUAL GRASSES DOWN TO 4 INCHES

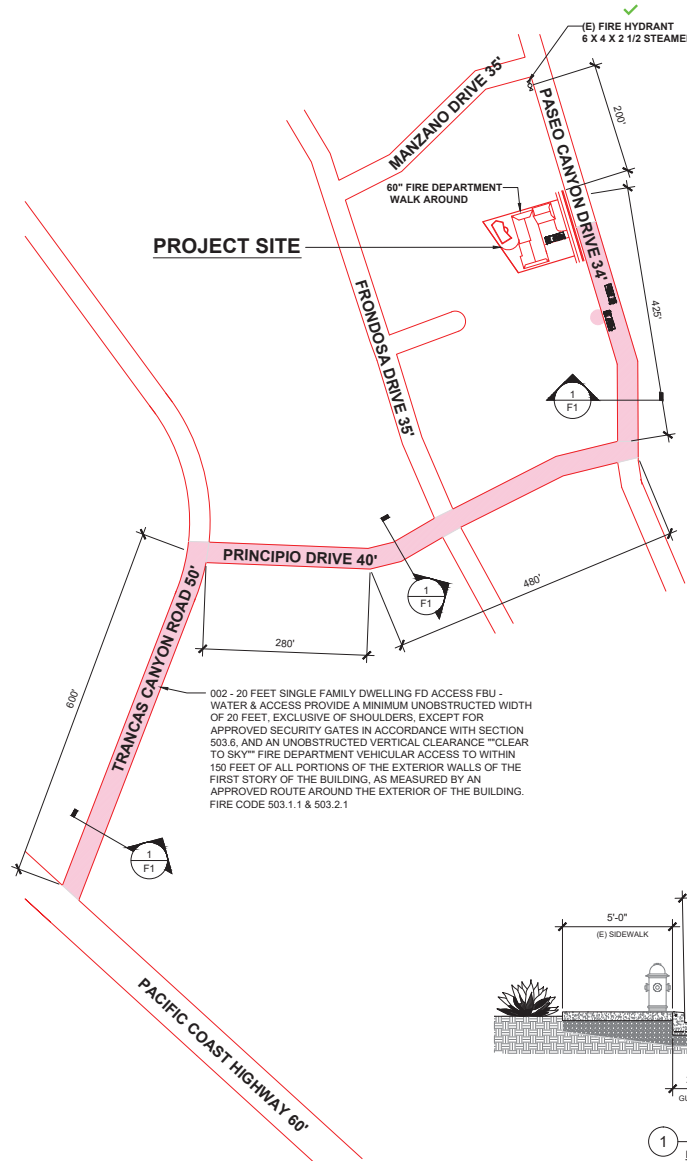
-IRRIGATION OF ANY FORM SHALL BE APPLIED TO MAINTAIN HIGH FUEL MOISTURE. IRRIGATION TO NATIVE PLANTS IS BENEFICIAL IN SMALL AMOUNTS 1-2 TIMES PER MONTH DURING SUMMER MONTHS



015 - 5 FOOT WALKING FD ACCESS FBU - WATER & ACCESS A MINIMUM 5 FOOT WIDE APPROVED FIREFIGHTER ACCESS WALKWAY LEADING FROM THE FIRE DEPARTMENT ACCESS ROAD TO ALL REQUIRED OPENINGS IN THE BUILDINGS EXTERIOR WALLS SHALL BE PROVIDED FOR FIREFIGHTING AND RESCUE PURPOSES. FIRE CODE 504.1

FUEL MODIFICATION SITE PLAN

SCALE: 1"=18'-0"



002 - 20 FEET SINGLE FAMILY DWELLING FD ACCESS FBU - WATER & ACCESS PROVIDE A MINIMUM UNOBSTRUCTED WIDTH OF 20 FEET, EXCLUSIVE OF SHOULDERS, EXCEPT FOR APPROVED SECURITY GATES IN ACCORDANCE WITH SECTION 503.6, AND AN UNOBSTRUCTED VERTICAL CLEARANCE "CLEAR TO SKY" FIRE DEPARTMENT VEHICULAR ACCESS TO WITHIN 150 FEET OF ALL PORTIONS OF THE EXTERIOR WALLS OF THE FIRST STORY OF THE BUILDING, AS MEASURED BY AN APPROVED ROUTE AROUND THE EXTERIOR OF THE BUILDING. FIRE CODE 503.1.1 & 503.2.1

FIRE APPARATUS ACCESS PLAN

SCALE: 1"=100'-0"



FIRE APPARATUS ACCESS NOTES

SURFACE AND LOAD CAPACITIES

005 - FD ACCESS ROAD SURFACE FBU - WATER & ACCESS FIRE APPARATUS ACCESS ROADS SHALL BE DESIGNED AND MAINTAINED TO SUPPORT THE IMPOSED LOAD OF FIRE APPARATUS WEIGHING 25 TONS AND SHALL BE SURFACED SO AS TO PROVIDE ALL-WEATHER DRIVING CAPABILITIES. FIRE APPARATUS ACCESS ROADS HAVING A GRADE OF 10 PERCENT OR GREATER SHALL HAVE A PAVED OR CONCRETE SURFACE. FIRE CODE 503.2.

BRIDGES AND ELEVATED SURFACES

BRIDGES OR AN ELEVATED SURFACE USED AS PART OF A FIRE APPARATUS ACCESS ROAD SHALL BE DESIGNED, CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH CFC SECTION 503.2.6.

GATES

GATES SECURING FIRE APPARATUS ACCESS ROADS SHALL COMPLY WITH

SHALL BE SETBACK FROM THE INTERSECTION ROADWAY AT LEAST 30 FEET

AND SHALL OPEN TO ALLOW A VEHICLE TO STOP WITHOUT OBSTRUCTING

MANUALLY OPERATED GATES SHALL NOT BE LOCKED WITH A PADLOCK OR

MEANS OF EMERGENCY OPERATION ACCEPTABLE TO THE ROPD FIRE

MARSHAL ARE PROVIDED. 0 ELECTRIC GATES SHALL INCLUDE THE

CAPABILITY OF BEING OPENED VIA A KNOX KEY SWITCH IN AN APPROVED

OPERATION SHALL BE DESIGNED, CONSTRUCTED AND INSTALLED TO

COMPLY WITH THE REQUIREMENTS OF ASTM F2200.

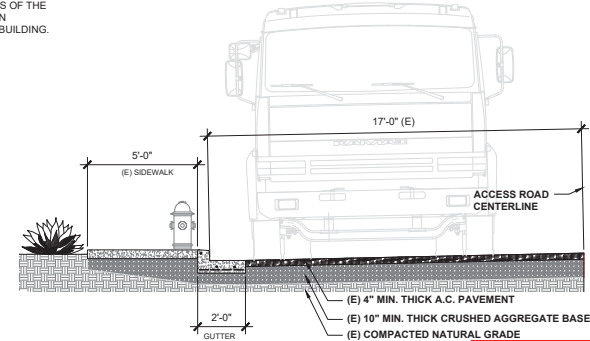
FIRE PROTECTION WATER SUPPLIES

022 - FIRE FLOW - ONE FAMILY DWELLING - FBU - WATER & ACCESS THE REQUIRED FIRE FLOW FOR FIRE HYDRANTS AT THIS LOCATION IS 1250 GPM, AT 20 PSI RESIDUAL PRESSURE, FOR A DURATION OF 2 HOURS OVER AND ABOVE MAXIMUM DAILY DOMESTIC DEMAND. FIRE CODE 507.3 AND APPENDIX B105.1 APPENDIX B.

✓ THE REQUIRED FIRE FLOW IS BASED ON THE FOLLOWING CALCULATION:
TYPE OF CONSTRUCTION PER THE BUILDING CODE TYPE VB / VHFHSZ YES
X NO
SIZE OF LOT (ACRES) .34 . ACRES FIRE FLOW BASED ON
THE FIRE-FLOW CALCULATION AREA 1250 GPM REDUCTION FOR FIRE
SPRINKLERS (MAXIMUM 50%) 0 GPM TOTAL FIRE FLOW REQUIRED
1250 GPM

025 - HYDRANT SPACING REQUIREMENTS FBU - WATER & ACCESS SPACING OF FIRE HYDRANTS SHALL NOT EXCEED THE DISTANCES SPECIFIED IN FIRE CODE C105.2 & C106.

029 - PUBLIC HYDRANTS INSTALLED PRIOR TO CONST- FBU - WATER & ACCESS- ALL REQUIRED PUBLIC FIRE HYDRANTS SHALL BE INSTALLED, TESTED AND ACCEPTED PRIOR TO BEGINNING CONSTRUCTION. FIRE CODE 501.4



1 TYPICAL ACCESS ROAD SECTION

NOTE:
001 - FD ACCESS ROAD MAINTENANCE FBU - WATER & ACCESS FIRE DEPARTMENT VEHICULAR ACCESS ROADS MUST BE INSTALLED AND MAINTAINED IN A SERVICEABLE MANNER PRIOR TO AND DURING THE TIME OF CONSTRUCTION. FIRE CODE 501.4



| REVISIONS |
|------------------------------|
| 1. ELEC PERMIT REQUIREMENT 1 |

| CONSULTANTS |
|--|
| SCOTT CHRISTIANSEN, P.E. 1003 WILSHIRE BLVD, 2ND FLOOR LOS ANGELES, CA 90024 (310) 395-7041 |

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|---|
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| OWNER |
|--|
| ELIZABETH AND JASON RIDDICK 1800 WILSHIRE BLVD, SUITE 315 MALIBU, CA 90265 |

| PROJECT |
|--|
| ACCESSORY DWELLING UNIT 1800 WILSHIRE BLVD, SUITE 315 MALIBU, CA 90265 |

9/17/20

SHEET 1 OF 1

F1

OCCUPANCY DATA

008 - SEPARATED OCCUPANCIES CALCULATION FBU - FIRE/LIFE SAFETY FOR BUILDINGS DESIGNED AS SEPARATED OCCUPANCIES, IN EACH STORY, THE BUILDING AREA SHALL BE SUCH THAT THE SUM OF THE RATIOS OF THE ACTUAL BUILDING AREA OF EACH SEPARATED OCCUPANCY DIVIDED BY THE ALLOWABLE BUILDING AREA OF EACH SEPARATED OCCUPANCY SHALL NOT EXCEED 1.

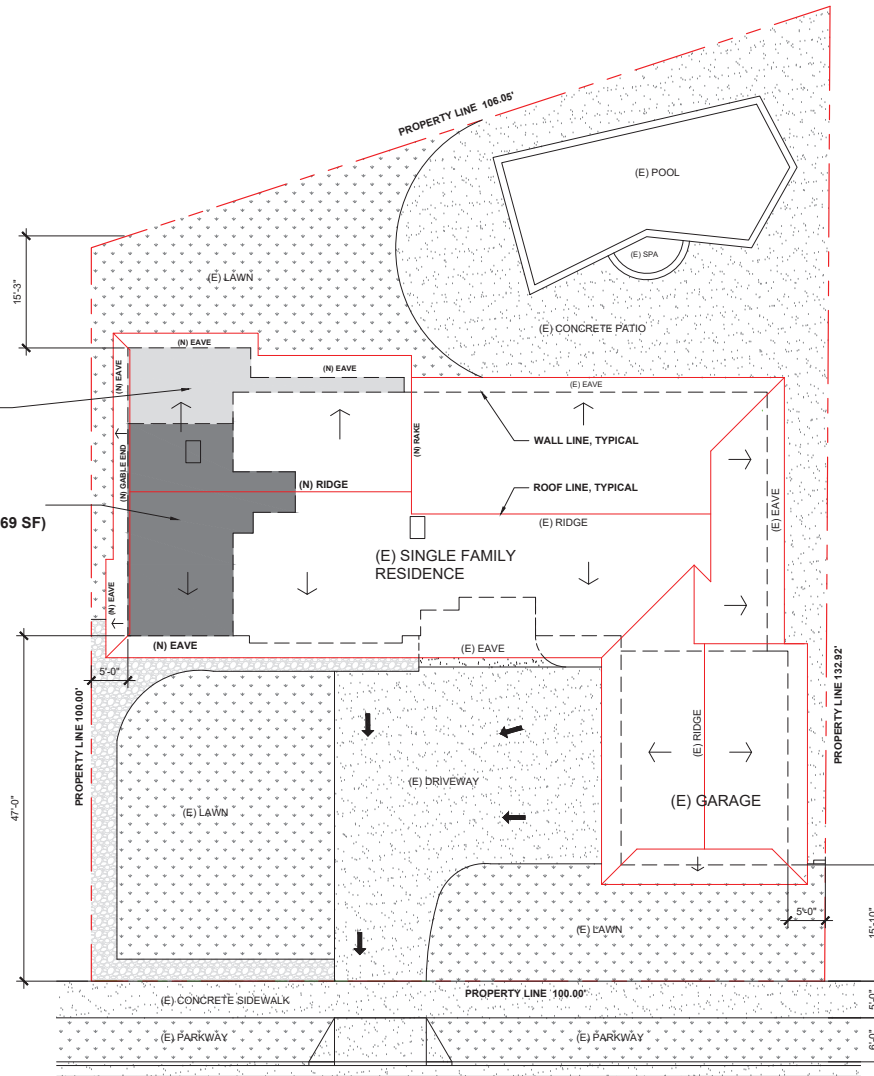
TOTAL(SF)

| | |
|-------------------|------|
| HOUSE | 2538 |
| COVERED PORCH | 43 |
| GARAGE(ATTACHED) | 619 |
| ADU | 414 |
| TOTAL DEVELOPMENT | 3614 |

$$\frac{2538}{3614} = 0.7 + \frac{414}{3614} = 0.1 = 0.8$$

NEW RESIDENCE
ADDITION (157 SF)

NEW ACCESSORY
DWELLING UNIT (469 SF)



PASEO CANYON DRIVE

SITE PLAN / ROOF PLAN

SCALE: 1/8" = 1'-0"



SITE PLAN NOTES

1. NO NEW LANDSCAPING IS PROPOSED FOR THIS PROJECT.
2. PROVISIONS SHALL BE MADE FOR CONTRIBUTORY DRAINAGE AT ALL TIMES.
3. OWNER WILL MAINTAIN DRAINAGE DEVICES AND KEEP THEM FREE OF DEBRIS.
4. THE FINISHED SLAB OF THE BUILDING SHALL BE AT LEAST 6" ABOVE THE ADJACENT FINISHED GRADE.
5. CLEARANCE OF BRUSH AND VEGETATIVE GROWTH SHALL BE MAINTAINED PER FIRE CODE 325.
6. 001 - ROOF COVERINGS- FBU - VHFHSZ- ALL ROOF COVERINGS SHALL BE CLASS "A" AS SPECIFIED IN BUILDING CODE 1505.1.1 (RESIDENTIAL CODE R327.5.2 & R902)
7. 002 - ROOF VALLEYS- FBU - VHFHSZ- ROOF VALLEY FLASHING SHALL BE NOT LESS THAN 0.019-INCH (NO. 26 GALVANIZED SHEET GAGE) CORROSION-RESISTANT METAL INSTALLED OVER A MINIMUM 36-INCH WIDE UNDER-LAYMENT CONSISTING OF ONE LAYER OF NO. 72 ASTM CAP SHEET MEETING RUNNING THE FULL LENGTH OF THE VALLEY. (RESIDENTIAL CODE R327.5.3 AND BUILDING CODE 705A.3)
8. 003 - ROOF GUTTERS- FBU - VHFHSZ- ROOF GUTTERS SHALL BE PROVIDED WITH A MEANS TO PREVENT THE ACCUMULATION OF LEAVES AND DEBRIS IN THE GUTTER. (RESIDENTIAL CODE R327.5.34 AND BUILDING CODE 705A.4)
9. 004 - ATTIC VENTILATION- FBU - VHFHSZ- VENTS SHALL RESIST THE INTRUSION OF FLAME AND EMBERS AND FLAME THROUGH THE VENTILATION OPENINGS. VENT OPENINGS SHALL BE PROTECTED BY CORROSION-RESISTANT, NONCOMBUSTIBLE WIRE MESH WITH A MINIMUM 1/16TH INCH OPENINGS AND SHALL NOT EXCEED 1/8TH INCH. VENTS SHALL NOT BE INSTALLED IN EAVES OR CORNICES. (RESIDENTIAL CODE R327.6.1 AND BUILDING CODE 706A.1)
10. 001 - FD ACCESS ROAD MAINTENANCE FBU - WATER & ACCESS FIRE DEPARTMENT VEHICULAR ACCESS ROADS MUST BE INSTALLED AND MAINTAINED IN A SERVICEABLE MANNER PRIOR TO AND DURING THE TIME OF CONSTRUCTION. FIRE CODE 501.4
11. 013 - ANCILLARY BUILDINGS- FBU - VHFHSZ- ANCILLARY BUILDINGS AND STRUCTURES AND DETACHED ACCESSORY STRUCTURES SHALL COMPLY WITH THE PROVISIONS OF RESIDENTIAL CODE R327.10.1 AND BUILDING CODE 710A.1.
12. 029 - PUBLIC HYDRANTS INSTALLED PRIOR TO CONST- FBU - WATER & ACCESS- ALL REQUIRED PUBLIC FIRE HYDRANTS SHALL BE INSTALLED, TESTED AND ACCEPTED PRIOR TO BEGINNING CONSTRUCTION. FIRE CODE 501.4

LEGEND

- INDICATES ROOF SLOPE DIRECTION
- INDICATES DRAINAGE SLOPE DIRECTION
- +EL. 000' SPOT ELEVATION HT.

| REVISIONS |
|---------------|
| 1. 01/01/2020 |

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PROJECT
ACCESSORY DWELLING UNIT
1800 PASEO CANYON DRIVE
MALIBU, CA 90265

9/8/20

SHEET 1 OF 13

A1

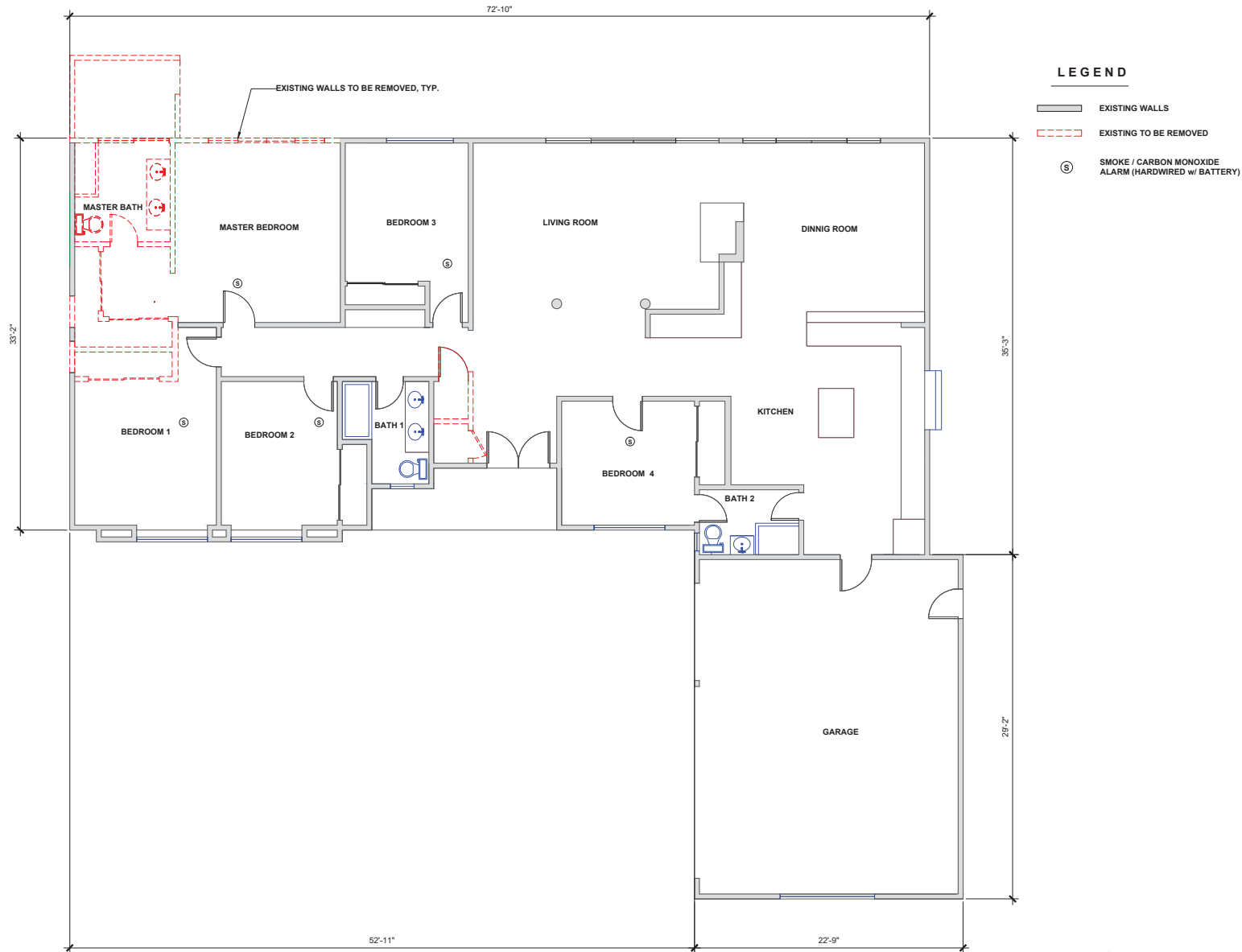
COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING
APPROVED

By *Johnnie McGee*
Fire Prevention Engineer

Date 10/01/2020

PLAN# FEPC-2020-0799

| REVISIONS | |
|-----------|--------------------|
| △ | REVISION |
| 1 | REVISION 1 2/18/18 |



EXISTING FLOOR PLAN / DEMOLITION PLAN
SCALE: 1/4" = 1'-0"



CONSULTANTS

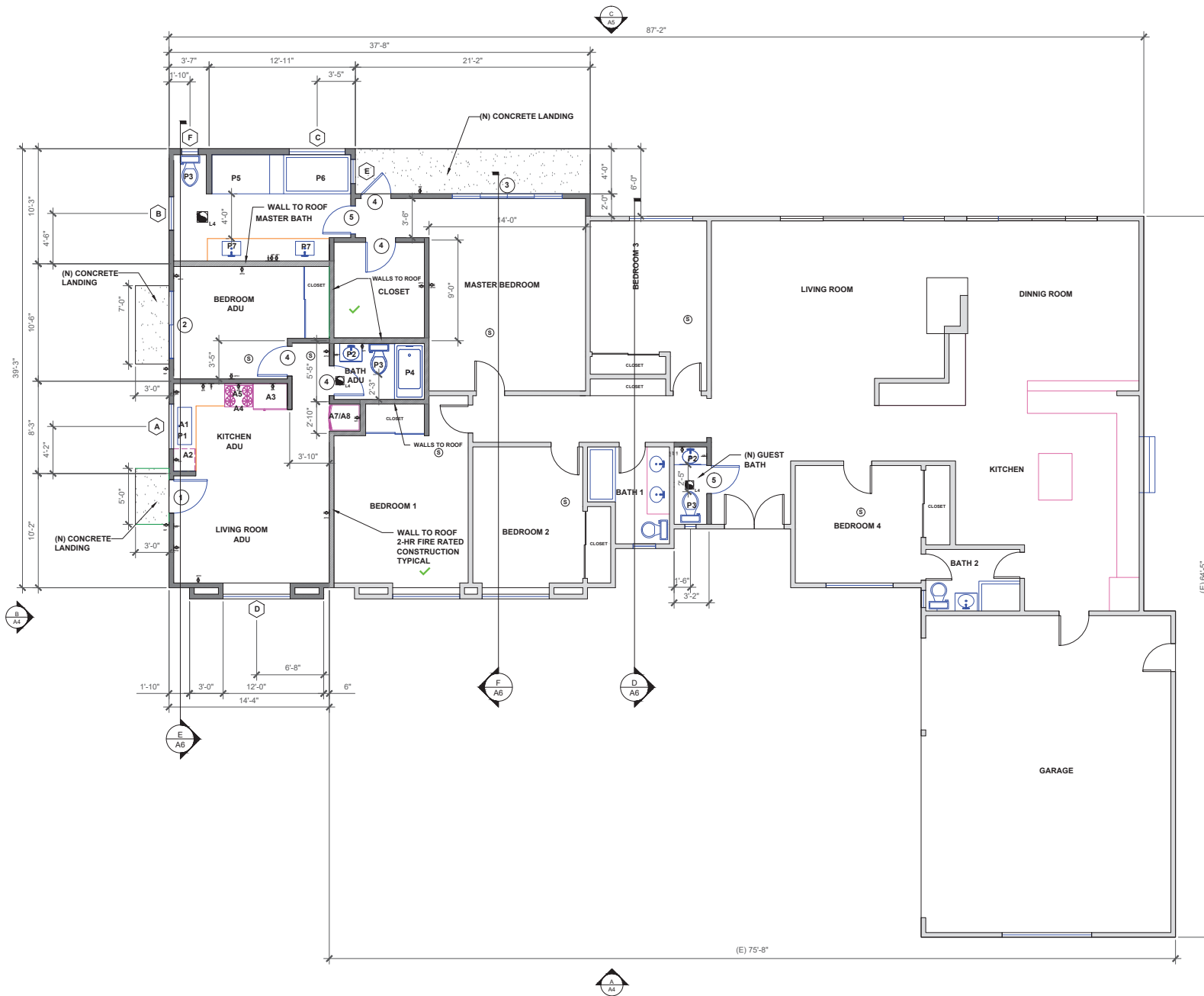
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9/8/20
SHEET 2 OF 13
A2



LEGEND

- EXISTING WALLS
- NEW 2x4 WALLS
- NEW 2-HOUR FIRE RATED 2x4 WALLS
012 - FIRE WALLS - FBU - FIRE/LIFE SAFETY. THE FIRE RESISTANCE RATING FOR THE FIRE WALL SHALL BE 2 HOUR PER TABLE 706.4. BUILDING CODE 706.4.
- DUPLEX RECEPTACLE
- GROUND FAULT INTERRUPTION
- WATERPROOF
- ARC FAULT INTERRUPTION
- LIGHTSWITCH
- SMOKE / CARBON MONOXIDE ALARM
- 100 CFM VENT FAN/LIGHT COMBO w/ HUMIDITY CONTROL
- VENTED TO EXTERIOR w/ DAMPER
- NEW WINDOW, SEE SCHEDULE ON SHT. A10
- NEW DOOR, SEE SCHEDULE ON SHT. A10
- NEW FIXTURE, SEE SCHEDULE ON SHT. A10
- NEW APPLIANCE, SEE SCHEDULE ON SHT. A10

PROPOSED NEW FLOOR PLAN
SCALE: 1/4" = 1'-0"



COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING
APPROVED
By *Johnnie McGee*
Fire Prevention Engineer
Date 10/01/2020
PLAN# FEPC 2020-0799

| REVISIONS |
|-------------------------------------|
| 1.000 PROJECT RESUBMIT 1 2/19/19 |

CONSULTANTS

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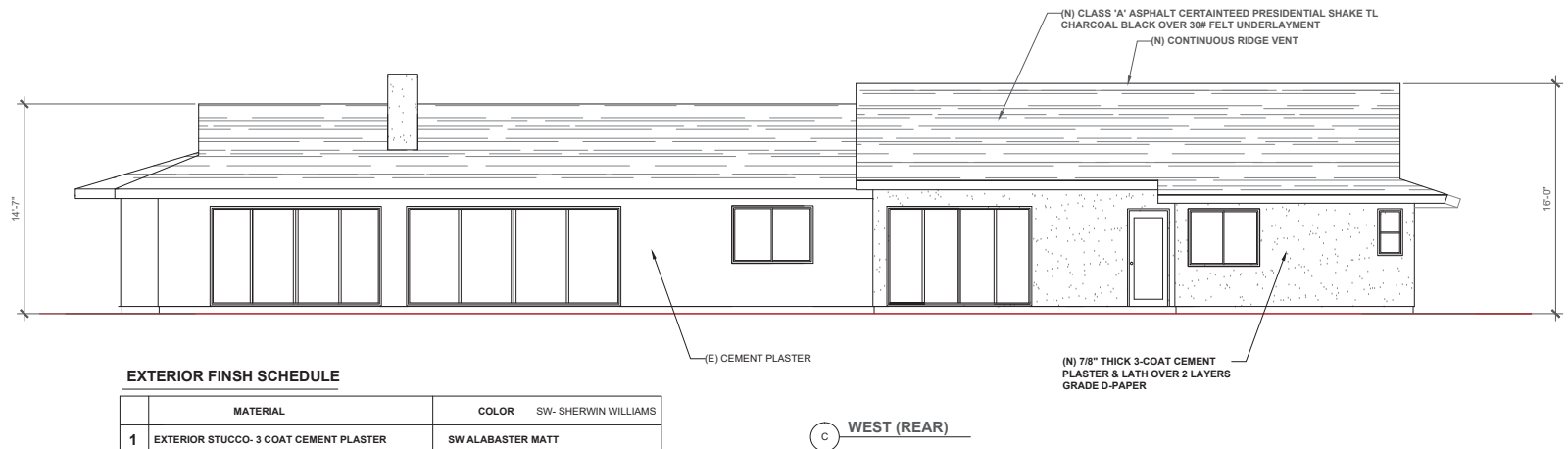
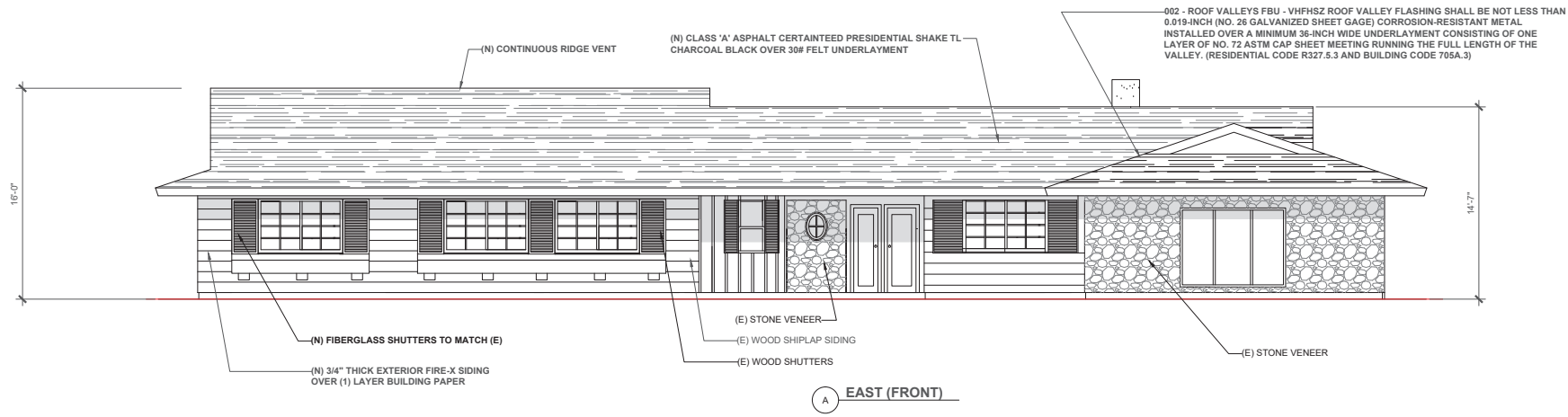
OWNER:
ELIZABETH AND JASON RIDDICK
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

PROJECT:
ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

9/17/20

SHEET 3 OF 13

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EXTERIOR FINISH SCHEDULE

| | MATERIAL | COLOR | SW- SHERWIN WILLIAMS |
|---|--|-------------------------|----------------------|
| 1 | EXTERIOR STUCCO- 3 COAT CEMENT PLASTER | SW ALABASTER MATT | |
| 2 | WINDOW TRIMS | SW HIGH GLOSS ALABASTER | |
| 3 | FASCIA- EXTERIOR FIRE RETARDANT TREATED WOOD | SW IRON ORE | |
| 4 | SHUTTERS- FIBERGLASS | SW HIGH GLOSS IRON ORE | |
| 5 | DOOR TRIMS- STANDARD SQUARE BRICK MOLDING | SW HIGH GLOSS ALABASTER | |
| 6 | HARDWARE TYPICAL | BRUSHED NICKEL | |
| 7 | METAL GUTTERS AND DOWN SPOUTS TYPICAL | SW IRON ORE | |
| 8 | CERTAINTEED PRESIDENTIAL SHAKE TL CLASS 'A' 001 - ROOF COVERINGS- FBV - VHFHSZ- ALL ROOF COVERINGS SHALL BE CLASS "A" AS SPECIFIED IN BUILDING CODE 1505.1.1 (RESIDENTIAL CODE R327.5.2 & R902) | CHARCOAL BLACK | |

NOTE!

005 - OPEN ROOF EAVES FBV - VHFHSZ OPEN ROOF EAVES SHALL MEET ONE OF THE FOLLOWING: A. NONCOMBUSTIBLE MATERIAL OR B. IGNITION-RESISTANT MATERIAL OR C. ONE LAYER OF 5/8-INCH TYPE "X" GYPSUM SHEATHING APPLIED BEHIND AN EXTERIOR COVERING D. 1-HOUR WALL ASSEMBLY APPLIED TO THE UNDERSIDE OF THE ROOF DECK (RESIDENTIAL CODE R327.7.4 AND BUILDING CODE 707A.4) SEE CONSTRUCTION DETAILS.
ALL EXTERIOR EXPOSED WOOD SHALL BE "EXTERIOR FIRE-X" EXTERIOR FIRE RETARDANT PRESSURE TREATED WOOD AS MANUFACTURED BY HOOVER TREATED WOOD PRODUCTS, INC. (800) 531-5558 AND DISTRIBUTED BY JONES WHOLESALE LUMBER, 10761 ALAMEDA ST., LYNWOOD CA 90626 (323) 567-1301

ATTIC VENTILATION CALCULATION

ATTIC AREA / 150 = MIN. VENTILATION NET FREE AREA(NFA)
348SF / 150 = 2.32SF / 144 = 334 SQ.IN.
(3) 2"Ø SCREENED VENT HOLES = 120 SQ.IN. NFA
USE (1)- CONTINUOUS RIDGE VENT = 100 SQ.IN. NFA

004 - ATTIC VENTILATION- FBV - VHFHSZ- VENTS SHALL RESIST THE INTRUSION OF FLAME AND EMBERS AND FLAME THROUGH THE VENTILATION OPENINGS. VENT OPENINGS SHALL BE PROTECTED BY CORROSION-RESISTANT, NONCOMBUSTIBLE WIRE MESH WITH A MINIMUM 1/16TH INCH OPENINGS AND SHALL NOT EXCEED 1/8TH INCH. VENTS SHALL NOT BE INSTALLED IN EAVES OR CORNICES. (RESIDENTIAL CODE R327.6.1 AND BUILDING CODE 706A.1

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING
APPROVED
By *Johnnie McGee*
Fire Prevention Engineer
Date **10/01/2020**
PLAN# FEPC 2020-0799

EXTERIOR ELEVATIONS
SCALE: 1/4" = 1'-0"

| REVISIONS |
|----------------------------------|
| 1. ELIZABETH RESIDENT 1/19/18 |

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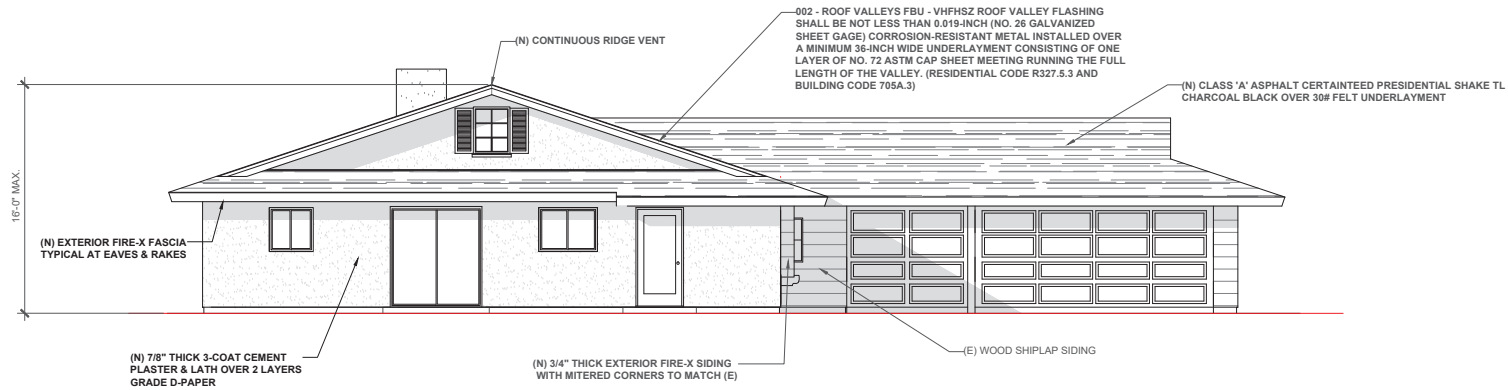
OWNER
ELIZABETH AND JASON RIDDICK
6255 PASO CANYON DRIVE
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PROJECT
ACCESSORY DWELLING UNIT
1500 WILSON AVENUE
MALIBU, CA 90265

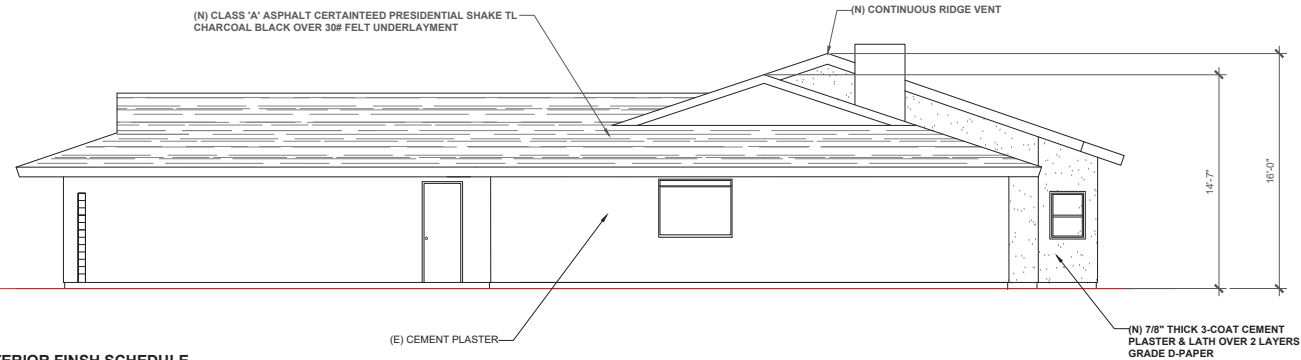
9/17/20

SHEET 4 OF 13

A4



B SOUTH



D NORTH

EXTERIOR FINISH SCHEDULE

| | MATERIAL | COLOR | SW- SHERWIN WILLIAMS |
|---|---|-------------------------|----------------------|
| 1 | EXTERIOR STUCCO- 3 COAT CEMENT PLASTER | SW ALABASTER MATT | |
| 2 | WINDOW TRIMS | SW HIGH GLOSS ALABASTER | |
| 3 | FASCIA- EXTERIOR FIRE RETARDANT TREATED WOOD | SW IRON ORE | |
| 4 | SHUTTERS- FIBERGLASS | SW HIGH GLOSS IRON ORE | |
| 5 | DOOR TRIMS- STANDARD SQUARE BRICK MOLDING | SW HIGH GLOSS ALABASTER | |
| 6 | HARDWARE TYPICAL | BRUSHED NICKEL | |
| 7 | METAL GUTTERS AND DOWN SPOUTS TYPICAL | SW IRON ORE | |
| 8 | CERTAINTEEED PRESIDENTIAL SHAKE TL CLASS 'A' | CHARCOAL BLACK | |
| | 001 - ROOF COVERINGS- FBU - VHFHSZ- ALL ROOF COVERINGS SHALL BE CLASS ""A"" AS SPECIFIED IN BUILDING CODE 1606.1.1 (RESIDENTIAL CODE R327.5.2 & R902) | | |

NOTE!

005 - OPEN ROOF EAVES FBU - VHFHSZ OPEN ROOF EAVES SHALL MEET ONE OF THE FOLLOWING: A. NONCOMBUSTIBLE MATERIAL OR B. IGNITION-RESISTANT MATERIAL OR C. ONE LAYER OF 5/8-INCH TYPE "X" GYPSUM SHEATHING APPLIED BEHIND AN EXTERIOR COVERING D. 1-HOUR WALL ASSEMBLY APPLIED TO THE UNDERSIDE OF THE ROOF DECK (RESIDENTIAL CODE R327.7.4 AND BUILDING CODE 707A.4) SEE CONSTRUCTION DETAILS.
ALL EXTERIOR EXPOSED WOOD SHALL BE "EXTERIOR FIRE-X" EXTERIOR FIRE RETARDANT PRESSURE TREATED WOOD AS MANUFACTURED BY HOOVER TREATED WOOD PRODUCTS, INC. (800) 531-5558 AND DISTRIBUTED BY JONES WHOLESALE LUMBER, 10761 ALAMEDA ST., LYNNWOOD CA 90626 (323) 567-1301

ATTIC VENTILATION CALCULATION

ATTIC AREA / 150 = MIN. VENTILATION NET FREE AREA(NFA)
348SF / 150 = 2.32SF / 144 = 334 SQ.IN.
(3) 2'0" SCREENED VENT HOLES = 120 SQ.IN. NFA
USE (1)- CONTINUOUS RIDGE VENT = 100 SQ.IN. NFA

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EXTERIOR ELEVATIONS
SCALE: 1/4" = 1'-0"

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING

APPROVED

By *Johnnie McGee*
Fire Prevention Engineer

Date 10/01/2020

PLAN# FEPC-2020-0799

9/17/20

SHEET 5 OF 13

A5

| REVISIONS |
|-------------------------------|
| 1. NO PERMIT REQUIRED 1/21/19 |

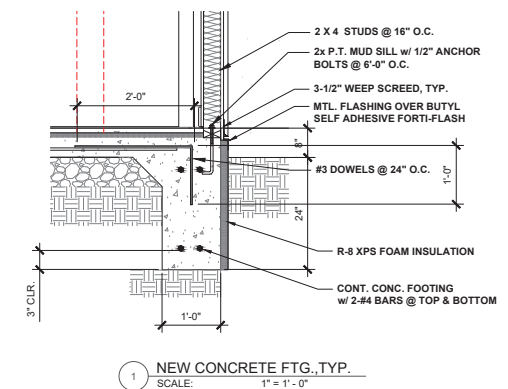
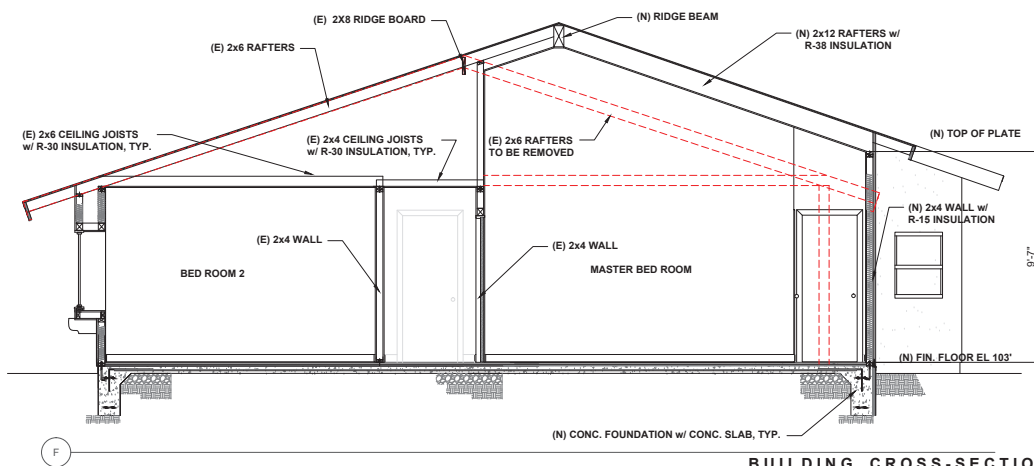
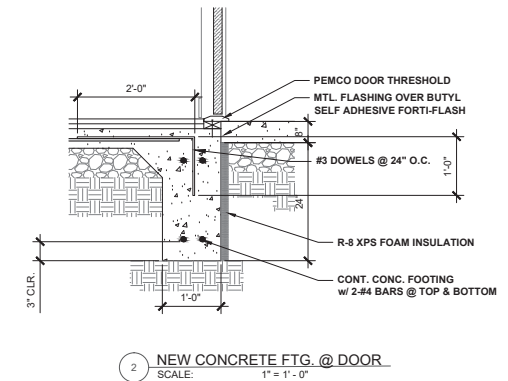
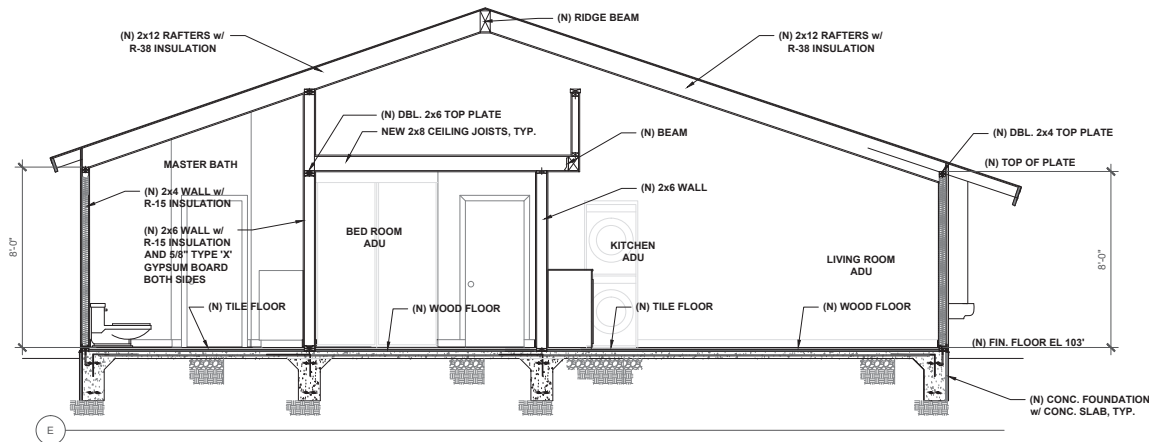
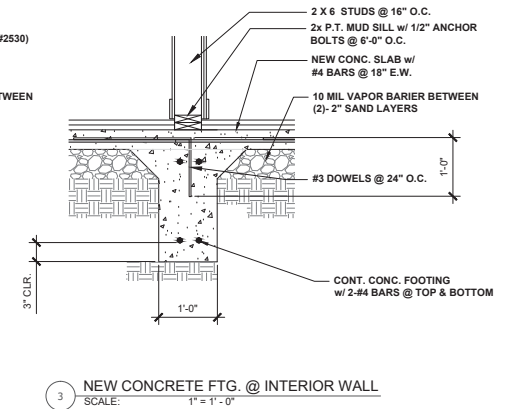
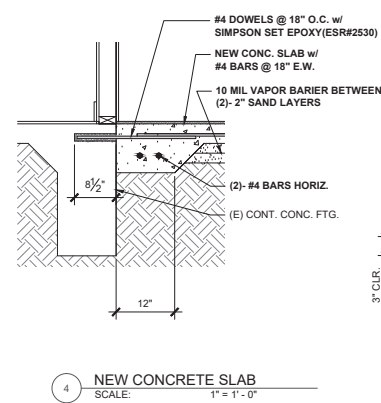
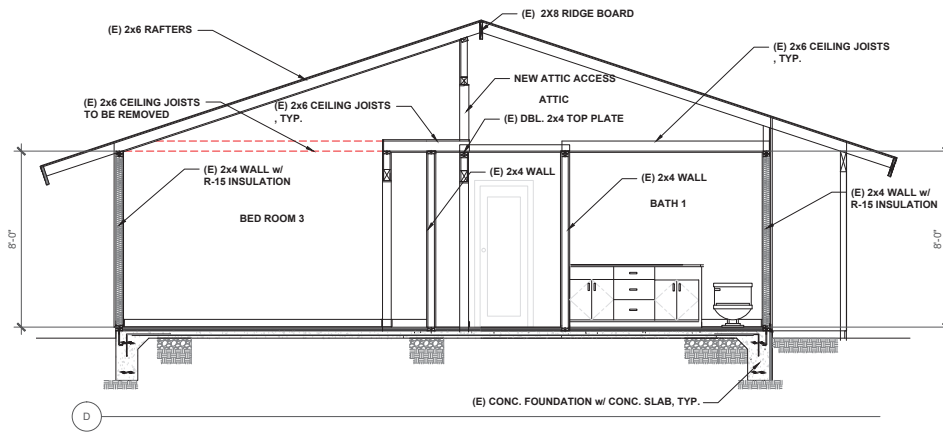
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MALIBU, CA 90265

PROJECT
ACCESSORY DWELLING UNIT
1235 BASEO CANYON DRIVE
MALIBU, CA 90265



BUILDING CROSS-SECTIONS
SCALE: 3/8" = 1'-0"

DETAILS

| REVISIONS |
|-------------------------|
| 1. REVISED PER COMMENTS |
| 2. REVISED PER COMMENTS |

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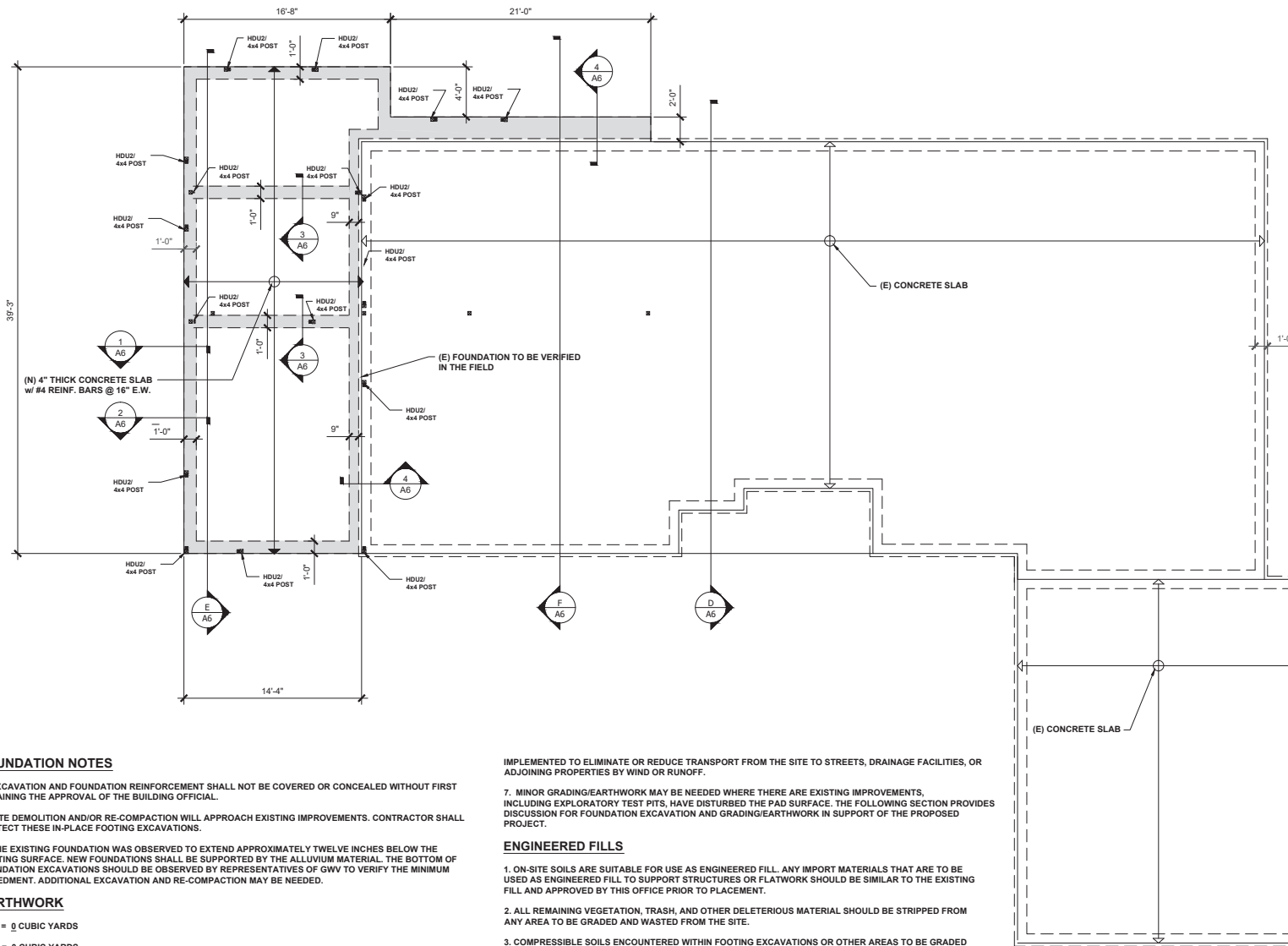
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PROJECT
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EPCO PASO CANYON DRIVE
MALIBU, CA 90265

9/8/20

SHEET 6 OF 13

A6



LEGEND

- NEW FOOTING
- EXISTING FOOTING
- NEW SLAB
- EXISTING SLAB

FOUNDATION NOTES

- EXCAVATION AND FOUNDATION REINFORCEMENT SHALL NOT BE COVERED OR CONCEALED WITHOUT FIRST OBTAINING THE APPROVAL OF THE BUILDING OFFICIAL.
- SITE DEMOLITION AND/OR RE-COMPACTION WILL APPROACH EXISTING IMPROVEMENTS. CONTRACTOR SHALL PROTECT THESE IN-PLACE FOOTING EXCAVATIONS.
- THE EXISTING FOUNDATION WAS OBSERVED TO EXTEND APPROXIMATELY TWELVE INCHES BELOW THE EXISTING SURFACE. NEW FOUNDATIONS SHALL BE SUPPORTED BY THE ALLUVIUM MATERIAL. THE BOTTOM OF FOUNDATION EXCAVATIONS SHOULD BE OBSERVED BY REPRESENTATIVES OF GNV TO VERIFY THE MINIMUM EMBEDMENT. ADDITIONAL EXCAVATION AND RE-COMPACTION MAY BE NEEDED.

EARTHWORK

CUT = 0 CUBIC YARDS

FILL = 0 CUBIC YARDS

GRADING / BMP NOTES

- EXCAVATIONS BELOW EXISTING FINISHED GRADE ARE FOR FOOTINGS FOR THE CONSTRUCTION OF A BUILDING ONLY AND WILL BE AUTHORIZED BY A BUILDING PERMIT.
- ANY CUT OR FILL SHALL NOT EXCEED ONE HUNDRED CUBIC YARDS OF MATERIAL NOR EXCEED ONE FOOT IN DEPTH OR HEIGHT.
- IF MORE THAN 100 CUBIC YARDS OF CUT AND FILL IS BEING MOVED ON THE PROJECT SITE, A GRADING PERMIT SHALL BE REQUIRED FROM THE PUBLIC WORKS DEPARTMENT.
- EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES (BMPs) SHALL BE IMPLEMENTED AND MAINTAINED TO MINIMIZE AND/OR PREVENT THE TRANSPORT OF SOIL FROM THE CONSTRUCTION SITE.
- APPROPRIATE BMPs FOR CONSTRUCTION RELATED MATERIALS, WASTES, SPILLS, OR RESIDUES SHALL BE

IMPLEMENTED TO ELIMINATE OR REDUCE TRANSPORT FROM THE SITE TO STREETS, DRAINAGE FACILITIES, OR ADJOINING PROPERTIES BY WIND OR RUNOFF.

- MINOR GRADING/EARTHWORK MAY BE NEEDED WHERE THERE ARE EXISTING IMPROVEMENTS, INCLUDING EXPLORATORY TEST PITS, HAVE DISTURBED THE PAD SURFACE. THE FOLLOWING SECTION PROVIDES DISCUSSION FOR FOUNDATION EXCAVATION AND GRADING/EARTHWORK IN SUPPORT OF THE PROPOSED PROJECT.

ENGINEERED FILLS

- ON-SITE SOILS ARE SUITABLE FOR USE AS ENGINEERED FILL. ANY IMPORT MATERIALS THAT ARE TO BE USED AS ENGINEERED FILL TO SUPPORT STRUCTURES OR FLATWORK SHOULD BE SIMILAR TO THE EXISTING FILL AND APPROVED BY THIS OFFICE PRIOR TO PLACEMENT.
- ALL REMAINING VEGETATION, TRASH, AND OTHER DELETERIOUS MATERIAL SHOULD BE STRIPPED FROM ANY AREA TO BE GRADED AND WASTED FROM THE SITE.
- COMPRESSIBLE SOILS ENCOUNTERED WITHIN FOOTING EXCAVATIONS OR OTHER AREAS TO BE GRADED SHALL BE REMOVED TO COMPETENT MATERIAL AND REPLACED AS PROPERLY COMPACTED FILL.
- SUBSEQUENT TO REMOVALS, THE SURFACE TO RECEIVE FILL SHALL BE SCARIFIED, ADJUSTED TO NEAR OPTIMUM MOISTURE, AND COMPACTED TO AT LEAST 90% RELATIVE COMPACTION.
- FILL MATERIALS SHALL BE PLACED IN THIN LIFTS, WATERED OR DRIED TO THE APPROPRIATE MOISTURE CONTENT, AND COMPACTED TO AT LEAST 90% OF THE MATERIAL'S MAXIMUM DENSITY PRIOR TO PLACING THE NEXT LIFT.
- ALL GRADING SHALL COMPLY WITH THE GRADING SPECIFICATIONS AND REQUIREMENTS OF THE CITY OF MALIBU PUBLIC WORKS.

FOUNDATION PLAN
SCALE: 1/4" = 1' - 0"



REVISIONS
1. 8/20/2019
2. 8/20/2019

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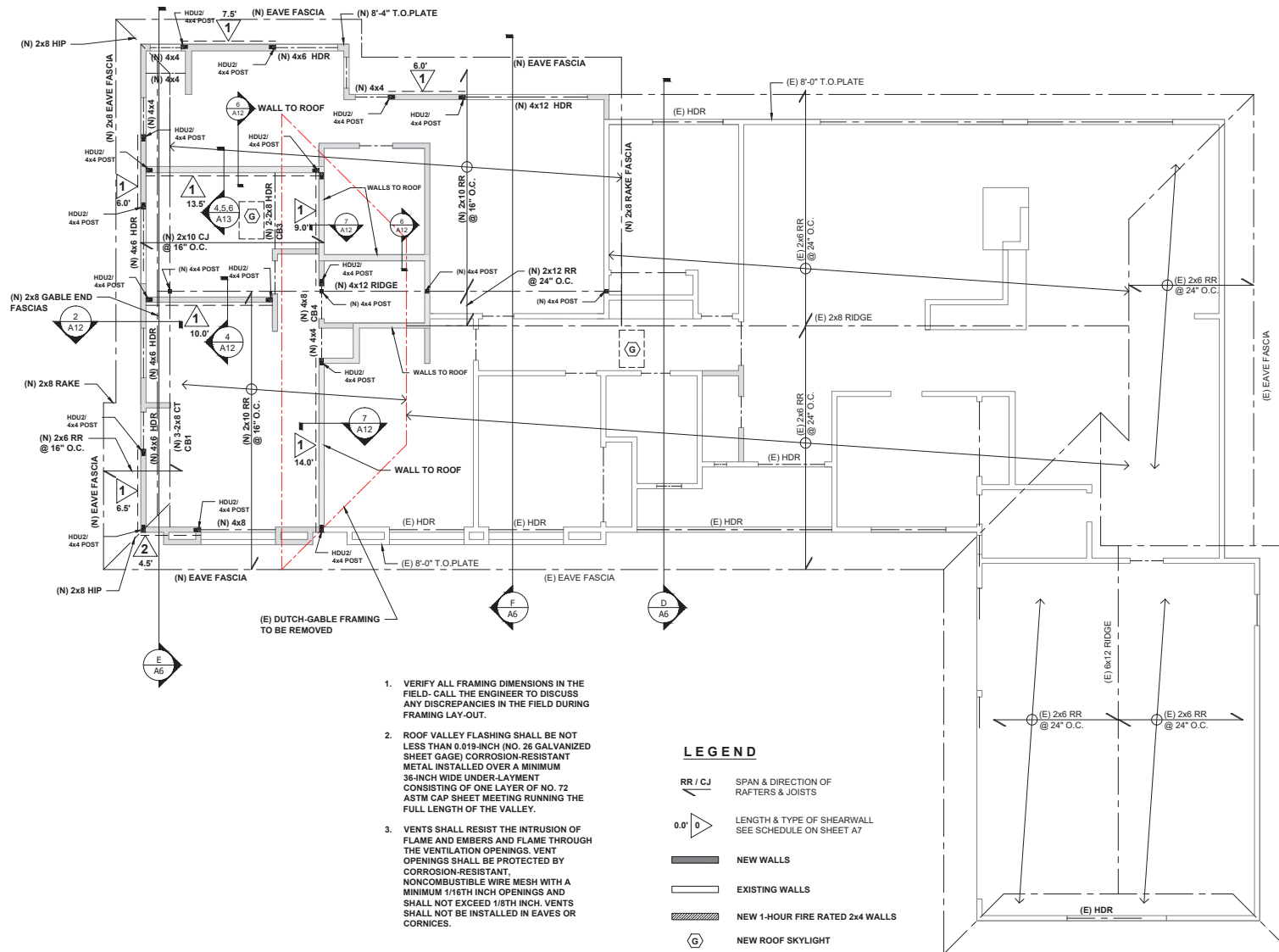
OWNER
ELIZABETH AND JASON RIDDICK
6255 PASSEO CANYON DRIVE
MALIBU, CA. 90265

PROJECT
ACCESSORY DWELLING UNIT
6255 PASSEO CANYON DRIVE
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9/8/20

SHEET 7 OF 13

A7



ROOF FRAMING PLAN
 SCALE: 1/4" = 1' - 0"



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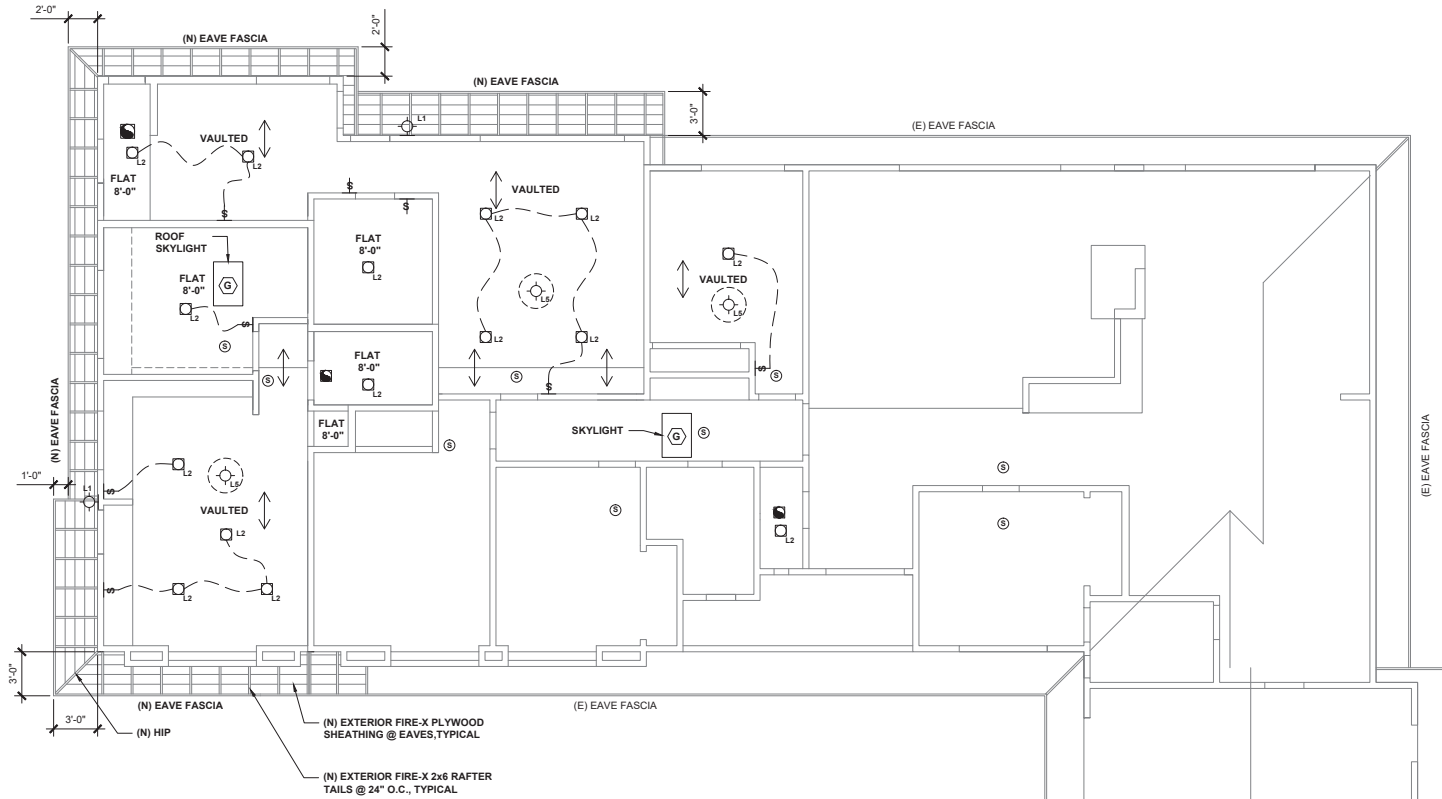
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SHEET 8 OF 13

A8

| REVISIONS |
|-------------------------------------|
| 1. 10/01/2020 REVISED 1. 2/19/18 |



LEGEND

- LIGHTSWITCH
- CEILING MOUNTED LIGHT
SEE SCHEDULE ON SHT. A10
- WALL MOUNTED LIGHT
SEE SCHEDULE ON SHT. A10
- CEILING SLOPE DIRECTION
- ROOF/CLG. SKYLIGHT
- CEILING FAN & LIGHT
(SEE SCHEDULE ON SHT. A8)

ELECTRICAL LIGHTING RCP
SCALE: 1/4" = 1' - 0"



COUNTY OF LOS ANGELES
FIRE DEPARTMENT
APPROVED
By *Johnnie McGee*
Fire Prevention Engineer
Date **10/01/2020**
PLAN# FEPC 2020-0799

9/8/20
SHEET 9 OF 13

A9

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GENERAL GLAZING NOTES

1. UNIT SKYLIGHTS SHALL BE LABELED BY A LOS ANGELES CITY APPROVED LABELING AGENCY. SUCH LABEL SHALL STATE THE APPROVED LABELING AGENCY NAME, PRODUCT DESIGNATION AND PERFORMANCE GRADE RATING. (RESEARCH REPORT NOT REQUIRED)

2. GLAZING IN THE FOLLOWING LOCATIONS SHALL BE SAFETY GLAZING CONFORMING TO THE HUMAN IMPACT LOADS OF SECTION R308.3 AS FOLLOWS:

A) FIXED AND OPERABLE PANELS OF SWINGING, SLIDING OR BI-FOLD DOORS

B) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL ADJACENT TO A DOOR WHERE THE NEAREST VERTICAL EDGE IS WITHIN A 24-INCH ARC OF EITHER VERTICAL EDGE OF THE DOR IN A CLOSED POSITION AND WHOSE BOTTOM EDGE IS LESS THAN 60 INCHES ABOVE THE FLOOR.

C) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL THAT MEETS ALL OF THE FOLLOWING CONDITIONS:

iii) EXPOSED AREA OF AN INDIVIDUAL PANE GREATER THAN 9 SQUARE FEET.

iv) BOTTOM EDGE IS LESS THAN 18 INCHES ABOVE THE FLOOR.

v) TOP EDGE GREATER THAN 36 INCHES ABOVE THE FLOOR.

vi) ONE OR MORE WALKING SURFACES WITHIN 36 INCHES HORIZONTALLY OF THE GLAZING.

D) GLAZING IN GUARDS AND RAILINGS.

E) GLAZING IN ENCLOSURES FOR OR WALLS FACING HOT TUBS, WHIRLPOOLS, SAUNAS, STEAM ROOMS, BATHTUBS AND SHOWERS WHERE THE BOTTOM EDGE OF THE GLAZING IS LESS THAN 60 INCHES, MEASURED VERTICALLY ABOVE ANY STANDING OR WALKING SURFACE.

F) GLAZING IN WALLS AND FENCES ADJACENT TO INDOOR AND OUTDOOR SWIMMING POOLS, HOT TUBS AND SPAS WHERE THE BOTTOM EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE A WALKING SURFACE AND WITHIN 60 INCHES, MEASURED HORIZONTALLY AND IN A STRAIGHT LINE, OF THE WATER'S EDGE.

G) GLAZING WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 36 INCHES ABOVE THE PLANE OF THE ADJACENT WALKING SURFACE OF STAIRWAYS, LANDINGS BETWEEN FLIGHTS OF STAIRS AND RAMPS.

H) GLAZING ADJACENT TO THE LANDING AT THE BOTTOM OF THE STAIRWAY WHERE THE GLAZING IS LESS THAN 36 INCHES ABOVE THE LANDING AND WITHIN A 60 INCH HORIZONTAL ARC LESS THAN 180 DEGREES FROM THE BOTTOM OF THE TREAD NOSING.

3. SKYLIGHTS AND SLOPED GLAZING SHALL COMPLY WITH SECTION R308.6.

MECHANICAL NOTES

1. THE EXHAUST FAN SHALL BE SWITCHED SEPARATELY FROM LIGHTING SYSTEM. LIGHTING INTEGRAL TO AN EXHAUST FAN MAY BE ON THE SAME SWITCH AS THE FAN PROVIDED THE LIGHTING CAN BE SWITCHED OFF WHILE ALLOWING THE FAN TO CONTINUE TO OPERATE FOR AN EXTENDED PERIOD OF TIME.

2. THE EXHAUST FAN MUST BE CONTROLLED BY A HUMIDITY CONTROL. HUMIDITY CONTROLS SHALL BE CAPABLE OF ADJUSTMENT BETWEEN A RELATIVE HUMIDITY RANGE OF 50 TO 80%. A HUMIDITY CONTROL MAY UTILIZE MANUAL OR AUTOMATIC MEANS OF ADJUSTMENT. A HUMIDITY CONTROL MAY BE A SEPARATE COMPONENT TO AN EXHAUST FAN AND IS NOT REQUIRED TO BE INTEGRAL (I.E. BUILT-IN).

ELECTRICAL AND LIGHTING NOTES

1. SCREW BASED LUMINAIRES SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS: (150(K)16 CEC) A. THE LUMINAIRES SHALL NOT BE RECESSED DOWNLIGHT LUMINAIRES IN CEILINGS B. THE LUMINAIRES SHALL CONTAIN LAMPS THAT COMPLY WITH REFERENCE JOINT APPENDIX JA8 C. THE INSTALLED LAMPS SHALL BE MARKED WITH "JA8-2016" OR "JA8-2016-E".

2. IN ALL AREAS SPECIFIED IN 210.52 ALL NONLOCKING-TYPE 125-VOLT, 15- AND 20-AMPERE RECEPTACLES SHALL BE LISTED TAMPER-RESISTANT RECEPTACLES.

3. LUMINAIRES LOCATED WITHIN THE ACTUAL OUTSIDE DIMENSION OF THE BATHTUB OR SHOWER TO A HEIGHT OF 8 FEET VERTICALLY FROM THE TOP OF THE BATHTUB RIM OR SHOWER THRESHOLD SHALL BE MARKED FOR DAMP LOCATIONS, OR MARKED FOR WET LOCATIONS WHERE SUBJECT TO SHOWER SPRAY.

4. ALL RESIDENTIAL OUTDOOR LIGHTING PERMANENTLY MOUNTED TO THE RESIDENCE OR OTHER BUILDINGS ON THE SAME LOT BE HIGH-EFFICACY AND MEET THE FOLLOWING REQUIREMENTS: (150(K)3A CEC) A. LIGHTS SHALL COMPLY WITH ONE OF THE TWO OPTIONS BELOW: I. CONTROLLED BY A PHOTOCELL AND MOTION SENSOR. CONTROLS THAT OVERRIDE TO ON SHALL NOT BE ALLOWED UNLESS THE OVERRIDE AUTOMATICALLY REACTIVATES THE MOTION SENSOR WITHIN 6 HOURS. II. CONTROLLED BY (1) PHOTOCONTROL AND AUTOMATIC TIME SWITCH CONTROL OR (2) ASTRONOMICAL TIME CLOCK OR (3) ENERGY MANAGEMENT CONTROL SYSTEM MEETING THE REQUIREMENTS OF 150(K)3A. - B. LIGHTS SHALL BE CONTROLLED BY A MANUAL ON AND OFF SWITCH THAT DOES NOT OVERRIDE TO ON THE AUTOMATIC ACTIONS OF ITEM I OR ITEM II CHOSEN ABOVE.

5. PROTECT IN PLACE DURING COURSE OF CONSTRUCTION ALL EXISTING DWELLING UNIT SMOKE DETECTION, EXISTING DETECTORS WIRED IN TANDEM, ELSEWHERE IN STRUCTURE SHALL REMAIN IN SERVICE TO THE EXTENT POSSIBLE BY CONTRACTOR. EXISTING SMOKE ALARMS ARE REQUIRED TO BE EVALUATED FOR AGE, AND IF IN SERVICE OVER 10 YEARS, BE REPLACED WITH NEW APPROVED AND LISTED UNITS AND WIRED IN TANDEM WITH REMAINDER OF RESIDENCE.

NEW PLUMBING NOTES

1. SHOWER COMPARTMENT FLOOR AND WALLS SHALL BE FINISHED WITH A NONABSORBENT SURFACE. SUCH WALL SURFACES SHALL EXTEND TO A HEIGHT OF NOT LESS THAN 6 FEET ABOVE THE FLOOR DRAIN.

2. WATER CLOSET SHALL HAVE AN AVERAGE WATER CONSUMPTION OF NOT MORE THAN 1.28 GALLONS PER FLUSH.

3. WATER HEATER MUST BE STRAPPED TO A WALL.

4. NEW SHOWER SHALL BE PROVIDED WITH INDIVIDUAL CONTROL VALVES OF THE PRESSURE BALANCE, THERMOSTATIC, OR COMBINATION PRESSURE BALANCE/THERMOSTATIC MIXING VALVE TYPE THAT PROVIDE SCALD AND THERMAL SHOCK PROTECTION. THESE VALVES SHALL CONFORM TO ASSE 1016 OR ASME A112.18.1/CSA B125.1. HANDLE POSITION STOPS SHALL BE PROVIDED ON SUCH VALVES AND SHALL BE ADJUSTED PER THE MANUFACTURER'S INSTRUCTIONS TO DELIVER A MAXIMUM MIXED WATER SETTING OF 120°F. WATER HEATING THERMOSTATS SHALL NOT BE CONSIDERED A SUITABLE CONTROL FOR MEETING THIS PROVISION.

| WINDOW SCHEDULE | | | | | | | | |
|-----------------|---------------|-------|----------|-------------|----------|--------|------|--------------------|
| SYM | SIZE | WALL | TYPE | MANUFACTURE | MATERIAL | FINISH | JAMB | GLAZING |
| A | 4'-0" x 3'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| B | 3'-0" x 3'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| C | 5'-0" x 4'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| D | 6'-0" x 4'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| E | 2'-0" x 3'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| F | 1'-6" x 3'-0" | 2 x 4 | SLIDING | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| G | 2'-0" x 3'-0" | 2 x 4 | SKYLIGHT | VELUX | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |
| H | 2'-6" x 3'-0" | 2 x 4 | | MILGARD | VINYL | WHITE | WOOD | DUAL-PANE TEMPERED |

| DOOR SCHEDULE | | | | | | | | |
|---------------|----------------|--------|---------------|-------------|--------------------|-----------|--------|-------------|
| SYM | SIZE | THK | TYPE | MANUFACTURE | GLAZING | MATERIAL | FINISH | |
| 1 | 3'-0" x 6'-8" | 1-3/4" | ENTRANCE | T.M.COBB | NONE | H.C. WOOD | PAINT | |
| 2 | 6'-0" x 6'-8" | 1-3/4" | SLIDING PATIO | MILGARD | DUAL-PANE TEMPERED | VINYL | WHITE | LOW E GLASS |
| 3 | 10'-0" x 6'-8" | 1-3/4" | SLIDING PATIO | MILGARD | DUAL-PANE TEMPERED | VINYL | WHITE | LOW E GLASS |
| 4 | 2'-8" x 6'-8" | 1-3/8" | SWING. PANEL | T.M.COBB | NONE | H.C. WOOD | PAINT | |
| 5 | 2'-6" x 6'-8" | 1-3/8" | SWING. PANEL | T.M.COBB | NONE | H.C. WOOD | PAINT | |

| PLUMBING ACCESSORIES SCHEDULE | | | | |
|-------------------------------|-------------------|----------------------|-------------------|-----------------------|
| QTY | ITEM | MANUFACTURE & MODEL | INLET | OUTLET |
| 1 | ANGLE STOPS | AQUAFLO V-101A BRASS | CP 5/8" O.D. COMP | 3/8" COMP |
| 1 | 9" TOILET SUPPLY | LSP SWC-109-PP | 3/8" COMP | 7/8" SOFT CONE |
| 1 | 16" FAUCET SUPPLY | LSP SFC-116-PP | 3/8" COMP | 1/2" F.I.P. SOFT CONE |
| 1 | DISHWASHER SUPPLY | LSP-KDW-660-PP | 3/8" COMP | 3/8" COMP |
| 2 | WASHER HOSES | LPS-WAS-148-PP 60" | 3/8" COMP | 3/8" COMP |

| PLUMBING FIXTURE SCHEDULE | | | | |
|---------------------------|--------------|---------------------|-----------------|------------------|
| SYM | ITEM | MANUFACTURE & MODEL | COLOR | FAUCETS & SPOUTS |
| P1 | KITCHEN SINK | AMERICAN STANDARD | STAINLESS STEEL | DELTA CHROME |
| P2 | LAVATORY | AMERICAN STANDARD | WHITE | DELTA CHROME |
| P3 | TOILET | TOTO | WHITE | |
| P4 | BATHTUB | KOHLER | WHITE | DELTA CHROME |
| P5 | SHOWER | CUSTOM TILE | | DELTA CHROME |
| P5 | BATHTUB | KOHLER | WHITE | DELTA CHROME |
| P5 | LAVATORY | KOHLER | WHITE | DELTA CHROME |

THE MAXIMUM FLOW RATE OF LAVATORY FAUCETS SHALL NOT EXCEED 1.2 GALLONS PER MINUTE AT 60 PSI. SHOWER HEADS SHALL HAVE A WATER FLOW NOT TO EXCEED 2.0 GALLONS PER MINUTE AT 80 PSI.

| ELECTRICAL FIXTURE SCHEDULE | | | | | | | |
|-----------------------------|-------------------|-----------|-------------|-------|------|------|--|
| SYM | ITEM | MFR | TYPE | COLOR | LAMP | VOLT | REMARKS |
| L1 | CLG. MTD. LIGHT | HALO | LED | WHITE | 50W | 120 | HIGH EFFICACY |
| L2 | WALL MTD. LIGHT | HALO | LED | | 50W | 120 | HIGH EFFICACY APPROVED FOR WET LOCATIONS |
| L3 | CLG. MTD. LIGHT | HALO | LED | WHITE | 50W | 120 | HIGH EFFICACY APPROVED FOR WET LOCATIONS |
| L4 | CLG. MTD. FAN | BROAN | 100 CFM | WHITE | 50W | 120 | ENERGY STAR COMPLIANT APPROVED FOR WET LOCATIONS |
| L5 | CLG. MTD. FAN/LT. | HAMPSHIRE | 3-SPEED LED | WHITE | 50W | 120 | ENERGY STAR COMPLIANT APPROVED FOR WET LOCATIONS |

| APPLIANCE SCHEDULE | | | | |
|--------------------|------------------------|-----------------|-----------------|--------------------------|
| SYM | ITEM | MANUFACTURE | MODEL | REMARKS |
| A1 | GARBAGE DISPOSAL | INSINKERATOR | 1/2 HP BADGER 5 | |
| A2 | DISHWASHER | FISHER & PAYKEL | DD24DCTW7 | STAINLESS STEEL |
| A3 | REFRIGERATOR / FREEZER | | RF170WDRX5 | |
| A4 | INDUCTION RANGE | | OR30SDPWIx1 | |
| A5 | VENT HOOD | | PNM9196SFSS | |
| A6 | MICROWAVE OVEN | | OD30WDX2 | |
| A7/A8 | STACK WASHER / DRYER | SAMSUNG | | WHITE ENAMEL |
| A9 | TANKLESS WATER HEATER | RENNAI | | WALL MOUNTED TO EXTERIOR |
| A10 | A/C UNIT | EXISTING | GOODMAN | |
| A11 | FAU | EXISTING | TRANE | |

| INTERIOR FINISH SCHEDULE | | | | | | | | | | | | |
|---------------------------|--------|------|-----------|-------|---|---|---|--|---------|--------|---------|--|
| ROOM NAME | FLOORS | BASE | BASE SHOE | WALLS | | | | | CASINGS | CLG HT | CEILING | FLOORS |
| | | | | N | E | S | W | | | | | 1 REFINISH EXISTING HARDWOOD 2 NEW CARPET 3 NEW TILE 4 NEW CONCRETE TOPPING |
| ADU LIVING ROOM / KITCHEN | 3 | 1 | 1 | 2 | 2 | 1 | 1 | | VARIES | 1 | | |
| ADU BATHROOM | 3 | 2 | 1 | 2 | 2 | 2 | 2 | | 8'-0" | 2 | | BASE 1 PAINT GRADE WOOD OR MDF 2 TILE |
| ADU BEDROOM | 2 | 1 | 1 | 1 | 1 | 1 | 1 | | 8'-0" | 1 | | |
| NEW GUEST BATHROOM | 3 | 2 | 1 | 2 | 2 | 2 | 2 | | 8'-0" | 2 | | BASE SHOE 1 PAINT GRADE WOOD OR MDF |
| MASTER BEDROOM | 2 | 1 | 1 | 1 | 1 | 1 | 1 | | VARIES | 1 | | |
| MASTER BATH | 3 | 2 | 1 | 2 | 2 | 2 | 2 | | VARIES | 2 | | WALLS 1 1/2" DRYWALL 2 5/8" TYPE 'X' WATER RESISTANT DRYWALL |
| BEDROOM 1 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | | 8'-0" | 1 | | |
| BEDROOM 3 | 2 | 1 | 1 | 1 | 1 | 1 | 1 | | VARIES | 1 | | CASINGS |
| | | | | | | | | | | | | CEILING 1 1/2" DRYWALL 2 1/2" WATER RESISTANT DRYWALL |

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING
APPROVED
By *Johnnie McGee*
Fire Prevention Engineer

Date 10/01/2020
PLAN# FEPC 2020-0799

REVISIONS
SUBMIT 1 2/19/19

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PROJECT

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9/8/20

SHEET 9 OF 13

A10

SCHEDULES

STRUCTURAL NOTES:

1.) GENERAL:

- CONTRACTOR SHALL VERIFY ALL DIMENSIONS ON JOB SITE WITH COMPLETE SET OF THE LATEST DRAWINGS, AND DIMENSIONS SHALL BE CHECKED AND VERIFIED WITH THE ARCHITECTURAL DRAWINGS. ANY DISCREPANCIES IN DRAWINGS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER BEFORE COMMENCING WORK, SO THAT THE PROPER REMEDIAL WORK MAY BE EXECUTED.
- UNLESS SPECIFICALLY DETAILED ON THESE DRAWINGS, CONTRACTOR SHALL FURNISH AND INSTALL ADEQUATE SHORING, BRACING, ETC., REQUIRED TO SAFELY EXECUTE ALL WORK AND SHALL BE FULLY RESPONSIBLE FOR THE SAME.
- DETAILS AND CONDITIONS NOT SPECIFICALLY SHOWN SHALL BE CONSTRUCTED IN ACCORDANCE WITH DETAILS SHOWN FOR SIMILAR CONDITIONS AND MATERIAL.

2.) SITE PREPARATIONS:

3.) CONCRETE:

- ALL CONCRETE SHALL BE OF NORMAL WEIGHT CONC WITH WEIGHT OF 145 PCF AND SHALL HAVE A MINIMUM COMPRESSIVE STRENGTH (AT 28 DAYS) OF 2500 PSI. TYPICAL UNLESS NOTED OTHERWISE.
- MAXIMUM SIZE OF AGGREGATE SHOULD BE 1", 1-1/2" AGGREGATE MAY BE USED.
- PORTLAND CEMENT SHALL BE TYPE I OR II CONFORMING TO A.S.T.M. SPECIFICATION C-150.
- MINIMUM CLEAR SPACING BETWEEN REINFORCING BARS SHALL BE 1.5 TIMES THE BAR DIAMETER, OR 1.5", OR 1-1/3 TIMES THE MAXIMUM AGGREGATE SIZE, WHICHEVER IS GREATER.
- MAXIMUM SLUMP NOT TO EXCEED 5 INCH.

4.) REINFORCING STEEL:

- SHALL BE DEFORMED BARS CONFORMING TO A.S.T.M. A615 REINFORCING STEEL. GRADE 40 - #4 AND SMALLER GRADE 60 - #5 AND GREATER.
- PLACING OF REINFORCING STEEL SHALL BE IN ACCORDANCE WITH CBC 2016.
- ALL BARS SHALL BE BENT COLD. NO BARS PARTIALLY EMBEDDED IN CONCRETE SHALL BE FIELD BENT EXCEPT AS SPECIFICALLY APPROVED BY THE ENGINEER.
- PROVIDE SPACE BARS, SPREADERS, CHAIRS, BLOCKS, ETC., AS REQUIRED TO SECURELY HOLD STEEL IN PLACE AGAINST DISPLACEMENTS WITHIN THE TOLERANCES PERMITTED.

5.) WELDING:

- ALL WELDING SHALL BE DONE IN AN APPROVED FABRICATING SHOP BY A LICENSED FABRICATOR, FIELD WELDING SHALL BE PERFORMED BY A CITY APPROVED LICENSED WELDER. ALL FIELD WELDING SHALL BE CONTINUOUS INSPECTION BY AN APPROVED DEPUTY INSPECTOR.
- WELDING SHALL BE DONE BY ELECTRIC SHIELDED ARC PROCESS USING E-70XX ELECTRODES. ALL WELDS SHALL BE UNIFORM IN SIZE AND APPEARANCE, AND FREE OF PINHOLES, POROSITY, UNDERCUTTING OR OTHER DEFECTS.
- ALL BUTT WELDS SHALL BE FULL PENETRATION. ALL FULL PENETRATION WELDS IN SHOP SHALL BE ULTRASONICALLY TESTED AND APPROVED.

6.) LUMBER:

- ALL LUMBER SHALL CONFORM TO THE W.C.L.I.B. STANDARD GRADING RULE OF THE CALIFORNIA BUILDING CODE.
- ALL STRUCTURAL FRAMING MEMBERS SHALL BE DOUGLAS FIR GRADED AND GRADE STAMPED IN ACCORDANCE WITH STANDARD GRADING RULE NO. 16 F THE W.C.L.I.B.
- LUMBER SHALL BE OF THE FOLLOWING GRADE EXCEPT AS NOTED ON PLAN.
 - STUD, BLOCKING, PLATES: DF-L NO. 2
 - BEAM, JOIST, RAFTER: DF-L NO. 1
- PLYWOOD SHALL BE DOUGLAS FIR SHEATHING CONFORMING TO PS 1-83 UNITED STATES DEPARTMENT OF COMMERCE AND SHALL BE GRADE STAMPED "D.F.P.A." EXTERIOR GLUE OR O.S.B.

7.) SIMPSON CONNECTORS:

- ALL CONNECTORS SHALL BE INSTALLED UNDER MANUFACTURER'S STRICT GUIDELINES AND CONFORMING TO ICC-ES®.
- SEE MANUFACTURER SPECIFICATION FOR INSTALLATION INSTRUCTION.
- UNLESS OTHERWISE NOTED ON PLANS, ALL CONNECTORS' NAIL SIZE SHALL USE THE SAME SIZE SPECIFIED BY MANUFACTURER SPECIFICATION.
- HOLD-DOWNS SHALL BE RE-TIGHTENED JUST PRIOR TO COVERING THE WALL FRAMING.

8.) NAILS:

- ALL NAILS SHALL BE COMMON NAILS.

9.) COVERT CIA ADHESIVE ANCHORAGE SYSTEM:

- ALL INJECTION ADHESIVE ANCHOR SYSTEM SHALL USE COVERT CIA ADHESIVE ANCHOR SYSTEM WITH ASTM A308 THREADED BOLT INTO PRE-DRILLED HOLE. FILL WITH EPOXY.
- SPECIAL INSPECTION SHALL BE PROVIDED FOR ANCHOR INSTALLATION.
- ALL ANCHORING SYSTEM SHALL BE INSTALLED PER MANUFACTURER'S INSTRUCTION AND CONFORMING TO ICC-ESR-2508.

10.) FOUNDATION NOTES:

- ALLOWABLE SOIL BEARING : 1500 PSF.
- PRIOR TO THE POURING OF CONCRETE, STRUCTURAL OBSERVATION ARE REQUIRED BY STRUCTURAL ENGINEER OF RECORD.
- SATURATE THE SOIL TO A DEPTH OF 18" PRIOR TO CASTING OF CONCRETE.
- ALL HOLD-DOWN HARDWARE IS TO BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.

ADDITIONAL NOTES 1:

- CONTRACTORS RESPONSIBLE FOR THE CONSTRUCTION OF A WIND OR SEISMIC FORCE RESISTING SYSTEM/COMPONENT LISTED IN THE "STATEMENT OF SPECIAL INSPECTION" SHALL SUBMIT A WRITTEN STATEMENT OF RESPONSIBILITY TO THE INSPECTORS AND THE OWNER PRIOR TO THE COMMENCEMENT OF WORK ON SUCH SYSTEM OR COMPONENT PER SEC 1709.1.
- CONTINUOUS SPECIAL INSPECTION BY A REGISTERED DEPUTY INSPECTOR IS REQUIRED FOR FIELD WELDING, CONCRETE STRENGTH $f_c > 2500$ PSI, HIGH STRENGTH BOLTING, SPRAYED-ON FIREPROOFING, ENGINEERED MASONRY, HIGH-LIFT GROUTING, PRE-STRESSED CONCRETE, HIGH LOAD DIAPHRAGMS AND SPECIAL MOMENT-RESISTING CONCRETE FRAMES. (1704 & CHAPTERS 19, 21, AND 22)
- FOUNDATION SILLS SHALL BE NATURALLY DURABLE OR PRESERVATIVE-TREATED WOOD. (2304.11.2.4)
- FIELD WELDING TO BE DONE BY WELDERS CERTIFIED BY THE FOR (STRUCTURAL STEEL)(REINFORCING STEEL)(LIGHT GAUGE STEEL)CONTINUOUS INSPECTION BY A DEPUTY INSPECTOR IS REQUIRED.
- SHOP WELDS MUST BE PERFORMED IN A LICENSED FABRICATOR'S SHOP.
- LICENSED FABRICATOR IS REQUIRED FOR (TRUSSES), (STRUCTURAL STEEL)
- GLUED-LAMINATED TIMBERS MUST BE FABRICATED IN A LICENSED SHOP. IDENTIFY GRADE SYMBOL AND LAMINATION SPECIES PER 2012 NDS SUPPLEMENT TABLE 5-A.
- PROVIDE LEAD HOLE 40% - 70% OF THREADED SHANK DIAMETER AND FULL DIAMETER FOR SMOOTH SHANK PORTION.
- PERIODIC SPECIAL INSPECTION IS REQUIRED FOR WOOD SHEAR WALLS, SHEAR PANELS, AND DIAPHRAGMS, INCLUDING NAILING, BOLTING, ANCHORING, AND OTHER FASTENING TO COMPONENTS OF THE SEISMIC FORCE RESISTING SYSTEM. SPECIAL INSPECTION BY A DEPUTY INSPECTOR IS REQUIRED WHERE THE FASTENER SPACING OF THE SHEATHING IS 4 INCHES ON CENTER OR LESS. (1707.3)
- A COPY OF THE LOS ANGELES RESEARCH REPORT AND/OR CONDITIONS OF LISTING SHALL BE MADE AVAILABLE AT THE JOB SITE.
- IF ADVERSE SOIL CONDITIONS ARE ENCOUNTERED, A SOILS INVESTIGATION REPORT MAY BE REQUIRED.

ADDITIONAL NOTES 2:

- HOLD-DOWN CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE APPROVED PLATE WASHERS; AND HOLD-DOWNS SHALL BE FINGER TIGHT AND 1 WRENCH TURN JUST PRIOR TO COVERING THE WALL FRAMING. CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE STEEL PLATE WASHERS ON THE POST ON THE OPPOSITE SIDE OF THE ANCHORAGE DEVICE. PLATE SIZE SHALL BE A MINIMUM OF 0.299 INCH BY 3 INCHES BY 3 INCHES(2305.5)
- ROOF DIAPHRAGM NAILING TO BE INSPECTED BEFORE COVERING. FACE GRAIN OF PLYWOOD SHALL BE PERPENDICULAR TO SUPPORTS. FLOOR SHALL HAVE TONGUE AND GROOVE OR BLOCKED PANEL EDGES. PLYWOOD SPANS SHALL CONFORM WITH TABLE 2304.7.
- ALL DIAPHRAGM AND SHEAR WALL NAILING SHALL UTILIZE COMMON NAILS OR GALVANIZED BOX.
- ALL BOLT HOLES SHALL BE DRILLED 1/32" TO 1/16" OVERSIZED. (11.1.2.2, 2012 NDS)
- HOLD-DOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION

ADDITIONAL FOUNDATION NOTES

- SOIL REPORT : A SOILS REPORT HAS BEEN PREPARED FOR THIS PROJECT BY GEOLABS-WESTLAKE VILLAGE DATED MARCH, 17 2020 AND IS MADE PART OF THE PLANS.
- ALLOWABLE SOIL PRESSURE.
 - 1500 PSF CONTINUOUS FOOTING.
 - 1500 PSF PADS.
- ALL BACK FILL SHALL BE COMPACTED TO A MINIMUM OF 90% OF MAXIMUM RELATIVE DENSITY.
- ALL FOOTINGS EXCAVATIONS SHALL BE INSPECTED AND APPROVED BY THE INSPECTOR PRIOR TO PLACING STEEL. IF THERE IS SOIL REPORT, SOIL ENGINEER SHALL ALSO VERIFY THE FOOTINGS.
- PROVIDE RAIN GUTTERS AND CONVEY RAIN WATER TO THE STREET.
- IF ADVERSE SOIL CONDITION ARE ENCOUNTERED, A SOIL INVESTIGATION REPORT IS REQUIRED.
- CONCRETE STRENGTH FOR FOUNDATION SHALL BE 2500 psi MINIMUM.
- MINIMUM FOOTING REINF. SHALL BE TWO #4 BAR-TOP & TWO #4 BAR-BOTTOM UNLESS NOTED OTHERWISE.
- MINIMUM ANCHOR BOLT SIZE AND SPACING SHALL BE $\frac{3}{4}$ "A.B. @ 48" O.C., WITH 7" EMBEDMENT, AND 3"x3"x $\frac{1}{4}$ " PLATE WASHERS. ANCHOR BOLTS SHALL BE LOCATED A MAXIMUM OF 12" AND 7" MINIMUM FROM THE END OF THE PLATE.

SHEAR WALL SCHEDULE:

| SYMBOL | SHEATHING | EDGE NAILING (FIELD=12"O.C.) | UPPER FLOOR SILL PL. NAILING | BLOCKING TO DOUBLE PL. | SILL PLATE ANCHOR BOLTS | CAPACITY | COMMENT |
|--------|------------|---------------------------------|--------------------------------------|---------------------------|--------------------------------|----------|----------------------------------|
| | 15/32 STR1 | 10d @ 6" O.C. | 16d @ 4" O.C. | SIMPSON A35 @ 24" O.C. | $\frac{3}{4}$ " DIA.@ 32" O.C. | 340 PLF | 2X SILL PLATE |
| | 15/32 STR1 | 10d @ 3" O.C. | $\frac{3}{4}$ " LAG SCREW @ 12" O.C. | SIMPSON A35 @ 12" O.C. | $\frac{3}{4}$ " DIA.@ 24" O.C. | 665 PLF | 3X SILL PLATE 2-2X SILL PLATE |

* $\frac{1}{4}$ " EDGE DISTANCE FROM THE PANEL EDGES AND $\frac{3}{4}$ " FROM THE EDGE OF CONNECTING MEMBERS.
ALL WOOD STRUCTURAL PANEL JOINT AND SILL PLATE NAILING SHALL BE STAGGERED AT ALL PANEL EDGES.

SHEAR WALL REQUIREMENTS:

SEE TYPICAL DETAILS ON SHEET A13

DESIGN LOADS & FACTORS:

- Floor Dead Load = 20 psf
Floor Live Load = 40 psf
 - Roof Dead Load = 15 psf
Roof Live Load = 20 psf
- C.Wind Design Data:
- Basic Wind Speed = 110 M.P.H. (LRFD)
- Occupancy Category = II Wind Importance factor = 1.0
 - Wind Exposure = B
- D.Seismic design data:
- Occupancy Category= II
Seismic Importance factor = 1.0
 - S_s = 2.755 g
 S_1 = 1.003 g
 - Site Class=D
 - SDS =1.837 g
 $SD1$ =1.003 g
 - Seismic Design Category = D
 - Basic Seismic Force Resisting System: Bearing Wall System,
Light-framed walls sheathed w/wood structural panels rated for shear resistance.
 - C_s =0.283
 - R = 6.5
 - Analysis Procedure Used: Equivalent Lateral Force
 - Redundancy factor =1.3

CODE : 2019 LABC

CONSULTANTS

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Los Angeles, CA 90007
(818) 515-7166

OWNER

ELIZABETH AND JASON RIDDICK
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

PROJECT

ACCESSORY DWELLING UNIT
6255 PASEO CANYON DRIVE
MALIBU, CA. 90265

9/8/20

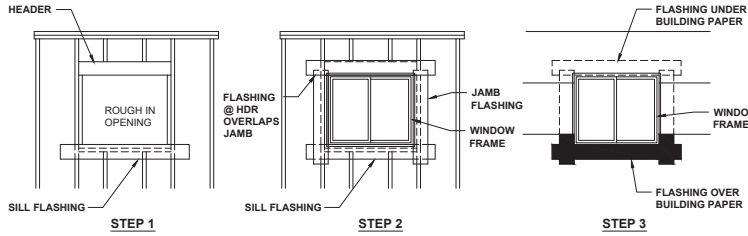
SHEET 11 OF 13

STRUCTURAL NOTES

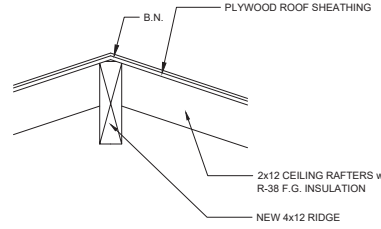
A11

FLASHING OF EXTERIOR WALL OPENINGS

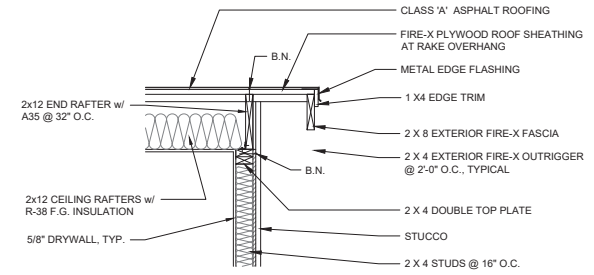
INDIVIDUALLY FLASH ALL EXTERIOR OPENINGS FOR FIXTURES SUCH AS WINDOWS, DOORS AND VENTS TO MAKE THEM WATERPROOF. FLASHING MATERIAL SHALL PROVIDE A FOUR HOUR MINIMUM PROTECTION FROM WATER PENETRATION WHEN TESTED IN ACCORDANCE WITH ASTM D-779. SEALANT SHALL BE PLACED OVER SOLID BACKING. FLASHING MATERIAL AT LEAST 9" WIDE SHALL BE APPLIED IN A WEATHERBOARD FASHION, BEGINNING WITH THE SILL USING A STRIP LONG ENOUGH TO PROTECT BEYOND THE JAMB FLASHING TO BE APPLIED. THE TWO JAMB FLASHINGS ARE THEN APPLIED WITH SUFFICIENT LENGTH TO EXTEND BEYOND THE SILL FLASHING, AND WITH THE SAME DISTANCE AT THE TOP. FOR NAIL-ON FLANGES, INSTALL BY PRESSING FLANGE POSITIVELY INTO A CONTINUOUS BEAD OF SEALANT WHICH EXTENDS AROUND THE BOTTOM AND SIDES OF THE FIXTURE. APPLY THE TOP HORIZONTAL FLASHING LAST WITH SUFFICIENT LENGTH TO EXTEND BEYOND THE JAMB FLASHING'S, OVERLAP AND SEAL AGAINST THE TOP NAILING FLANGE WITH A CONTINUOUS BEAD OF SEALANT. APPLY REMAINING BUILDING PAPER IN A WEATHERBOARD FASHION WITH THE SILL FLASHING LAPPING OVER THE TOP AND THE HEAD AND JAMB FLASHING'S BELOW.



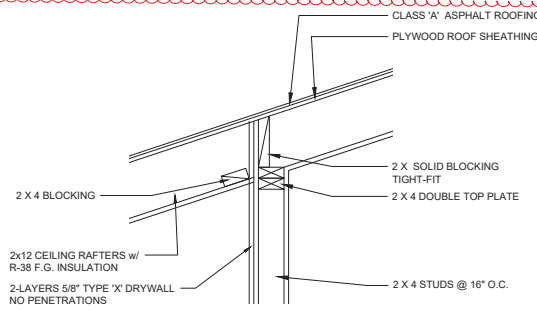
OPENINGS IN EXTERIOR WALLS
SCALE: 1/2" = 1'-0"



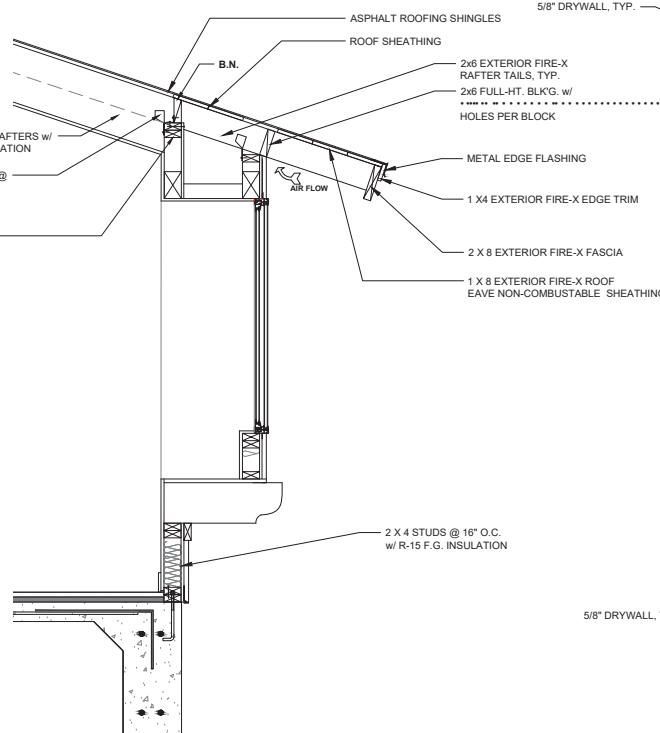
5 SHEAR TRANSFER @ RIDGE
SCALE: 1" = 1'-0"



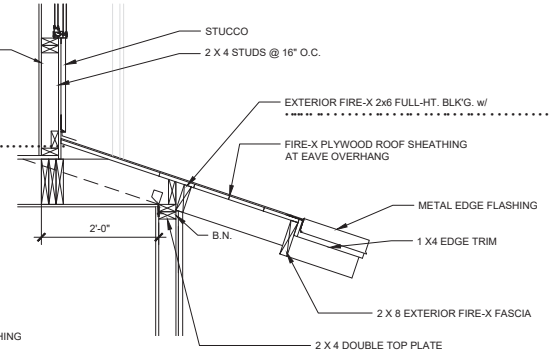
1 SHEAR TRANSFER @ RAKE
SCALE: 1" = 1'-0"



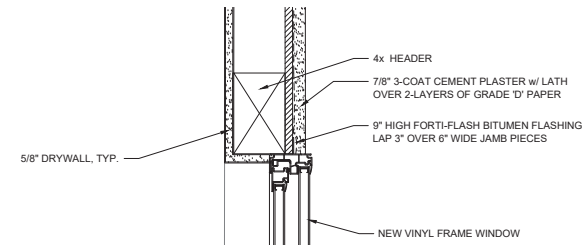
6 WALL TO ROOF
Scale: 1-1/2"=1'-0"



4 SHEAR TRANSFER @ EAVE
SCALE: 1" = 1'-0"



2 SHEAR TRANSFER @ EAVE
SCALE: 1" = 1'-0"



3 WINDOW HEAD (JAMB & SILL SIM.)
SCALE: 1" = 1'-0"

7 WALL TO ROOF
Scale: 1-1/2"=1'-0"

COUNTY OF LOS ANGELES
FIRE DEPARTMENT
FIRE PREVENTION ENGINEERING

APPROVED

By *Johnnie McGee*
Fire Prevention Engineer

Date 10/01/2020
PLAN# FEPC 2020-0799

| REVISIONS |
|-------------------------|
| 1. SUBMITTAL 1. 2/18/18 |

CONSULTANTS

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OWNER
ELIZABETH AND JASON RIDDICK
6235 PASO CANYON DRIVE
MALIBU, CA. 90265

PROJECT
ACCESSORY DWELLING UNIT
6235 PASO CANYON DRIVE
MALIBU, CA. 90265

9/17/20

SHEET 12 OF 13

A12

DETAILS

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.¹ 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

¹ 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.² 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).³

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).)”⁴

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.”⁵ 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.⁶

² 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.]

³ 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]

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

⁵ See Ex. C [February 24, 2020 Response Ltr. From City]

⁶ 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, 2019.⁷**

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

⁷ 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.”⁸

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.”⁹ 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.¹⁰

Ms. Sperling is 82-year-old, and suffers from Glaucoma, Arthritis, Asthma and Osteoporosis.¹¹ Accordingly, Ms. Sperling carries a handicap placard issued by the California State Department of Motor Vehicles.¹² 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].

⁸ 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.

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

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

¹¹ Ex. H [Doctors Note 1] and Ex. I [Doctor’s Note 2]

¹² Ex. J [Picture of Handicap Placard]

Mr. Richard Mollica

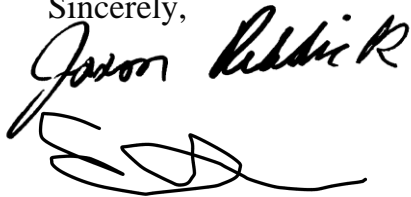
April 13, 2021

Page 6 of 6

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". Below the signature is a stylized, abstract scribble or flourish.

Jason and Elizabeth Riddick
310-490-2777
elizabethriddick@hotmail.com
jason_riddick@hotmail.com

EXHIBIT A

Exhibit A

Jason and Elizabeth Riddick

6255 Paseo Canyon Drive

Malibu, California 90265

Telephone: [REDACTED]

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).¹

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.)²

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

¹ 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.”

² “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
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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.

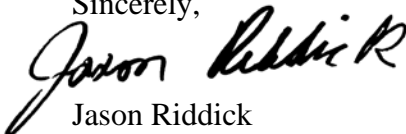
Sincerely,

Jason Riddick

Exhibit “A”

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

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 Legislation¹

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 local 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

¹ 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 B

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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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 local 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).)

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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.

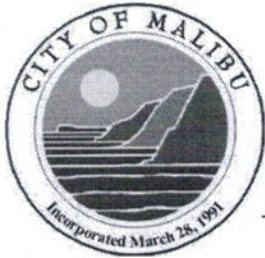
Covenants and Deed Restrictions Null and Void – AB 670 (Friedman)

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 C



City of Malibu

23825 Stuart Ranch Road · Malibu, California · 90265-4861
Phone (310) 456-2489 · Fax (310) 456-7650 · 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 D

Exhibit D

From: [Jason Riddick](#)
To: [Trevor Rusin](#)
Cc: [David Eng](#); [Richard Mollica](#); [Elizabeth Riddick](#)
Subject: RE: ADU Letter
Date: Wednesday, February 24, 2021 4:31:28 PM

Trevor, why haven't you addressed the only argument we made in my December 7, 2020 memorandum, which is that our attached ADU falls within the exception enumerated by Section 13.4.1 of Malibu's existing LCP? Your response does not even mention the exception, which is the only argument we made. Are you planning on completely ignoring what we wrote?

From: Richard Mollica <rmollica@malibucity.org>
Sent: Wednesday, February 24, 2021 3:52 PM
To: Elizabeth Riddick [REDACTED]; Jason Riddick [REDACTED]
Cc: Trevor Rusin <trevor.rusin@bbklaw.com>; David Eng <deng@malibucity.org>
Subject: ADU Letter

Good Afternoon,

I realize that Trevor promised a response to you, the attached letter was drafted with input from Trevor. Please consider this as his reply as well.

Richard

Richard Mollica, AICP
Planning Director
City of Malibu
310-456-2489 Ext. 346

EXHIBIT E

ADULAND USE PLAN

CHAPTER 3—MARINE AND LAND RESOURCES

g. New Development

3.42 New development shall be sited and designed to minimize impacts to ESHA by:

- a. Minimizing grading and landform alteration, consistent with Policy 6.8.
- b. Minimizing the removal of natural vegetation, both that required for the building pad and road, as well as the required fuel modification around structures.
- c. Limiting the maximum number of structures to one main residence which can contain a junior accessory dwelling unit, one ~~second residential structure~~, accessory dwelling unit, and accessory structures such as, stable, corral, pasture, workshop, gym, studio, pool cabana, office, or tennis court, provided that such accessory structures are located within the approved development area and structures are clustered to minimize required fuel modification.
- d. Minimizing the length of the access road or driveway, except where a longer roadway can be demonstrated to avoid or be more protective of resources.
- e. Grading for access roads and driveways should be minimized; the standard for new on-site access roads shall be a maximum of 300 feet or one-third the parcel depth, whichever is less. Longer roads may be allowed on approval of the City Planning Commission, upon recommendation of the Environmental Review Board and the determination that adverse environmental impacts will not be incurred. Such approval shall constitute a conditional use to be processed consistent with the LIP provisions.
- f. Prohibiting earthmoving operations during the rainy season, consistent with Policy 3.47.
- g. Minimizing impacts to water quality, consistent with Policies 3.94—3.155. (Resolution No. 07-04)

CHAPTER 5—NEW DEVELOPMENT

2. Land Use Plan Provisions

The LUP provides parameters for new development within the City. The Land Use Plan Map designates the allowable land use, including type, maximum density and intensity, for each parcel. Land use types include local commercial, visitor serving commercial, residential, institutional, recreational, and open space. The LUP describes the allowable uses in each category.

The commercial development policies provide for pedestrian and bicycle circulation to be provided within new commercial projects in order to minimize vehicular traffic. Visitor serving commercial uses shall be allowed in all commercial zones in the City and shall be given priority over other non-coastal dependent development. Parking facilities approved for office or other commercial developments shall be permitted to be used for public beach parking on weekends and other times when the parking is not needed for the approved uses.

The LUP encourages and provides for the preparation of a specific plan or other comprehensive plan for the Civic Center area. The Land Use Plan Map designates this area for Community Commercial, General Commercial, and Visitor- Serving Commercial uses. By preparing a Specific Plan a wider range and mix of uses, development standards, and design guidelines tailored to the unique characteristics of the Civic Center could be provided for this area as a future amendment to the LCP.

The LUP policies address new residential development. The maximum number of structures allowed in a residential development is one main residence which can contain a junior accessory dwelling unit, one ~~second residential structure~~ accessory dwelling unit and additional accessory structures provided that all such structures are located within the approved development area and clustered to minimize required fuel modification, landform alteration, and removal of native vegetation.

The LUP provides for a lot retirement program designed to minimize the individual and cumulative impacts of the potential buildout of existing parcels that are located in ESHA or other constrained areas and still allow for new development and creation of parcels in areas with fewer constraints. This includes the Transfer of Development Credit (TDC) Program, and an expedited reversion to acreage process. The TDC program will be implemented on a region-wide basis, including the City as well as the unincorporated area of the Santa Monica Mountains within the Coastal Zone. New development that results in the creation of new parcels, or multi-family development that includes more than one unit per existing parcel, except for affordable housing units, must retire an equivalent number of existing parcels that meet the qualification criteria of the program. Finally, an expedited procedure will be implemented to process reversion to acreage maps.

The LUP policies require that land divisions minimize impacts to coastal resources and public access. Land divisions include subdivisions through parcel or tract map, lot line adjustments, and certificates of compliance. Land divisions are only permitted if they are approved in a coastal

development permit. A land division cannot be approved unless every new lot created would contain an identified building site that could be developed consistent with all policies of the LCP. Land divisions must be designed to cluster development, to minimize landform alteration, to minimize site disturbance, and to maximize open space. Any land division resulting in the creation of additional lots must be conditioned upon the retirement of development credits (TDCs) at a ratio of one credit per new lot created. Certificates of compliance must meet all policies of the LCP.

The LUP policies provide for the protection of water resources. New development must provide evidence of an adequate potable water supply. The use of water wells to serve new development must minimize individual and cumulative impacts on groundwater supplies and on adjacent or nearby streams, springs or seeps and their associated riparian habitats. Water conservation shall be promoted. Reclaimed water may be used for approved landscaping, but landscaping or irrigation of natural vegetation for the sole purpose of disposing of reclaimed water is prohibited.

Communication facilities are provided for as a conditional use in all land use designations. All facilities and related support structures shall be sited and designed to protect coastal resources, including scenic and visual resources. Co-location of facilities is required where feasible to avoid the impacts of facility proliferation. New transmission lines and support structures will be placed underground where feasible. Existing facilities should be relocated underground when they are replaced.

Finally, the New Development policies provide for the protection and preservation of archaeological and paleontological resources. Measures to avoid and/or minimize impacts to identified archaeological and paleontological resources must be incorporated into the project and monitoring must be provided during construction to protect resources.

- h. Design guidelines, including architectural design, lighting, signs, and landscaping.
- i. Provisions for mixed use development. (Resolution No. 07-04)

6. Residential Development Policies

5.20 All residential development, including land divisions and lot line adjustments, shall conform to all applicable LCP policies, including density provisions. Allowable densities are stated as maximums. Compliance with the other policies of the LCP may further limit the maximum allowable density of development.

5.21 The maximum number of structures permitted in a residential development shall be limited to one main residence which can contain a junior accessory dwelling unit, one accessory dwelling unit, ~~second residential structure~~, and accessory structures such as stable, workshop, gym, studio, pool cabana, office, or tennis court provided that all such structures are located within the approved development area and structures are clustered to minimize required fuel modification.

- 5.22 ~~Second residential units~~ Accessory dwelling units (guesthouses, granny units, etc.) shall be limited in size to a maximum of ~~850 square feet for a studio or one-bedroom and 1,000 900~~ square feet ~~for a two-bedroom~~two-bedroom unit. Junior accessory dwelling units shall be limited in size to a maximum of 500 square feet. The maximum square footage shall include the total floor area of all enclosed space, including lofts, mezzanines, and storage areas. Detached garages, including garages provided as part of an ~~an second residential unit~~ accessory dwelling unit, shall not exceed 400 square feet (2-car) maximum. The area of a garage provided as part of an ~~an second residential unit~~ accessory dwelling unit shall not be included in the ~~850 or 1,000 900~~ square foot limit.
- 5.23 A ~~minimum-maximum~~ of one on-site parking space shall be required for the exclusive use of ~~an any second residential unit~~ accessory dwelling unit. No parking shall be required for a junior accessory dwelling unit.
- 5.24 New development of an ~~an second residential unit~~ accessory dwelling unit or other accessory structure that includes plumbing facilities shall demonstrate that adequate private sewage disposal can be provided on the project site consistent with all of the policies of the LCP.
- 5.25 In order to protect the rural character, improvements, which create a suburban atmosphere such as sidewalks and streetlights, shall be avoided in any rural residential designation.

LOCAL IMPLEMENTATION PLAN

CHAPTER 2—DEFINITIONS

2.1. GENERAL DEFINITIONS

ACCESSORY DWELLING UNIT - a dwelling unit providing complete independent living facilities for one or more persons that is located on a parcel with another primary, single-family dwelling as defined by State law. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling's location. An accessory dwelling unit may be within the same structure as the primary unit, in an attached structure, or in a separate structure on the same parcel. The term accessory dwelling unit also includes an "efficiency unit," as defined in Health and Safety Code Section 17958., or any successor statute and a "manufactured home," as defined in Health and Safety Code Section 18007, or any successor statute.

ACCESSORY DWELLING UNIT, ATTACHED – an accessory dwelling unit that is structurally attached to the primary dwelling unit by a shared wall or as an additional story above the primary dwelling unit, but which has independent, direct access from the exterior.

ACCESSORY DWELLING UNIT DETACHED – an accessory dwelling unit that is not structurally attached to the primary dwelling unit.

CAR SHARE VEHICLE - a motor vehicle that is operated as part of a regional fleet by a public or private car-sharing company or organization and provides hourly or daily service. A car share vehicle does not include vehicles used as part of ride-hailing companies such as Uber or Lyft.

EFFICIENCY KITCHEN - a kitchen that at a minimum contains the following: a sink with a maximum waste line diameter of 1.5 inches, a cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas, and a food preparation counter or counters that total at least 15 square feet in area and storage cabinets that total at least 30 square feet of shelf space.

JUNIOR ACCESSORY DWELLING UNIT - an accessory dwelling unit that is no more than 500 square feet in size and is contained entirely within the floor area or total development square footage of an existing or proposed single-family structure, and which includes. A junior accessory dwelling unit may include separate sanitation facilities or may share sanitation facilities with the existing structure.

PASSAGEWAY – a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit or junior accessory dwelling unit.

PRINCIPAL PLACE OF RESIDENCE - the residence where a property owner actually lives for the greater part of time, or the place where the property owner remains when not called elsewhere for some special or temporary purpose and to which the property owner returns frequently and periodically, as from work or vacation. There may be only one "principal place of residence," and where more than one residence is maintained or owned, the burden shall be on the property owner to show that the Primary Residential Unit is his or her principal place of residence as evidenced by qualifying for the homeowner's tax exemption, voter registration, vehicle registration, or similar methods that demonstrate owner-occupancy. If multiple persons own the Property as tenants in common or some other form of common ownership, a person or persons representing at least 50 percent of the ownership interest in the Property shall reside on the Property and maintain the Property as his, her, or their principal place of residence. Any person or persons who qualify for the homeowner's tax exemption under the California State Board of Equalization rules, may qualify as an owner occupant.

~~SECOND UNIT—an attached or detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single family dwelling is situated. The maximum living area of a second unit shall not exceed 900 square feet, including any mezzanine or storage space. A second unit may include a garage not to exceed 400 sq. ft. The square footage of the garage shall not be included in the maximum living area.~~

PUBLIC TRANSIT - a location, including, but not limited to, a bus stop, where the public may access buses and other forms of transportation that charges set fares, run on fixed routes, and available to the public.

CHAPTER 3—ZONING DESIGNATIONS AND PERMITTED USES

Q. Planned Development (PD) Zone

1. Purpose

The PD District is intended to provide for a mix of residential and recreational development, consistent with the PD Land Use Designation in Chapter 5 (Section C.2) of the Land Use Plan consisting of five single-family residences and 1.74 acres of recreational area located east of Malibu Bluffs Park and south of Pacific Coast Highway. The PD District consists of the land designated as Assessor Parcel Numbers (APNs) 4458-018-019, 4458-018-002, and 4458-018-018, known as Malibu Coast Estate, and formerly known as the “Crummer Trust” parcel.

2. Permitted Uses

The uses and structures permitted in Malibu Coast Estate are as follows. Lot numbers are as identified on the “Malibu Coast Estate Planned Development Map 1” of this LIP.

a. Lot Nos. 1—5

- i. One single-family residence, which may contain ~~a~~one junior accessory dwelling unit, per lot.
- ii. Accessory uses (one second accessory dwelling unit or guest house per lot, garages, swimming pools, spas, pool houses, cabanas, water features, gazebos, storage sheds, private non-illuminated sports courts, noncommercial greenhouses, gated driveways, workshops, gyms, home studios, home offices, and reasonably similar uses normally associated with a single-family residence, as determined by the Planning Director).
- iii. Domestic animals, kept as pets.
- iv. Landscaping.

b. Lot No. 6

- i. Uses and structures maintained by either the owners of Lots 1—5 or the homeowners’ association formed to serve the residential development within Malibu Coast Estate, including a guard house, private access road, gates (including entry gates), fencing, visitor parking, landscaping, guardhouse parking, community utilities, informational and directional signage, private open space, lighting and wastewater treatment facilities serving uses within Malibu Coast Estate.

c. Lot No. 7

- i. Parks and public open space, excluding community centers.
- ii. Active and passive public recreational facilities, such as ball fields, skate parks, picnic areas, playgrounds, walkways, restrooms, scoreboard, sport court fencing, parking lots, and reasonably similar uses as determined by the Planning Director. Night lighting of recreational facilities shall be prohibited, except for the minimum lighting necessary for public safety.
- iii. Onsite wastewater treatment facilities.

3. Lot Development Criteria

All new lots created in Malibu Coast Estate shall comply with the following criteria:

a. Lot Nos. 1—5

- i. Minimum lot area: 113,600 square feet (2.60 acres).
- ii. Minimum lot width: 115 feet.
- iii. Minimum lot depth: 480 feet.

b. Lot No. 6

- i. Minimum lot area: 125,700 square feet (2.88 acres).
- ii. Minimum lot width: 625 feet.
- iii. Minimum lot depth: 100 feet.

c. Lot No. 7

- i. Minimum lot area: 75,640 square feet (1.74 acres).
- ii. Minimum lot width: 460 feet.
- iii. Minimum lot depth: 100 feet.

4. Property Development and Design Standards

Development in Malibu Coast Estate shall be subject to all applicable standards of the Malibu LIP, unless otherwise indicated in this LIP Section 3.3(Q). The following development standards shall replace the corresponding development standards otherwise contained in each noted LIP Section for those lots in Malibu Coast Estate.

a. Lot Nos. 1—5

- i. Development Footprint and Structure Size (Replaces corresponding standards in LIP Section 3.6(K))

- a) The total development square footage (TDSF) on each of Lot Nos. 1—5 shall not exceed the following square footage per lot:
 - Lot 1 – 10,052 sq. ft.
 - Lot 2 – 9,642 sq. ft.
 - Lot 3 – 9,434 sq. ft.
 - Lot 4 – 9,513 sq. ft.
 - Lot 5 – 10,990 sq. ft.
 - b) Combinations of Basements, Cellars and/or Subterranean Garages. If any combination of basements, cellars, and/or subterranean garages is proposed, the initial one-thousand (1,000) square feet of the combined area shall not count toward TDSF. Any additional area in excess of one-thousand (1,000) square feet shall be included in the calculation of TDSF at ratio of one square foot for every two square feet proposed.
 - c) Covered areas, such as covered patios, eaves, and awnings that project up to six feet from the exterior wall of the structure shall not count toward TDSF; if the covered areas project more than six feet, the entire covered area (including the area within the six foot projection) shall be included in TDSF.
 - d) The development footprint on each lot (Lot Nos. 1—5) shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Structures on Lot 5 shall be setback a minimum of 190 feet from the edge of the bluff as identified on “Malibu Coast Estate Planned Development Map 1” in order to ensure that impacts to public views of the eastern Malibu coastline as seen from Malibu Bluffs Park are minimized. The structural setback on Lot 5 does not apply to at grade improvements or low profile above-grade improvements for accessory uses not to exceed 10 feet in height.
- ii. Setbacks (Replaces corresponding standards in LIP Section 3.6F)
- a) Front yard setbacks shall be at least twenty (20) percent of the total depth of the lot measured from the property line abutting the street, or sixty-five (65) feet, whichever is less. However, the front yard setback for Lot 5 shall be at least forty-three (43) feet.
 - b) Side yard setbacks shall be cumulatively at least twenty-five (25) percent of the total width of the lot but, in no event, shall a single side yard setback be less than ten (10) percent of the width of the lot.
 - c) Rear yard setbacks shall be at least fifteen (15) percent of the lot depth.
 - d) Parkland setbacks in LIP Section 3.6(F)(6) shall not apply.
- iii. Structure Height (Replaces corresponding standards in LIP Section 3.6(E))

- a) Every residence and every other building or structure associated with a residential development (excluding chimneys), including satellite dish antenna, solar panels and rooftop equipment, shall not be higher than eighteen (18) feet, except the easternmost approximately 2,500 sq. ft. of the residence on Lot 2 and the southwestern corner of the residence on Lot 5 shall not be higher than 15 feet, as indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. Height is measured from natural or finished grade, whichever is lower.
 - b) Mechanical equipment, including screens may not exceed roof height. Roof-mounted mechanical equipment shall be integrated into the roof design and screened.
 - c) In no event shall the maximum number of stories above grade be greater than two. Basements and subterranean garages shall not be considered a story.
- iv. Grading (Replaces corresponding standards in LIP Section 8.3(B))
- a) Notwithstanding other provisions of this Code, all grading associated with the berm, ingress, egress, including safety access, shall be considered exempt grading.
 - b) Non-exempt grading shall be limited to 2,000 cubic yards per lot.
 - c) Net export shall be limited to 3,500 cubic yards per lot.
- v. Impermeable Coverage, Landscaping, and Berm
- a) The impermeable coverage requirement in LIP Section 3.6(I) shall apply.
 - b) In addition to the requirements of LIP Section 3.10, site landscaping shall be designed to minimize views of the approved structures as seen from public viewing areas, including the use of native trees to screen approved structures. Landscaping and trees shall be selected, sited, and maintained to not exceed 25 feet.
 - c) A natural-looking earthen berm that is 4 feet in height (except for the northernmost 30 foot long portion on Lot 1 that shall be no less than 2 feet in height) above finished grade shall be constructed along the east side of all approved structures on Lots 1 and 2 to minimize views of the development from downcoast public viewing locations. The location and height of the berm shall substantially conform to that indicated on “Malibu Coast Estate Planned Development Map 1” of this LIP. The berm shall be vegetated with lower-lying native species that blend with the natural bluff landscape.
- vi. Parking (In addition to the parking standards of LIP Section 3.14)

- a) Two enclosed and two unenclosed parking spaces. The minimum size for a residential parking space shall be 18 feet long by 10 feet wide.
- b) One enclosed or unenclosed parking space for a guest house or ~~second~~ accessory dwelling unit. No parking is required for a junior accessory dwelling unit.

vii. Colors and Lighting (In addition to the standards of LIP Section 6.5(B))

- a) Structures shall be limited to colors compatible with the surrounding environment and landscape (earth tones), including shades of green, brown, and gray with no white or light or bright tones. The color palette shall be specified on plans submitted in building plan check and must be approved by the Planning Director prior to issuance of a building permit. All windows shall be comprised of non-glare glass.
- b) Lighting must comply with LIP Section 6.5(G).

viii. Permit Required

To insure the protection of scenic and visual resources in accordance with the provisions of the LCP, any future improvements to structures or significant changes to landscaping beyond that authorized by the coastal development permit (CDP) for each residential lot (Lots 1-5), which would ordinarily be exempt from a CDP pursuant to LIP Section 13.4.1, shall be subject to a new CDP or permit amendment.

long as sufficient parking is provided to serve existing and proposed public access and recreation uses and any adverse impacts to public access and recreation are avoided.

iii. Fencing

With the exception of skate park and sport court fencing and backstops, fences and walls shall not exceed eight feet in height. The fencing and backstops design and materials shall take into consideration view and vista areas, site distance, and environmental constraints.

iv. Temporary Uses

Temporary uses shall be in accordance with LIP Section 13.4.9 and the temporary use permit process contained within Malibu Municipal Code Chapter 17.68. (Ord. 398 § 4, 2015; Ord. 373 § 3, 2013; Ord. 366 § 3(C), 2012; Ord. 364 § 4(A), 2012)

3.6. RESIDENTIAL DEVELOPMENT STANDARDS

All single-family and multiple-family residences shall be subject to the following development standards:

D. The minimum floor area of a residential unit shall be as follows:

1. For a single-family residence, not less than 800 square feet, exclusive of any appurtenant structures. This minimum does not apply to accessory structures.
2. For each multi-family dwelling unit, not less than 750 square feet, exclusive of any appurtenant structures.

N. Accessory Structures. Accessory structures identified as being permitted within any zone may be established only if they are clearly accessory to a primary permitted or conditionally permitted use established concurrent with or prior to establishment of accessory use.

~~1. Second Residential Units~~

~~a. Second residential unit includes a guest house or a second unit, as defined in Section 2.1 of the Malibu LIP.~~

~~b. A maximum of one second residential unit may be permitted as an accessory to a permitted or existing single family dwelling. Development of a second residential unit shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.~~

~~c. Development Standards~~

~~i. Siting~~

~~Any permitted second residential unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.~~

~~ii. Maximum Living Area~~

~~The maximum living area of a second residential unit shall not exceed 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the second residential unit.~~

iii. ~~Parking~~

- a) ~~A minimum of one on-site parking space shall be provided for the exclusive use of a second residential unit.~~
- b) ~~One garage not to exceed 400 square feet in size may be permitted as part of a second residential unit.~~

1. Accessory Dwelling Units

- i. Purpose. The purpose of this section is to establish the procedures for the creation of accessory dwelling units as defined in the LIP Section 2.1 (General Definitions) and in California Government Code Section 65852.2, or any successor statute in the following residential zones: Rural Residential (RR), Single Family (SF), Multiple Family (MF), Multifamily Beach Front (MFBF) or areas designated for single family residential use as part of a Planned Development (PD) zone and to provide development standards to ensure the orderly development of these units in appropriate areas of the City.
- ii. CDP required. An accessory dwelling unit coastal development permit (ADU CDP) shall be obtained for a detached accessory dwelling unit pursuant to LIP Section 13.30.
- iii. The director shall approve, conditionally approve, or deny an ADU CDP application for an accessory dwelling unit that complies with Subsection iv (Development Standards) below within 60 days after receiving a complete application.

~~iii.~~ iv. s.

Both an ADU and a Junior ADU may be established on a lot when one detached, new-construction ADU is proposed on a lot with a proposed or existing single-family dwelling, if the detached ADU satisfies the following limitations:

- (i) The side- and rear-yard setbacks are at least four-feet.
- (ii) The total floor area is 800 square feet or smaller.
- (iii) The peak height above grade is 16 feet or less.

~~iv.~~ v.

iv. v. Development Standards. Except as modified by this subsection, an accessory dwelling unit shall conform to all requirements of the underlying zoning district, any applicable overlay district and all other applicable provisions of the LIP including, but not limited to, height, setback, site coverage, and other coastal resource protection development standards. An accessory dwelling unit is exempt from these requirements if it ~~unless the unit~~ is contained within a legal nonconforming structure and the accessory dwelling unit development would comply with LIP section 13.5.

a) Setback requirements.

1) Accessory dwelling units shall provide a minimum four foot setback from all side and rear lot lines.

2) No additional setback shall be required for an existing garage that is ~~converted~~~~remodeled~~ into an accessory dwelling unit provided that the side and rear setbacks comply with required Fire and Building Codes.

3) An addition to create an accessory dwelling unit above an existing garage shall require a setback of not more than five feet from side and rear property lines.

b) Unit size

1) The maximum size of a detached or attached accessory dwelling unit is 850 square feet for a studio or one-bedroom unit and 1,000 square feet for a unit with two bedrooms. No more than two bedrooms are allowed. An accessory dwelling unit may include a garage not to exceed 400 square feet. The square footage of the garage shall not be included in the maximum living area.

2) An attached ADU that is created on a lot with an existing primary dwelling is further limited to 50 percent of the floor area of the existing primary dwelling.

3) Application of other development standards might further limit the size of the accessory dwelling unit, but no application of lot coverage, open space, floor area ratio or minimum lot size may require the accessory dwelling unit to be less than 800 square feet

c) Exterior Access. An accessory dwelling unit shall have independent exterior access from the primary dwelling unit.

d) Parking. Parking shall comply with requirements of LIP 3.14 (Parking Regulations) except as modified below:

1) One parking space is required for an attached or detached accessory dwelling unit or each accessory dwelling unit in a multifamily building. Such parking may be provided in setback areas, as tandem parking and/or may be located on an existing driveway.

2) Tandem parking or parking in setback areas may be prohibited if the parking configuration is not feasible based upon specific site topographic or fire and life safety conditions.

3) No parking shall be required when:

- a) The accessory dwelling unit is converted as part of the existing primary residence or existing accessory structure.
- b) The accessory dwelling unit is located within one-half mile (measured by actual walking distance) of a public transit stop with fixed route bus service.
- c) On-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- d) The location of the proposed accessory dwelling unit is within one block of a designated car share vehicle.
- 4) ~~When a required parking space within a garage, carport or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit including enclosed, unenclosed or tandem spaces or by the use of mechanical automobile parking lifts. Replacement parking must be located on hardscape and mechanical automobile parking lifts must be located within an enclosed structure.~~
- e) Fire Sprinklers. Accessory dwelling units shall not be required to provide fire sprinklers if sprinklers were not required for the primary dwelling.
- f) Passageway. A passageway or path from the street to the entrance of an accessory dwelling unit shall not be required unless required by the fire department.
- g) Utilities. Accessory dwelling units shall not be considered new residential uses for the purposes of calculating utility connection fees.
- 1) A new or separate utility connection fee can be required for an accessory dwelling unit that is not contained within the existing primary dwelling unit or within an existing accessory building. The connection fee shall be proportionate to the burden of the accessory dwelling unit based on the accessory dwelling unit size and number of plumbing fixtures.
- 2) Conversion of floor space area to an accessory dwelling unit within an existing structure with the appropriate meter size shall not be subject to new water connection fees.
- h) Multifamily Lots. Accessory Dwelling Units on multifamily lots are subject to the following standards:
 - i) Multiple accessory dwelling units are allowed within portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each converted accessory complies with state building standards for dwellings. At least one converted accessory dwelling unit is allowed within an existing

multifamily dwelling, and up to 25 percent of the existing multifamily dwelling units may each have a converted ADU under this paragraph.

ii) No more than two detached accessory dwelling units are allowed on a lot that has an existing multifamily dwelling if each detached accessory dwelling unit satisfies the following limitations:

1) The side- and rear-yard setbacks are at least four-feet.

2) The total floor area is 800 square feet or smaller.

i) Additional requirements for all accessory dwelling units.

1) A single-family dwelling must exist on the lot or shall be constructed on the lot in conjunction with the construction of the accessory dwelling unit.

2) A detached accessory dwelling unit shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

3) The accessory dwelling unit shall not be sold separately from the primary dwelling.

4) The accessory dwelling unit shall comply with the same building and safety requirements as the primary dwelling unit in accordance with the California Government Code and California Fire Code.

5) An approved permanent foundation shall be required for an accessory dwelling unit.

6) The accessory dwelling unit shall comply with all applicable requirements for onsite wastewater treatment systems.

7) An accessory dwelling unit may not be rented for a period less than 30 consecutive calendar days.

8) The owner of an accessory dwelling unit shall provide information to the city annually, upon request, for reporting to the State as to whether during the prior 12 months the junior accessory dwelling unit was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.

j) Processing

i) An attached accessory dwelling unit or an accessory dwelling unit located inside of an existing accessory structure shall be exempt from obtaining a coastal development permit

pursuant to LIP Section 13.4.1, if it complies with the requirements of this subsection, is consistent with the LCP, and has no potential for adverse effects, either individually or cumulatively, on coastal resources.

ii) A detached accessory dwelling unit shall be processed without a public hearing as an administrative coastal development permit. An administrative coastal development permit for a detached accessory dwelling unit shall be appealable pursuant to LIP Section 13.30.

iii) Applications for an accessory dwelling unit that include a request for a discretionary permit, such as a site plan review, minor modification or variance, shall be processed concurrently with the discretionary permit. The discretionary permit shall be subject to appeal pursuant to LIP Section 13.20.

2. Junior Accessory Dwelling Units

a. One junior accessory dwelling unit may be permitted in conjunction with an existing single-family residence.

b. A junior accessory dwelling unit shall not be sold separately from the primary residence.

c. The property owner shall reside in and maintain the primary residential unit as the property owner's principal place of residence. Owners of lots developed with an accessory junior accessory dwelling unit shall live on the lot as long as the lot is developed with a junior accessory.

d. Development Standards

i. A junior accessory dwelling unit shall not exceed 500 square feet in total floor area. If a bathroom is shared with the remainder of the single-family dwelling, it shall not be included in the square footage calculation.

ii. A junior accessory dwelling unit shall be contained entirely within an existing single-family residence. Except up to 150 square feet is allowed if the expansion is limited to accommodating ingress and egress.

iii. A junior accessory dwelling unit shall have an independent exterior access from the primary dwelling.

iv. An interior connection to the main living area of the primary residence shall be maintained. A second door may be added for sound attenuation. Two (2) doors may be installed within one (1) frame for noise attenuation.

v. The junior accessory dwelling unit may share a bathroom with the primary residence or have its own.

vi. No additional parking shall be required for a junior accessory dwelling unit.

e. Except as provided herein, a junior accessory dwelling unit shall comply with all building and fire code requirementsrequirement.

- f. A junior accessory dwelling unit may not be rented for a period less than 30 consecutive calendar days.
- g. The owner of a junior accessory dwelling unit shall provide information to the city annually upon request for reporting to the State as to whether during the prior 12 months the junior accessory dwelling unit was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.
- h. Prior to issuance of a building permit for a junior accessory dwelling unit, a deed restriction shall be recorded that: prohibits the subdivision or sale of the junior accessory dwelling unit separate from the single-family dwelling; specifies that the deed restriction runs with the land and is therefore enforceable against future property owners; restricts the size and features of the junior accessory dwelling unit in accordance with this section; requires owners of record of the property to occupy the primary dwelling unit or the junior accessory dwelling unit; and further that the City shall be a third party beneficiary of the deed restriction with the right to enforce the provisions of the deed restriction.

3. Guest houses

a. Development of a guest house shall require that a primary dwelling unit be developed on the lot prior to or concurrent with the second residential unit.

b. Development Standards

i. Siting. Any permitted guest house shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.

ii. Maximum Living Area. The maximum living area of a guest house shall not exceed 900 square feet, including the total floor area of all enclosed space, including any mezzanine or storage space. The maximum living area shall not include the area of a garage included as part of the guest house.

iii. Parking

a) A minimum of one on-site parking space shall be provided for the exclusive use of a guest house.

b) One garage not to exceed 400 square feet in size may be permitted as part of a guest house.

42. Other Accessory Structures

- a. Accessory structures customarily ancillary to single family dwellings including, but not limited to, a stable, workshop, gym, studio, pool cabana, office, sport court, pool, or spa may be permitted as an accessory to a permitted or existing single family dwelling.
- b. Any permitted accessory structure shall be located within the approved development area for the project site and shall be clustered with the primary dwelling unit and any other approved structures to minimize required fuel modification.
- c. Permitted development located within or adjacent to parklands that adversely impact those areas may include open space or conservation restrictions or easements over parkland buffer in order to protect resources.

CHAPTER 13—COASTAL DEVELOPMENT PERMITS

No changes to 13.1 through 13.3

13.4. EXEMPTIONS

The following projects are exempt from the requirement to obtain a Coastal Development Permit.

13.4.1 Improvements to Existing Single-Family Residences

- A. Improvements to existing single-family residences except as noted below in (B). For purposes of this section, the terms “Improvements to existing single-family residences” includes all fixtures and structures directly attached to the residence and those structures normally associated with a single family residence, such as garages, swimming pools, fences, storage sheds and landscaping but specifically not including guest houses or accessory self-contained (detached) residential units. 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.
- B. The exemption in (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental impact:
1. Improvements to a single-family structure if the structure or improvement is 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.
 2. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland, or sand dune, or within 50 feet of the edge of a coastal bluff, or in environmentally sensitive habitat areas.
 3. The expansion or construction of water wells or septic systems.
 4. On property not included in subsection (B)(1) above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resources areas as designated by the City or Coastal Commission, improvement that would result in an increase of 10 percent or more

of internal floor area of an existing structure or an additional improvement of 10 percent or less where an improvement to the structure had previously been undertaken pursuant to this section or **Public Resources Code** section 30610(a), increase in height by more than 10 percent of an existing structure and/or any significant non-attached structure such as garages, fences, shoreline protective works or docks.

5. In areas which the City or Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use, the construction of any specified major water using development not essential to residential use including but not limited to swimming pools, or the construction or extension of any landscaping irrigation system.

6. Any improvement to a single-family residence where the development permit issued for the original structure by the Coastal Commission, regional Coastal Commission, or City indicated that any future improvements would require a development permit.

13.4.2 Repair and Maintenance Activities

A. Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities.

B. The exemption in Section 13.4.2 (A) of the Malibu LIP shall not apply to the following extraordinary methods of repair and maintenance which require a coastal development permit because they involve a risk of adverse environmental impact:

1. Any method of repair or maintenance of a seawall, revetment, bluff retaining wall, breakwater, groin, culvert, outfall, or similar shoreline work that involves:

a. Repair or maintenance involving substantial alteration of the foundation of the protective work including pilings and other surface or subsurface structures;

b. The placement, whether temporary or permanent, of rip-rap, artificial berms of sand or other beach materials, or any other forms of solid materials, on a beach or in coastal waters, streams, wetlands, estuaries and lakes or on a shoreline protective works;

c. The replacement of 20 percent or more of the materials of an existing structure with materials of a different kind; or

d. The presence, whether temporary or permanent, of mechanized construction equipment or construction materials on any sand area, bluff, or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams.

2. Any method of routine maintenance dredging that involves:

a. The dredging of 100,000 cubic yards or more within a twelve (12) month period;

b. The placement of dredged spoils of any quantity within an environmentally sensitive habitat area, on any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams; or

c. The removal, sale, or disposal of dredged spoils of any quantity that would be suitable for beach nourishment in an area the City or the Coastal Commission has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use.

3. Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within 50 feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within 20 feet of coastal waters or streams that include:

a. The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials;

b. The presence, whether temporary or permanent, of mechanized equipment or construction materials.

C. All repair and maintenance activities governed by Section 13.4.2 (B) shall be subject to the LCP permit regulations, including but not limited to the regulations governing administrative and emergency permits. The provisions of Section 13.4.2 (B) shall not be applicable to those activities specifically described in the document entitled Repair, Maintenance and Utility Hookups, adopted by the Coastal Commission on September 5, 1978 unless a proposed activity will have a risk of substantial adverse impact on public access, environmentally sensitive habitat area, wetlands, or public views to the ocean.

D. Unless destroyed by natural disaster, the replacement of 50 percent or more of a single-family residence, (as measured by 50% of the exterior walls), seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance but instead constitutes a replacement structure requiring a coastal development permit.

13.4.3 Other Improvements

A. Improvements to any structure other than a single-family residence or a public works facility except as noted below in Section 13.4.3 (B) of the Malibu LIP. For purposes of this section, where there is an existing structure, other than a single-family residence or public works facility, the following shall be considered a part of that structure:

1. All fixtures and other structures directly attached to the structure.
2. Landscaping on the lot.

B. The exemption in 13.4.3 (A) above shall not apply to the following classes of development which require a coastal development permit because they involve a risk of adverse environmental effect, adversely affect public access, or involve a change in use contrary to the policies of the LCP.

1. Improvement to any structure if the structure or the improvement is located: on a beach; in a wetland, stream, or lake; seaward of the mean high tide line; or within 50 feet of the edge of a coastal bluff;
2. Any significant alteration of land forms including removal or placement of vegetation, on a beach or sand dune; in a wetland or stream; within 100 feet of the edge of a coastal bluff, or in an environmentally sensitive habitat area;
3. The expansion or construction of water wells or septic systems;
4. On property not included in subsection 13.4.3 (B)(1) of the Malibu LIP above that is located between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or in significant scenic resource areas as designated by the LUP, an improvement that would result in an increase of 10 percent or more of internal floor area of the existing structure, or constitute an additional improvement of 10 percent or less where an improvement to the structure has previously been undertaken pursuant to section (A) above or [Public Resources Code](#) section 30610(b), and/or increase in height by more than 10 percent of an existing structure;

5. In areas which the City or the Coastal Commission has previously declared by resolution after public hearing to have a critically short water supply that must be maintained for protection of coastal recreation or public recreational use, the construction of any specified major water using development including but not limited to swimming pools or the construction or extension of any landscaping irrigation system;
6. Any improvement to a structure where the coastal development permit issued for the original structure by the City or the Coastal Commission indicated that any future improvements would require a development permit;
7. Any improvement to a structure which changes the intensity of use of the structure;
8. Any improvement made pursuant to a conversion of an existing structure from a multiple unit rental use or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold including but not limited to a condominium conversion, stock cooperative conversion or motel/hotel timesharing conversion.

13.30 ACCESSORY DWELLING UNIT COASTAL DEVELOPMENT PERMITS

13.30.1 Applicability

These regulations shall apply to all applications for an Accessory Dwelling Unit (ADU) as defined in Chapter 2 of the Malibu LIP (Definitions) that are not exempt pursuant to LIP Section 13.4.1. An application for an Accessory Dwelling Unit Coastal Development Permit (ADU CDP) shall be made to the Planning Director.

A. Applications for ADU CDPs shall be to the Planning Director on forms provided by the Planning Department.

B. The Planning Director shall refer the application to the City's Biologist (except when the ADU is located entirely within the existing primary dwelling unit) and the Environmental Health Administrator for review and verification of the facts in the application and analysis of the design of the proposed ADU.

C. Public notice for an ADU CDP shall be provided in accordance with LIP Section 13.12.2(B) and 13.13.3.

13.30.2 Findings and Permit Issuance

A. The Planning Director may approve an application for an ADU CDP if all of the following findings can be made:

1. The proposed ADU is consistent with the LCP and all applicable LCP provisions, local laws and regulations regarding ADUs.
2. The dwelling conforms to the development standards and requirements for accessory dwelling units established in LIP Section 3.6(N).
3. Public and utility services including emergency access are adequate to serve both dwellings.
4. The proposed ADU CDP has been conditioned in accordance with the LCP.

B. Upon approving an ADU CDP, the Planning Director shall issue a written document that at a minimum includes the following information:

1. Location of the project;
2. The date of issuance;

3. An expiration date;
4. The scope of work to be performed;
5. Terms and conditions of the permit; and
6. Findings.

13.30.3 Reporting of ADU CDPs

The Planning Director shall report in writing to the Planning Commission at each meeting the ADU CDP permits approved under this section in the same manner as for an administrative permit, consistent with LIP Section 13.13.6, except that the ADU CDP shall not be eligible for treatment as a regular coastal development permit requiring a public hearing. The ADU CDP shall become effective 5 days after the Planning Commission meeting unless the approval is rescinded by the Planning Director before that date.

13.11. PUBLIC HEARING REQUIRED AND PUBLIC COMMENT

A. At least one public hearing shall be required on all appealable development as defined in Chapter 2 of the Malibu LIP (Definitions), except for accessory dwelling units as defined in Section 3.6 N.2.

1. Such hearing shall occur no earlier than seven (7) calendar days following the mailing of the notice required in Section 13.12 of the Malibu LIP. The public hearing may be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally or in writing.

2. If a decision on a development permit is continued by the City to a time which is neither (a) previously stated in the notice provided pursuant to Section 13.12 of the Malibu LIP, nor (b) announced at the hearing as being continued to a time certain, the local government shall provide notice of the further hearings (or action on the proposed development) in the same manner, and within the same time limits as established in Section 13565 of the California Code of Regulations.

B. Any person may submit written comments to the Planning Director Manager on an application for a Coastal Development Permit, or on an appeal of a Coastal Development Permit, at any time prior to the close of the public hearing. If no public hearing is required, written comments may be submitted prior to the decision date specified in the public notice. Written comments shall be submitted to the Planning Director Manager who shall forward them to the appropriate person, commission, board or the Council and to the applicant. (Ord. 303 § 3, 2007)

13.13. ADMINISTRATIVE PERMITS

13.13.1 Applicability

A. The Planning ~~Director~~ Manager may process consistent with the procedures in this Chapter any coastal development permit application for the specific uses identified below, except a proposed coastal development permit that is appealable or is within the Commission's continuing jurisdiction as defined in Chapter 2 of the Malibu LIP (Definitions).

1. Improvements to any existing structure;
2. Any single-family dwelling;
3. Lot mergers;
4. Any development of four dwelling units or less that does not require demolition, and any other developments not in excess of one hundred thousand dollars (\$100,000) other than any division of land;
5. Water wells.

B. Notwithstanding any other provisions of the LCP, ~~attached or~~ detached accessory second dwelling units shall be processed as administrative permits, ~~except that~~ the approval of such permits shall be appealable to the Coastal Commission if the project is located in the appealable zone. (Ord. 335 § 3, 2009; Ord. 303 § 3, 2007)

NOTE: Changes are proposed for the Residential land use category only as noted below. No changes are proposed for the other land use categories.

Appendix 1 TABLE B PERMITTED USES

| KEY TO TABLE (In addition to a coastal development permit, the following permits are required.) | |
|---|--|
| P | Permitted use |
| MCUP | Requires the approval of a minor Conditional Use Permit by the Director |
| CUP | Requires the approval of a Conditional Use Permit |
| A | Permitted only as an accessory use to an otherwise permitted use |
| LFDC | Requires the approval of a Large Family Day Care permit |
| WTF | Requires the approval of a Wireless Telecommunications Facility |
| . | Not permitted (Prohibited) |

| USE | RR | SF | MF | MFBF | MHR | CR | BPO | CN | CC | CV-1 | CV-2 | CG | OS | I | PRF | RVP |
|--|----------------|----------------|----------------|----------------|------------|-----------|------------|-----------|-----------|-------------|-------------|-----------|-----------|----------|------------|------------|
| RESIDENTIAL | | | | | | | | | | | | | | | | |
| Single-family residential | P | P | P | P | . | . | . | . | . | . | . | . | . | A | . | . |
| Manufactured homes | P | P | P | P | . | . | . | . | . | . | . | . | . | . | . | . |
| Multiple-family residential (including duplexes, condominiums, stock cooperatives, apartments, and similar developments) | . | . | CUP | CUP | . | . | . | . | . | . | . | . | . | . | . | . |
| Second-Accessory dwelling units | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Junior accessory dwelling units | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home parks | . | . | . | . | P | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home park accessory uses (including recreation facilities, meeting rooms, management offices, storage/maintenance buildings, and other similar uses) | . | . | . | . | CUP | . | . | . | . | . | . | . | . | . | . | . |
| Mobile home as residence during construction | P | P | P | MCUP | . | . | . | . | . | . | . | . | . | . | . | . |
| Accessory uses (guest units house, garages, barns, pool houses, pools, spas, gazebos, storage sheds, greenhouses (non-commercial), sports courts (non-illuminated), corrals (non-commercial), and similar uses) | A ¹ | A ¹ | A ¹ | A ¹ | . | . | . | . | . | . | . | . | . | . | . | . |
| Residential care facilities (serving 6 or fewer persons) | P | P | P | . | . | . | . | . | . | . | . | . | . | . | . | . |
| Small family day care (serving 6 or fewer persons) | A | A | A | . | . | . | . | . | . | . | . | . | . | . | . | . |
| USE | RR | SF | MF | MFBF | MHR | CR | BPO | CN | CC | CV-1 | CV-2 | CG | OS | I | PRF | RVP |
| RESIDENTIAL (continued) | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | |
|--|-------------------------|-------------------------|-------------------------|-------------------------|---|---|---|---|---|----------------|----------------|---|---|---|---|---|
| Large family day care (serving 7 to 12 persons) | LFDC | LFDC | LFDC | . | . | . | . | . | . | . | . | . | . | . | . | . |
| Home occupations | P/ MCUP ² | P/ MCUP ² | P/ MCUP ² | P/ MCUP ² | . | . | . | . | . | . | . | . | . | . | . | . |
| Barber shops, beauty salons | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |
| Laundry, dry cleaners | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |
| Miscellaneous services including travel agencies, photocopy services, photographic processing and supplies, mailing services, appliance repair, and similar uses | . | . | . | . | . | . | . | P | P | P ⁴ | P ⁴ | P | . | . | . | . |

Notes:

1. Subject to Residential Development Standards (Section 3.6).
2. Subject to Home Occupations Standards [(Section 3.6(O))].
3. Use Prohibited in Environmentally Sensitive Habitat Areas.
4. This commercial use may be permitted only if at least 50% of the total floor area of the project is devoted to visitor serving commercial use. This floor area requirement shall not apply to the Civic Center Wastewater Treatment Facility.
5. CUP for veterinary hospitals.
6. Maximum interior occupancy of 125 persons.
7. If exceeding interior occupancy of 125 persons.
8. By hand only.
9. Use permitted only if available to general public.
10. Charitable, philanthropic, or educational non-profit activities shall be limited to permanent uses that occur within an enclosed building.
11. Sports field lighting shall be limited to the main sports field at Malibu High School and subject to the standards of LIP Sections 4.6.2 and 6.5(G).
12. Limited to public agency use only (not for private use).
13. Accessory uses when part of an educational or non-profit (non-commercial) use. However, residential care facilities for the elderly are limited to operation by a non-profit only.
14. CUP for facilities within a side or rear yard when adjacent to a residentially-zoned parcel.
15. Conditionally permitted only when facilities are ancillary to the Civic Center Wastewater Treatment Facility, including, but not limited to, injection wells, generators, and pump stations.
16. This use is conditionally permitted in the Civic Center Wastewater Treatment Facility Institutional Overlay District and only when associated with the existing wastewater treatment facility or with the Civic Center Wastewater Treatment Facility.

(Ord. 393 § 4, 2015; Ord. 373 § 3, 2013; Ord. 366 §§ 3(A) and (B), 2012; Ord. 303 § 3, 2007)\

EXHIBIT F



California Department of Housing and
Community Development

Accessory Dwelling Unit Handbook



Where foundations begin

Updated December 2020

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Understanding Accessory Dwelling Units (ADUs) and Their Importance



California's housing production is not keeping pace with demand. In the last decade, less than half of the homes needed to keep up with the population growth were built. Additionally, new homes are often constructed away from job-rich areas. This lack of housing that meets people's needs is impacting affordability and causing average housing costs, particularly for renters in California, to rise significantly. As affordable housing becomes less accessible, people drive longer distances between housing they can afford and their workplace or pack themselves into smaller shared spaces, both of which reduce quality of life and produce negative environmental impacts.

Beyond traditional construction, widening the range of housing types can increase the housing supply and help more low-income Californians thrive. Examples of some of these housing types are Accessory Dwelling Units (ADUs - also referred to as second units, in-law units, casitas, or granny flats) and Junior Accessory Dwelling Units (JADUs).

What is an ADU?

An ADU is an accessory dwelling unit with complete independent living facilities for one or more persons and has a few variations:

- Detached: The unit is separated from the primary structure.
- Attached: The unit is attached to the primary structure.
- Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit.
- Junior Accessory Dwelling Unit (JADU): A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence.

ADUs tend to be significantly less expensive to build and offer benefits that address common development barriers such as affordability and environmental quality. Because ADUs must be built on lots with existing or proposed housing, they do not require paying for new land, dedicated parking or other costly infrastructure required to build a new single-family home. Because they are contained inside existing single-family homes, JADUs require relatively

modest renovations and are much more affordable to complete. ADUs are often built with cost-effective one or two-story wood frames, which are also cheaper than other new homes. Additionally, prefabricated ADUs can be directly purchased and save much of the time and money that comes with new construction. ADUs can provide as much living space as apartments and condominiums and work well for couples, small families, friends, young people, and seniors.

Much of California's housing crisis comes from job-rich, high-opportunity areas where the total housing stock is insufficient to meet demand and exclusionary practices have limited housing choice and inclusion. Professionals and students often prefer living closer to jobs and amenities rather than spending hours commuting. Parents often want better access to schools and do not necessarily require single-family homes to meet their needs. There is a shortage of affordable units, and the units that are available can be out of reach for many people. To address our state's needs, homeowners can construct an ADU on their lot or convert an underutilized part of their home into a JADU. This flexibility benefits both renters and homeowners who can receive extra monthly rent income.

ADUs also 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. The space can be used for a variety of reasons, including adult children who can pay off debt and save up for living on their own.

New policies are making ADUs even more affordable to build, in part by limiting the development impact fees and relaxing zoning requirements. A 2019 study from the Turner Center on Housing Innovation noted that one unit of affordable housing in the Bay Area costs about \$450,000. ADUs and JADUs can often be built at a fraction of that price and homeowners may use their existing lot to create additional housing, without being required to provide additional infrastructure. Often the rent generated from the ADU can pay for the entire project in a matter of years.

ADUs and JADUs are a flexible form of housing that can help Californians more easily access job-rich, high-opportunity areas. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education, and services for many Californians.

Summary of Recent Changes to Accessory Dwelling Unit Laws



In Government Code Section 65852.150, the California Legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in zones that allow single-family and multifamily uses provides additional rental housing, and is an essential component in addressing California's housing needs. Over the years, ADU law has been revised to improve its effectiveness at creating more housing units. Changes to ADU laws effective January 1, 2021, further reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs).

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing

options for family members, friends, students, the elderly, in-home health care providers, people with disabilities, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the California Department of Housing and Community Development (HCD) has prepared this guidance to assist local governments, homeowners, architects, and the general public in encouraging the development of ADUs. The following is a summary of recent legislation that amended ADU law: AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019). Please see Attachment 1 for the complete statutory changes for AB 3182 (2020) and SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671 (2019).

AB 3182 (Ting)

Chapter 198, Statutes of 2020 (Assembly Bill 3182) builds upon recent changes to ADU law (Gov. Code, § 65852.2 and Civil Code Sections 4740 and 4741) to further address barriers to the development and use of ADUs and JADUs.

This recent legislation, among other changes, addresses the following:

- States that an application for the creation of an ADU or JADU shall be *deemed approved* (not just subject to ministerial approval) if the local agency has not acted on the completed application within 60 days.
- Requires ministerial approval of an application for a building permit within a residential or mixed-use zone to create one ADU *and* one JADU per lot (not one or the other), within the proposed or existing single-family dwelling, if certain conditions are met.
- Provides for the rental or leasing of a separate interest ADU or JADU in a common interest development, notwithstanding governing documents that otherwise appear to prohibit renting or leasing of a unit, *and* without regard to the date of the governing documents.

- Provides for not less than 25 percent of the separate interest units within a common interest development be allowed as rental or leasable units.

AB 68 (Ting), AB 881 (Bloom), and SB 13 (Wieckowski)

Chapter 653, Statutes of 2019 (Senate Bill 13, Section 3), Chapter 655, Statutes of 2019 (Assembly Bill 68, Section 2) and Chapter 659 (Assembly Bill 881, Section 1.5 and 2.5) build upon recent changes to ADU and JADU law (Gov. Code § 65852.2, 65852.22) and further address barriers to the development of ADUs and JADUs.

This legislation, among other changes, addresses the following:

- Prohibits local agencies from including in development standards for ADUs requirements on minimum lot size (Gov. Code, § 65852.2, subd. (a)(1)(B)(i)).
- Clarifies areas designated by local agencies for ADUs may be based on the adequacy of water and sewer services as well as impacts on traffic flow and public safety (Gov. Code, § 65852.2, subd. (a)(1)(A)).
- Eliminates all owner-occupancy requirements by local agencies for ADUs approved between January 1, 2020, and January 1, 2025 (Gov. Code, § 65852.2, subd. (a)(6)).
- Prohibits a local agency from establishing a maximum size of an ADU of less than 850 square feet, or 1,000 square feet if the ADU contains more than one bedroom and requires approval of a permit to build an ADU of up to 800 square feet (Gov. Code, § 65852.2, subds. (c)(2)(B) & (C)).
- Clarifies that when ADUs are created through the conversion of a garage, carport or covered parking structure, replacement of offstreet parking spaces cannot be required by the local agency (Gov. Code, § 65852.2, subd. (a)(1)(D)(xi)).
- Reduces the maximum ADU and JADU application review time from 120 days to 60 days (Gov. Code, § 65852.2, subd. (a)(3) and (b)).
- Clarifies that “public transit” includes various means of transportation that charge set fees, run on fixed routes and are available to the public (Gov. Code, § 65852.2, subd. (j)(10)).
- Establishes impact fee exemptions and limitations based on the size of the ADU. ADUs up to 750 square feet are exempt from impact fees (Gov. Code § 65852.2, subd. (f)(3)); ADUs that are 750 square feet or larger may be charged impact fees but only such fees that are proportional in size (by square foot) to those for the primary dwelling unit (Gov. Code, § 65852.2, subd. (f)(3)).
- Defines an “accessory structure” to mean a structure that is accessory or incidental to a dwelling on the same lot as the ADU (Gov. Code, § 65852.2, subd. (j)(2)).
- Authorizes HCD to notify the local agency if HCD finds that their ADU ordinance is not in compliance with state law (Gov. Code, § 65852.2, subd. (h)(2)).
- Clarifies that a local agency may identify an ADU or JADU as an adequate site to satisfy Regional Housing Needs Allocation (RHNA) housing needs (Gov. Code, §§ 65583.1, subd. (a), and 65852.2, subd. (m)).
- Permits JADUs even where a local agency has not adopted an ordinance expressly authorizing them (Gov. Code, § 65852.2, subds. (a)(3), (b), and (e)).

- Allows a permitted JADU to be constructed within the walls of the proposed or existing single-family residence and eliminates the required inclusion of an existing bedroom or an interior entry into the single-family residence (Gov. Code § 65852.22, subd. (a)(4); former Gov. Code § 65852.22, subd. (a)(5)).
- Requires, upon application and approval, a local agency to delay enforcement against a qualifying substandard ADU for five (5) years to allow the owner to correct the violation, so long as the violation is not a health and safety issue, as determined by the enforcement agency (Gov. Code, § 65852.2, subd. (n); Health & Safety Code, § 17980.12).

AB 587 (Friedman), AB 670 (Friedman), and AB 671 (Friedman)

In addition to the legislation listed above, AB 587 (Chapter 657, Statutes of 2019), AB 670 (Chapter 178, Statutes of 2019), and AB 671 (Chapter 658, Statutes of 2019) also have an impact on state ADU law, particularly through Health and Safety Code Section 17980.12. These pieces of legislation, among other changes, address the following:

- AB 587 creates a narrow exemption to the prohibition for ADUs to be sold or otherwise conveyed separately from the primary dwelling by allowing deed-restricted sales to occur if the local agency adopts an ordinance. To qualify, the primary dwelling and the ADU are to be built by a qualified nonprofit corporation whose mission is to provide units to low-income households (Gov. Code, § 65852.26).
- AB 670 provides that covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a lot zoned for single-family residential use are void and unenforceable (Civ. Code, § 4751).
- AB 671 requires local agencies' housing elements to include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs (Gov. Code, § 65583; Health & Safety Code, § 50504.5).

Frequently Asked Questions:

Accessory Dwelling Units¹

1. Legislative Intent

a. Should a local ordinance encourage the development of accessory dwelling units?

Yes. Pursuant to Government Code Section 65852.150, the California Legislature found and declared that, among other things, California is facing a severe housing crisis and ADUs are a valuable form of housing that meets the needs of family members, students, the elderly, in-home health care providers, people with disabilities and others. Therefore, ADUs are an essential component of California's housing supply.

ADU law and recent changes intend to address barriers, streamline approval,

Government Code 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.

¹ Note: Unless otherwise noted, the Government Code section referenced is 65852.2.

and expand potential capacity for ADUs, recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment, and implementation of local ADU ordinances must be carried out consistent with Government Code, Section 65852.150 and must not unduly constrain the creation of ADUs. Local governments adopting ADU ordinances should carefully weigh the adoption of zoning, development standards, and other provisions for impacts on the development of ADUs.

In addition, ADU law is the statutory minimum requirement. Local governments may elect to go beyond this statutory minimum and further the creation of ADUs. Many local governments have embraced the importance of ADUs as an important part of their overall housing policies and have pursued innovative strategies. (Gov. Code, § 65852.2, subd. (g)).

2. Zoning, Development and Other Standards

A) Zoning and Development Standards

- **Are ADUs allowed jurisdiction wide?**

No. ADUs proposed pursuant to subdivision (e) must be considered in any residential or mixed-use zone. For other ADUs, local governments may, by ordinance, designate areas in zones where residential uses are permitted that will also permit ADUs. However, any limits on where ADUs are permitted may only be based on the adequacy of water and sewer service, and the impacts on traffic flow and public safety. Further, local governments may not preclude the creation of ADUs altogether, and any limitation should be accompanied by detailed findings of fact explaining why ADU limitations are required and consistent with these factors.

Examples of public safety include severe fire hazard areas and inadequate water and sewer service and includes cease and desist orders. Impacts on traffic flow should consider factors like lesser car ownership rates for ADUs and the potential for ADUs to be proposed pursuant to Government Code section 65852.2, subdivision (e). Finally, local governments may develop alternative procedures, standards, or special conditions with mitigations for allowing ADUs in areas with potential health and safety concerns. (Gov. Code, § 65852.2, subd. (e))

Residential or mixed-use zone should be construed broadly to mean any zone where residential uses are permitted by-right or by conditional use.

- **Can a local government apply design and development standards?**

Yes. A local government may apply development and design standards that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards shall be sufficiently objective to allow ministerial review of an ADU. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i))

ADUs created under subdivision (e) of Government Code 65852.2 shall not be subject to design and development standards except for those that are noted in the subdivision.

What does objective mean?

“objective zoning standards” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Gov Code § 65913.4, subd. (a)(5)

ADUs that do not meet objective and ministerial development and design standards may still be permitted through an ancillary discretionary process if the applicant chooses to do so. Some jurisdictions with compliant ADU ordinances apply additional processes to further the creation of ADUs that do not otherwise comply with the minimum standards necessary for ministerial review. Importantly, these processes are intended to provide additional opportunities to create ADUs that would not otherwise be permitted, and a discretionary process may not be used to review ADUs that are fully compliant with ADU law. Examples of these processes include areas where additional health and safety concerns must be considered, such as fire risk.

- **Can ADUs exceed general plan and zoning densities?**

Yes. An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning that does not count toward the allowable density. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Further, local governments could elect to allow more than one ADU on a lot, and ADUs are automatically a residential use deemed consistent with the general plan and zoning. (Gov. Code, § 65852.2, subd. (a)(1)(C).)

- **Are ADUs permitted ministerially?**

Yes. ADUs must be considered, approved, and permitted ministerially, without discretionary action. Development and other decision-making standards must be sufficiently objective to allow for ministerial review. Examples include numeric and fixed standards such as heights or setbacks, or design standards such as colors or materials. Subjective standards require judgement and can be interpreted in multiple ways such as privacy, compatibility with neighboring properties or promoting harmony and balance in the community; subjective standards shall not be imposed for ADU development. Further, ADUs must not be subject to a hearing or any ordinance regulating the issuance of variances or special use permits and must be considered ministerially. (Gov. Code, § 65852.2, subd. (a)(3).)

- **Can I create an ADU if I have multiple detached dwellings on a lot?**

Yes. A lot where there are currently multiple detached single-family dwellings is eligible for creation of one ADU per lot by converting space within the proposed or existing space of a single-family dwelling or existing structure or a new construction detached ADU subject to certain development standards.

- **Can I build an ADU in a historic district, or if the primary residence is subject to historic preservation?**

Yes. ADUs are allowed within a historic district, and on lots where the primary residence is subject to historic preservation. State ADU law allows for a local agency to impose standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. However, these standards do not apply to ADUs proposed pursuant to Government Code section 65852.2, subdivision (e).

As with non-historic resources, a jurisdiction may impose objective and ministerial standards that are sufficiently objective to be reviewed ministerially and do not unduly burden the creation of ADUs. Jurisdictions are encouraged to incorporate these standards into their ordinance and submit these standards along with their ordinance to HCD. (Gov. Code, § 65852.2, subds. (a)(1)(B)(i) & (a)(5).)

B) Size Requirements

- **Is there a minimum lot size requirement?**

No. While local governments may impose standards on ADUs, these standards shall not include minimum lot size requirements. Further, lot coverage requirements cannot preclude the creation of a statewide exemption ADU (800 square feet ADU with a height limitation of 16 feet and 4 feet side and rear yard setbacks). If lot coverage requirements do not allow such an ADU, an automatic exception or waiver should be given to appropriate development standards such as lot coverage, floor area or open space requirements. Local governments may continue to enforce building and health and safety standards and may consider design, landscape, and other standards to facilitate compatibility.

What is a statewide exemption ADU?

A statewide exemption ADU is an ADU of up to 800 square feet, 16 feet in height, as potentially limited by a local agency, and with 4 feet side and rear yard setbacks. ADU law requires that no lot coverage, floor area ratio, open space, or minimum lot size will preclude the construction of a statewide exemption ADU. Further, ADU law allows the construction of a detached new construction statewide exemption ADU to be combined on the same lot with a JADU in a single-family residential zone. In addition, ADUs are allowed in any residential or mixed uses regardless of zoning and development standards imposed in an ordinance. See more discussion below.

- **Can minimum and maximum unit sizes be established for ADUs?**

Yes. A local government may, by ordinance, establish minimum and maximum unit size requirements for both attached and detached ADUs. However, maximum unit size requirements must be at least 850 square feet and 1,000 square feet for ADUs with more than one bedroom. For local agencies without an ordinance, maximum unit sizes are 1,200 square feet for a new detached ADU and up to 50 percent of the floor area of the existing primary dwelling for an attached ADU (at least 800 square feet). Finally, the local agency must not establish by ordinance a minimum square footage requirement that prohibits an efficiency unit, as defined in Health and Safety Code section 17958.1.

The conversion of an existing accessory structure or a portion of the existing primary residence to an ADU is not subject to size requirements. For example, an existing 3,000 square foot barn converted to an ADU would not be subject to the size requirements, regardless if a local government has an adopted ordinance. Should an applicant want to expand an accessory structure to create an ADU beyond 150 square feet, this ADU would be subject to the size maximums outlined in state ADU law, or the local agency's adopted ordinance.

- **Can a percentage of the primary dwelling be used for a maximum unit size?**

Yes. Local agencies may utilize a percentage (e.g., 50 percent) of the primary dwelling as a maximum unit size for attached or detached ADUs but only if it does not restrict an ADU's size to less than the standard of at least 850 square feet (or at least 1000 square feet for ADUs with more than one bedroom). Local agencies must not, by ordinance, establish any other minimum or maximum unit sizes, including based on

a percentage of the primary dwelling, that precludes a statewide exemption ADU. Local agencies utilizing percentages of the primary dwelling as maximum unit sizes could consider multi-pronged standards to help navigate these requirements (e.g., shall not exceed 50 percent of the dwelling or 1,000 square feet, whichever is greater).

- **Can maximum unit sizes exceed 1,200 square feet for ADUs?**

Yes. Maximum unit sizes, by ordinance, can exceed 1,200 square feet for ADUs. ADU law does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs (Gov. Code, § 65852.2, subd. (g)).

Larger unit sizes can be appropriate in a rural context or jurisdictions with larger lot sizes and is an important approach to creating a full spectrum of ADU housing choices.

C) Parking Requirements

- **Can parking requirements exceed one space per unit or bedroom?**

No. Parking requirements for ADUs shall not exceed one parking space per unit or bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway. Guest parking spaces shall not be required for ADUs under any circumstances.

What is Tandem Parking?

Tandem parking means two or more automobiles that are parked on a driveway or in any other location on a lot, lined up behind one another. (Gov. Code, § 65852.2, subs. (a)(1)(D)(x)(I) and (j)(11).)

Local agencies may choose to eliminate or reduce parking requirements for ADUs such as requiring zero or half a parking space per each ADU.

- **Is flexibility for siting parking required?**

Yes. Local agencies should consider flexibility when siting parking for ADUs. Offstreet parking spaces for the ADU shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made. Specific findings must be based on specific site or regional topographical or fire and life safety conditions.

When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or converted to an ADU, the local agency shall not require that those offstreet parking spaces for the primary unit be replaced. (Gov. Code, § 65852.2, subd. (a)(D)(xi).)

- **Can ADUs be exempt from parking?**

Yes. A local agency shall not impose ADU parking standards for any of the following, pursuant to Government Code section 65852.2, subdivisions (d)(1-5) and (j)(10).

(1) Accessory dwelling unit is located within one-half mile walking distance of public transit.

- (2) Accessory dwelling unit is located within an architecturally and historically significant historic district.
- (3) Accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.
- (4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
- (5) When there is a car share vehicle located within one block of the accessory dwelling unit.

Note: For the purposes of state ADU law, a jurisdiction may use the designated areas where a car share vehicle may be accessed. Public transit is any location where an individual may access buses, trains, subways and other forms of transportation that charge set fares, run on fixed routes and are available to the general public. Walking distance is defined as the pedestrian shed to reach public transit. Additional parking requirements to avoid impacts to public access may be required in the coastal zone.

D) Setbacks

- **Can setbacks be required for ADUs?**

Yes. A local agency may impose development standards, such as setbacks, for the creation of ADUs. Setbacks may include front, corner, street, and alley setbacks. Additional setback requirements may be required in the coastal zone if required by a local coastal program. Setbacks may also account for utility easements or recorded setbacks. However, setbacks must not unduly constrain the creation of ADUs and cannot be required for ADUs proposed pursuant to subdivision (e). Further, a setback of no more than four feet from the side and rear lot lines shall be required for an attached or detached ADU. (Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

A local agency may also allow the expansion of a detached structure being converted into an ADU when the existing structure does not have four-foot rear and side setbacks. A local agency may also allow the expansion area of a detached structure being converted into an ADU to have no setbacks, or setbacks of less than four feet, if the existing structure has no setbacks, or has setbacks of less than four feet. A local agency shall not require setbacks of more than four feet for the expanded area of a detached structure being converted into an ADU.

A local agency may still apply front yard setbacks for ADUs, but front yard setbacks cannot preclude a statewide exemption ADU and must not unduly constrain the creation of all types of ADUs. (Gov. Code, § 65852.2, subd. (c).)

E) Height Requirements

- **Is there a limit on the height of an ADU or number of stories?**

Not in state ADU law, but local agencies may impose height limits provided that the limit is no less than 16 feet. (Gov. Code, § 65852.2, subd. (a)(1)(B)(i).)

F) Bedrooms

- **Is there a limit on the number of bedrooms?**

State ADU law does not allow for the limitation on the number of bedrooms of an ADU. A limit on the number of bedrooms could be construed as a discriminatory practice towards protected classes, such as familial status, and would be considered a constraint on the development of ADUs.

G) Impact Fees

- **Can impact fees be charged for an ADU less than 750 square feet?**

No. An ADU is exempt from incurring impact fees from local agencies, special districts, and water corporations if less than 750 square feet. Should an ADU be 750 square feet or larger, impact fees shall be charged proportionately in relation to the square footage of the ADU to the square footage of the primary dwelling unit.

What is “Proportionately”?

“Proportionately” is some amount that corresponds to a total amount, in this case, an impact fee for a single-family dwelling. For example, a 2,000 square foot primary dwelling with a proposed 1,000 square foot ADU could result in 50 percent of the impact fee that would be charged for a new primary dwelling on the same site. In all cases, the impact fee for the ADU must be less than the primary dwelling. Otherwise, the fee is not calculated proportionately. When utilizing proportions, careful consideration should be given to the impacts on costs, feasibility, and ultimately, the creation of ADUs. In the case of the example above, anything greater than 50 percent of the primary dwelling could be considered a constraint on the development of ADUs.

For purposes of calculating the fees for an ADU on a lot with a multifamily dwelling, the proportionality shall be based on the average square footage of the units within that multifamily dwelling structure. For ADUs converting existing space with a 150 square foot expansion, a total ADU square footage over 750 square feet could trigger the proportionate fee requirement. (Gov. Code, § 65852.2, subd. (f)(3)(A).)

- **Can local agencies, special districts or water corporations waive impact fees?**

Yes. Agencies can waive impact and any other fees for ADUs. Also, local agencies may also use fee deferrals for applicants.

- **Can school districts charge impact fees?**

Yes. School districts are authorized but do not have to levy impact fees for ADUs greater than 500 square feet pursuant to Section 17620 of the Education Code. ADUs less than 500 square feet are not subject to school impact fees. Local agencies are encouraged to coordinate with school districts to carefully weigh the importance of promoting ADUs, ensuring appropriate nexus studies and appropriate fees to facilitate construction or reconstruction of adequate school facilities.

- **What types of fees are considered impact fees?**

Impact fees charged for the construction of ADUs must be determined in accordance with the Mitigation Fee Act and generally include any monetary exaction that is charged by a local agency in connection with the approval of an ADU, including impact fees, for the purpose of defraying all or a portion of the cost of public facilities relating to the ADU. A local agency, special district or water corporation shall not consider ADUs as a new residential use for the purposes of calculating connection fees or capacity charges for

utilities, including water and sewer services. However, these provisions do not apply to ADUs that are constructed concurrently with a new single-family home. (Gov. Code, §§ 65852.2, subd. (f), and 66000)

- **Can I still be charged water and sewer connection fees?**

ADUs converted from existing space and JADUs shall not be considered by a local agency, special district or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, unless constructed with a new single-family dwelling. The connection fee or capacity charge shall be proportionate to the burden of the proposed ADU, based on its square footage or plumbing fixtures as compared to the primary dwelling. State ADU law does not cover monthly charge fees. (Gov. Code, § 65852.2, subd. (f)(2)(A).)

H) Conversion of Existing Space in Single Family, Accessory and Multifamily Structures and Other Statewide Permissible ADUs (Subdivision (e))

- **Are local agencies required to comply with subdivision (e)?**

Yes. All local agencies must comply with subdivision (e). This subdivision requires the ministerial approval of ADUs within a residential or mixed-use zone. The subdivision creates four categories of ADUs that should not be subject to other specified areas of ADU law, most notably zoning and development standards. For example, ADUs under this subdivision should not have to comply with lot coverage, setbacks, heights, and unit sizes. However, ADUs under this subdivision must meet the building code and health and safety requirements. The four categories of ADUs under subdivision (e) are:

- b. One ADU and one JADU are permitted per lot within the existing or proposed space of a single-family dwelling, or a JADU within the walls of the single family residence, or an ADU within an existing accessory structure, that meets specified requirements such as exterior access and setbacks for fire and safety.**
- c. One detached new construction ADU that does not exceed four-foot side and rear yard setbacks. This ADU may be combined on the same lot with a JADU and may be required to meet a maximum unit size requirement of 800 square feet and a height limitation of 16 feet.**
- d. Multiple ADUs within the portions of multifamily structures that are not used as livable space. Local agencies must allow at least one of these types of ADUs and up to 25 percent of the existing multifamily structures.**
- e. Up to two detached ADUs on a lot that has existing multifamily dwellings that are subject to height limits of 16 feet and 4-foot rear and side yard setbacks.**

The above four categories are not required to be combined. For example, local governments are not required to allow (a) and (b) together or (c) and (d) together. However, local agencies may elect to allow these ADU types together.

Local agencies shall allow at least one ADU to be created within the non-livable space within multifamily dwelling structures, or up to 25 percent of the existing multifamily dwelling units within a structure and may also allow not more than two ADUs on the lot detached from the multifamily dwelling structure. New detached units are subject to height limits of 16 feet and shall not be required to have side and rear setbacks of more than four feet.

The most common ADU that can be created under subdivision (e) is a conversion of proposed or existing space of a single-family dwelling or accessory structure into an ADU, without any prescribed size limitations, height, setback, lot coverage, architectural review, landscape, or other development standards. This would enable the conversion of an accessory structure, such as a 2,000 square foot garage, to an ADU without any additional requirements other than compliance with building standards for dwellings. These types of ADUs are also eligible for a 150 square foot expansion (see discussion below).

ADUs created under subdivision (e) shall not be required to provide replacement or additional parking. Moreover, these units shall not, as a condition for ministerial approval, be required to correct any existing or created nonconformity. Subdivision (e) ADUs shall be required to be rented for terms longer than 30 days, and only require fire sprinklers if fire sprinklers are required for the primary residence. These ADUs shall not be counted as units when calculating density for the general plan and are not subject to owner-occupancy.

- **Can I convert my accessory structure into an ADU?**

Yes. The conversion of garages, sheds, barns, and other existing accessory structures, either attached or detached from the primary dwelling, into ADUs is permitted and promoted through the state ADU law. These conversions of accessory structures are not subject to any additional development standard, such as unit size, height, and lot coverage requirements, and shall be from existing space that can be made safe under building and safety codes. A local agency should not set limits on when the structure was created, and the structure must meet standards for health and safety. Finally, local governments may also consider the conversion of illegal existing space and could consider alternative building standards to facilitate the conversion of existing illegal space to minimum life and safety standards.

- **Can an ADU converting existing space be expanded?**

Yes. An ADU created within the existing or proposed space of a single-family dwelling or accessory structure can be expanded beyond the physical dimensions of the structure. In addition, an ADU created within an existing accessory structure may be expanded up to 150 square feet without application of local development standards, but this expansion shall be limited to accommodating ingress and egress. An example of where this expansion could be applicable is for the creation of a staircase to reach a second story ADU. These types of ADUs shall conform to setbacks sufficient for fire and safety.

A local agency may allow for an expansion beyond 150 square feet, though the ADU would have to comply with the size maximums as per state ADU law, or a local agency's adopted ordinance.

As a JADU is limited to being created within the walls of a primary residence, this expansion of up to 150 square feet does not pertain to JADUs.

I) Nonconforming Zoning Standards

- **Does the creation of an ADU require the applicant to carry out public improvements?**

No physical improvements shall be required for the creation or conversion of an ADU. Any requirement to carry out public improvements is beyond what is required for the creation of an ADU, as per state law. For example, an applicant shall not be required to improve sidewalks, carry out street improvements, or access improvements to create an ADU. Additionally, as a condition for ministerial approval of an ADU, an applicant shall not be required to correct nonconforming zoning conditions. (Gov. Code, § 65852.2, subd. (e)(2).)

J) Renter and Owner-occupancy

- **Are rental terms required?**

Yes. Local agencies may require that the property be used for rentals of terms longer than 30 days. ADUs permitted ministerially, under subdivision (e), shall be rented for terms longer than 30 days. (Gov. Code, § 65852.2, subds. (a)(6) & (e)(4).)

- **Are there any owner-occupancy requirements for ADUs?**

No. Prior to recent legislation, ADU laws allowed local agencies to elect whether the primary dwelling or ADU was required to be occupied by an owner. The updates to state ADU law removed the owner-occupancy allowance for newly created ADUs effective January 1, 2020. The new owner-occupancy exclusion is set to expire on December 31, 2024. Local agencies may not retroactively require owner occupancy for ADUs permitted between January 1, 2020, and December 31, 2024.

However, should a property have both an ADU and JADU, JADU law requires owner-occupancy of either the newly created JADU, or the single-family residence. Under this specific circumstance, a lot with an ADU would be subject to owner-occupancy requirements. (Gov. Code, § 65852.2, subd. (a)(2).)

K) Fire Sprinkler Requirements

- **Are fire sprinklers required for ADUs?**

No. Installation of fire sprinklers may not be required in an ADU if sprinklers are not required for the primary residence. For example, a residence built decades ago would not have been required to have fire sprinklers installed under the applicable building code at the time. Therefore, an ADU created on this lot cannot be required to install fire sprinklers. However, if the same primary dwelling recently undergoes significant remodeling and is now required to have fire sprinklers, any ADU created after that remodel must likewise install fire sprinklers. (Gov. Code, § 65852.2, subds. (a)(1)(D)(xii) and (e)(3).)

Please note, for ADUs created on lots with multifamily residential structures, the entire residential structure shall serve as the “primary residence” for the purposes of this analysis. Therefore, if the multifamily structure is served by fire sprinklers, the ADU can be required to install fire sprinklers.

L) Solar Panel Requirements

- **Are solar panels required for new construction ADUs?**

Yes, newly constructed ADUs are subject to the Energy Code requirement to provide solar panels if the unit(s) is a newly constructed, non-manufactured, detached ADU. Per the California Energy Commission (CEC), the panels can be installed on the ADU or on the primary dwelling unit. ADUs that are constructed within existing space, or as an addition to existing homes, including detached additions where an existing detached building is converted from non-residential to residential space, are not subject to the Energy Code requirement to provide solar panels.

Please refer to the CEC on this matter. For more information, see the CEC's website www.energy.ca.gov. You may email your questions to: title24@energy.ca.gov, or contact the Energy Standards Hotline at 800-772-3300. CEC memos can also be found on HCD's website at <https://www.hcd.ca.gov/policy-research/AccessoryDwellingUnits.shtml>.

3. Junior Accessory Dwelling Units (JADUs) – Government Code Section 65852.22

- **Are two JADUs allowed on a lot?**

No. A JADU may be created on a lot zoned for single-family residences with one primary dwelling. The JADU may be created within the walls of the proposed or existing single-family residence, including attached garages, as attached garages are considered within the walls of the existing single-family residence. Please note that JADUs created in the attached garage are not subject to the same parking protections as ADUs and could be required by the local agency to provide replacement parking.

JADUs are limited to one per residential lot with a single-family residence. Lots with multiple detached single-family dwellings are not eligible to have JADUs. (Gov. Code, § 65852.22, subd. (a)(1).)

- **Are JADUs allowed in detached accessory structures?**

No, JADUs are not allowed in accessory structures. The creation of a JADU must be within the single-family residence. As noted above, attached garages are eligible for JADU creation. The maximum size for a JADU is 500 square feet. (Gov. Code, § 65852.22, subds. (a)(1), (a)(4), and (h)(1).)

- **Are JADUs allowed to be increased up to 150 square feet when created within an existing structure?**

No. Only ADUs are allowed to add up to 150 square feet "beyond the physical dimensions of the existing accessory structure" to provide for ingress. (Gov. Code, § 65852.2, subd. (e)(1)(A)(i).)

This provision extends only to ADUs and excludes JADUs. A JADU is required to be created within the single-family residence.

- **Are there any owner-occupancy requirements for JADUs?**

Yes. There are owner-occupancy requirements for JADUs. The owner must reside in either the remaining portion of the primary residence, or in the newly created JADU. (Gov. Code, § 65852.22, subd. (a)(2).)

4. Manufactured Homes and ADUs

- **Are manufactured homes considered to be an ADU?**

Yes. An ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes a manufactured home (Health & Saf. Code, § 18007).

Health and Safety Code section 18007, subdivision (a): **“Manufactured home,”** for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

5. ADUs and the Housing Element

- **Do ADUs and JADUs count toward a local agency’s Regional Housing Needs Allocation?**

Yes. Pursuant to Government Code section 65852.2 subdivision (m), and section 65583.1, ADUs and JADUs may be utilized towards the Regional Housing Need Allocation (RHNA) and Annual Progress Report (APR) pursuant to Government Code section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, an ADU, and a JADU with shared sanitation facilities, and any other unit that meets the census definition, and is reported to DOF as part of the DOF annual City and County Housing Unit Change Survey, can be credited toward the RHNA based on the appropriate income level. The housing element or APR must include a reasonable methodology to demonstrate the level of affordability. Local governments can track actual or anticipated affordability to assure ADUs and JADUs are counted towards the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit or other applications.

- **Is analysis required to count ADUs toward the RHNA in the housing element?**

Yes. To calculate ADUs in the housing element, local agencies must generally use a three-part approach: (1) development trends, (2) anticipated affordability and (3) resources and incentives. Development trends must consider ADUs permitted in the prior planning period and may also consider more recent trends. Anticipated affordability can use a variety of methods to estimate the affordability by income group. Common approaches include rent surveys of ADUs, using rent surveys and square footage assumptions and data available through the APR pursuant to Government Code section 65400. Resources and incentives include policies and programs to encourage ADUs, such as prototype plans, fee waivers, expedited procedures and affordability monitoring programs.

- **Are ADUs required to be addressed in the housing element?**

Yes. The housing element must include a description of zoning available to permit ADUs, including development standards and analysis of potential constraints on the development of ADUs. The element must include programs as appropriate to address identified constraints. In addition, housing elements must

include a plan that incentivizes and promotes the creation of ADUs that can offer affordable rents for very low, low-, or moderate-income households and requires HCD to develop a list of state grants and financial incentives in connection with the planning, construction and operation of affordable ADUs. (Gov. Code, § 65583 and Health & Saf. Code, § 50504.5.)

6. Homeowners Association

- **Can my local Homeowners Association (HOA) prohibit the construction of an ADU or JADU?**

No. Assembly Bill 670 (2019) and AB 3182 (2020) amended Section 4751, 4740, and 4741 of the Civil Code to preclude common interest developments from prohibiting or unreasonably restricting the construction or use, including the renting or leasing of, an ADU on a lot zoned for single-family residential use. Covenants, conditions and restrictions (CC&Rs) that either effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on such lots are void and unenforceable or may be liable for actual damages and payment of a civil penalty. Applicants who encounter issues with creating ADUs or JADUs within CC&Rs are encouraged to reach out to HCD for additional guidance.

7. Enforcement

- **Does HCD have enforcement authority over ADU ordinances?**

Yes. After adoption of the ordinance, HCD may review and submit written findings to the local agency as to whether the ordinance complies with state ADU law. If the local agency's ordinance does not comply, HCD must provide a reasonable time, no longer than 30 days, for the local agency to respond, and the local agency shall consider HCD's findings to amend the ordinance to become compliant. If a local agency does not make changes and implements an ordinance that is not compliant with state law, HCD may refer the matter to the Attorney General.

In addition, HCD may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify ADU law.

8. Other

- **Are ADU ordinances existing prior to new 2020 laws null and void?**

No. Ordinances existing prior to the new 2020 laws are only null and void to the extent that existing ADU ordinances conflict with state law. Subdivision (a)(4) of Government Code Section 65852.2 states an ordinance that fails to meet the requirements of subdivision (a) shall be null and void and shall apply the state standards (see Attachment 3) until a compliant ordinance is adopted. However, ordinances that substantially comply with ADU law may continue to enforce the existing ordinance to the extent it complies with state law. For example, local governments may continue the compliant provisions of an ordinance and apply the state standards where pertinent until the ordinance is amended or replaced to fully comply with ADU law. At the same time, ordinances that are fundamentally incapable of being enforced because key provisions are invalid -- meaning there is not a reasonable way to sever conflicting provisions and apply the remainder of an ordinance in a way that is consistent with state law -- would be fully null and void and must follow all state standards until a compliant ordinance is adopted.

- **Do local agencies have to adopt an ADU ordinance?**

No. Local governments may choose not to adopt an ADU ordinance. Should a local government choose to not adopt an ADU ordinance, any proposed ADU development would be only subject to standards set in state ADU law. If a local agency adopts an ADU ordinance, it may impose zoning, development, design, and other standards in compliance with state ADU law. (See Attachment 4 for a state standards checklist.)

- **Is a local government required to send an ADU ordinance to the California Department of Housing and Community Development (HCD)?**

Yes. A local government, upon adoption of an ADU ordinance, must submit a copy of the adopted ordinance to HCD within 60 days after adoption. After the adoption of an ordinance, the Department may review and submit written findings to the local agency as to whether the ordinance complies with this section. (Gov. Code, § 65852.2, subd. (h)(1).)

Local governments may also submit a draft ADU ordinance for preliminary review by HCD. This provides local agencies the opportunity to receive feedback on their ordinance and helps to ensure compliance with the new state ADU law.

- **Are charter cities and counties subject to the new ADU laws?**

Yes. ADU law applies to a local agency which is defined as a city, county, or city and county, whether general law or chartered. (Gov. Code, § 65852.2, subd. (j)(5)).

Further, pursuant to Chapter 659, Statutes of 2019 (AB 881), the Legislature found and declared ADU law as “...a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution” and concluded that ADU law applies to all cities, including charter cities.

- **Do the new ADU laws apply to jurisdictions located in the Coastal Zone?**

Yes. ADU laws apply to jurisdictions in the Coastal Zone, but do not necessarily alter or lessen the effect or application of Coastal Act resource protection policies. (Gov. Code, § 65852.22, subd. (l)).

Coastal localities should seek to harmonize the goals of protecting coastal resources and addressing housing needs of Californians. For example, where appropriate, localities should amend Local Coastal Programs for California Coastal Commission review to comply with the California Coastal Act and new ADU laws. For more information, see the [California Coastal Commission 2020 Memo](#) and reach out to the locality’s local Coastal Commission district office.

- **What is considered a multifamily dwelling?**

For the purposes of state ADU law, a structure with two or more attached dwellings on a single lot is considered a multifamily dwelling structure. Multiple detached single-unit dwellings on the same lot are not considered multifamily dwellings for the purposes of state ADU law.

Resources



Attachment 1: Statutory Changes (Strikeout/Italics and Underline)

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2

Combined changes from (AB 3182 Accessory Dwelling Units) and (AB 881, AB 68 and SB 13 Accessory Dwelling Units)

(Changes noted in strikeout, underline/italics)

Effective January 1, 2021, Section 65852.2 of the Government Code is amended to read:

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
- (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
- (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
- (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
- (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.
- (D) Require the accessory dwelling units to comply with all of the following:
- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
- (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
- (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
- (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
- (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
- (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
- (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
- (viii) Local building code requirements that apply to detached dwellings, as appropriate.
- (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
- (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
- (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
- (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
- (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
- (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.

(4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.

(5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.

(6) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or imposed, including any owner-occupant requirement, except that a local agency may require that the property be used for rentals of terms longer than 30 days.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision 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. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ **and** one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

(5) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

(6) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

- (f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).
- (2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.
- (3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.
- (B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision (b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.
- (4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family home.
- (5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
- (g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.
- (h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.
- (2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.
- (B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:
- (i) Amend the ordinance to comply with this section.
- (ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.
- (3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.
- (B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.
- (i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.
- (j) As used in this section, the following terms mean:
- (1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:
- (A) An efficiency unit.
- (B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

- (2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.
 - (3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.
 - (4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.
 - (5) "Local agency" means a city, county, or city and county, whether general law or chartered.
 - (6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.
 - (7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.
 - (8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.
 - (9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.
 - (10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.
 - (k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.
 - (l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.
 - (m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.
 - (n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:
 - (1) The accessory dwelling unit was built before January 1, 2020.
 - (2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.
 - (o) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.
- (Becomes operative on January 1, 2025)**

Section 65852.2 of the Government Code is amended to read (changes from January 1, 2021 statute noted in underline/italic):

65852.2.

- (a) (1) A local agency may, by ordinance, provide for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily dwelling residential use. The ordinance shall do all of the following:
 - (A) Designate areas within the jurisdiction of the local agency where accessory dwelling units may be permitted. The designation of areas may be based on the adequacy of water and sewer services and the impact of accessory dwelling units on traffic flow and public safety. A local agency that does not provide water or sewer services shall consult with the local water or sewer service provider regarding the adequacy of water and sewer services before designating an area where accessory dwelling units may be permitted.
 - (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Resources. These standards shall not include requirements on minimum lot size.
 - (ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.
 - (C) Provide that accessory dwelling units do not exceed the allowable density for the lot upon which the accessory dwelling unit is located, and that accessory dwelling units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

- (i) The accessory dwelling unit may be rented separate from the primary residence, but may not be sold or otherwise conveyed separate from the primary residence.
 - (ii) The lot is zoned to allow single-family or multifamily dwelling residential use and includes a proposed or existing dwelling.
 - (iii) The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure or detached from the proposed or existing primary dwelling and located on the same lot as the proposed or existing primary dwelling.
 - (iv) If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.
 - (v) The total floor area for a detached accessory dwelling unit shall not exceed 1,200 square feet.
 - (vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
 - (vii) No setback shall be required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure.
 - (viii) Local building code requirements that apply to detached dwellings, as appropriate.
 - (ix) Approval by the local health officer where a private sewage disposal system is being used, if required.
 - (x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on a driveway.
 - (II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions.
 - (III) This clause shall not apply to an accessory dwelling unit that is described in subdivision (d).
 - (xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the local agency shall not require that those offstreet parking spaces be replaced.
 - (xii) Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.
- (2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.
- (3) A permit application for an accessory dwelling unit or a junior accessory dwelling unit shall be considered and approved ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall be considered without discretionary review or hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved. A local agency may charge a fee to reimburse it for costs incurred to implement this paragraph, including the costs of adopting or amending any ordinance that provides for the creation of an accessory dwelling unit.
- (4) An existing ordinance governing the creation of an accessory dwelling unit by a local agency or an accessory dwelling ordinance adopted by a local agency shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. If a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.
- (5) No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision.
- (6) (A) This subdivision establishes the maximum standards that local agencies shall use to evaluate a proposed

accessory dwelling unit on a lot that includes a proposed or existing single-family dwelling. No additional standards, other than those provided in this subdivision, shall be used or ~~imposed, including any owner-occupant requirement, except that~~ imposed except that, subject to subparagraph (B), a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant or that the property be used for rentals of terms longer than 30 days.

(B) Notwithstanding subparagraph (A), a local agency shall not impose an owner-occupant requirement on an accessory dwelling unit permitted between January 1, 2020, to January 1, 2025, during which time the local agency was prohibited from imposing an owner-occupant requirement.

(7) A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

(8) An accessory dwelling unit that conforms to this subdivision 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. The accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(b) When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a). The permitting agency shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the local agency has not acted upon the completed application within 60 days, the application shall be deemed approved.

(c) (1) Subject to paragraph (2), a local agency may establish minimum and maximum unit size requirements for both attached and detached accessory dwelling units.

(2) Notwithstanding paragraph (1), a local agency shall not establish by ordinance any of the following:

(A) A minimum square footage requirement for either an attached or detached accessory dwelling unit that prohibits an efficiency unit.

(B) A maximum square footage requirement for either an attached or detached accessory dwelling unit that is less than either of the following:

(i) 850 square feet.

(ii) 1,000 square feet for an accessory dwelling unit that provides more than one bedroom.

(C) Any other minimum or maximum size for an accessory dwelling unit, size based upon a percentage of the proposed or existing primary dwelling, or limits on lot coverage, floor area ratio, open space, and minimum lot size, for either attached or detached dwellings that does not permit at least an 800 square foot accessory dwelling unit that is at least 16 feet in height with four-foot side and rear yard setbacks to be constructed in compliance with all other local development standards.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile walking distance of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the proposed or existing primary residence or an accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

(e) (1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit ~~or~~ and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling if all of the following apply:

(i) The accessory dwelling unit or junior accessory dwelling unit is within the proposed space of a single-family dwelling or existing space of a single-family dwelling or accessory structure and may include an expansion of not

more than 150 square feet beyond the same physical dimensions as the existing accessory structure. An expansion beyond the physical dimensions of the existing accessory structure shall be limited to accommodating ingress and egress.

(ii) The space has exterior access from the proposed or existing single-family dwelling.

(iii) The side and rear setbacks are sufficient for fire and safety.

(iv) The junior accessory dwelling unit complies with the requirements of Section 65852.22.

(B) One detached, new construction, accessory dwelling unit that does not exceed four-foot side and rear yard setbacks for a lot with a proposed or existing single-family dwelling. The accessory dwelling unit may be combined with a junior accessory dwelling unit described in subparagraph (A). A local agency may impose the following conditions on the accessory dwelling unit:

(i) A total floor area limitation of not more than 800 square feet.

(ii) A height limitation of 16 feet.

(C) (i) Multiple accessory dwelling units within the portions of existing multifamily dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings.

(ii) A local agency shall allow at least one accessory dwelling unit within an existing multifamily dwelling and shall allow up to 25 percent of the existing multifamily dwelling units.

(D) Not more than two accessory dwelling units that are located on a lot that has an existing multifamily dwelling, but are detached from that multifamily dwelling and are subject to a height limit of 16 feet and four-foot rear yard and side setbacks.

(2) A local agency shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions.

(3) The installation of fire sprinklers shall not be required in an accessory dwelling unit if sprinklers are not required for the primary residence.

(4) A local agency may require owner occupancy for either the primary dwelling or the accessory dwelling unit on a single-family lot, subject to the requirements of paragraph (6) of subdivision (a).

~~(4)~~ (5) A local agency shall require that a rental of the accessory dwelling unit created pursuant to this subdivision be for a term longer than 30 days.

~~(5)~~ (6) A local agency may require, as part of the application for a permit to create an accessory dwelling unit connected to an onsite wastewater treatment system, a percolation test completed within the last five years, or, if the percolation test has been recertified, within the last 10 years.

~~(6)~~ (7) Notwithstanding subdivision (c) and paragraph (1) a local agency that has adopted an ordinance by July 1, 2018, providing for the approval of accessory dwelling units in multifamily dwelling structures shall ministerially consider a permit application to construct an accessory dwelling unit that is described in paragraph (1), and may impose standards including, but not limited to, design, development, and historic standards on said accessory dwelling units. These standards shall not include requirements on minimum lot size.

(f) (1) Fees charged for the construction of accessory dwelling units shall be determined in accordance with Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

(2) An accessory dwelling unit shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit was constructed with a new single-family dwelling.

(3) (A) A local agency, special district, or water corporation shall not impose any impact fee upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

(B) For purposes of this paragraph, "impact fee" has the same meaning as the term "fee" is defined in subdivision

(b) of Section 66000, except that it also includes fees specified in Section 66477. "Impact fee" does not include any connection fee or capacity charge charged by a local agency, special district, or water corporation.

(4) For an accessory dwelling unit described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge, unless the accessory dwelling unit was constructed with a new single-family ~~home-~~ dwelling.

(5) For an accessory dwelling unit that is not described in subparagraph (A) of paragraph (1) of subdivision (e), a local agency, special district, or water corporation may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its square feet or the number of its drainage fixture unit (DFU) values, as defined in the

Uniform Plumbing Code adopted and published by the International Association of Plumbing and Mechanical Officials, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of an accessory dwelling unit.

(h) (1) A local agency shall submit a copy of the ordinance adopted pursuant to subdivision (a) to the Department of Housing and Community Development within 60 days after adoption. After adoption of an ordinance, the department may submit written findings to the local agency as to whether the ordinance complies with this section.

(2) (A) If the department finds that the local agency's ordinance does not comply with this section, the department shall notify the local agency and shall provide the local agency with a reasonable time, no longer than 30 days, to respond to the findings before taking any other action authorized by this section.

(B) The local agency shall consider the findings made by the department pursuant to subparagraph (A) and shall do one of the following:

(i) Amend the ordinance to comply with this section.

(ii) Adopt the ordinance without changes. The local agency shall include findings in its resolution adopting the ordinance that explain the reasons the local agency believes that the ordinance complies with this section despite the findings of the department.

(3) (A) If the local agency does not amend its ordinance in response to the department's findings or does not adopt a resolution with findings explaining the reason the ordinance complies with this section and addressing the department's findings, the department shall notify the local agency and may notify the Attorney General that the local agency is in violation of state law.

(B) Before notifying the Attorney General that the local agency is in violation of state law, the department may consider whether a local agency adopted an ordinance in compliance with this section between January 1, 2017, and January 1, 2020.

(i) The department may review, adopt, amend, or repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, and standards set forth in this section. The guidelines adopted pursuant to this subdivision are not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

(j) As used in this section, the following terms mean:

(1) "Accessory dwelling unit" means an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family or multifamily dwelling is or will be situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(2) "Accessory structure" means a structure that is accessory and incidental to a dwelling located on the same lot.

(3) "Efficiency unit" has the same meaning as defined in Section 17958.1 of the Health and Safety Code.

(4) "Living area" means the interior habitable area of a dwelling unit, including basements and attics, but does not include a garage or any accessory structure.

(5) "Local agency" means a city, county, or city and county, whether general law or chartered.

(6) "Nonconforming zoning condition" means a physical improvement on a property that does not conform with current zoning standards.

(7) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(8) "Proposed dwelling" means a dwelling that is the subject of a permit application and that meets the requirements for permitting.

(9) "Public transit" means a location, including, but not limited to, a bus stop or train station, where the public may access buses, trains, subways, and other forms of transportation that charge set fares, run on fixed routes, and are available to the public.

(10) "Tandem parking" means that two or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

(k) A local agency shall not issue a certificate of occupancy for an accessory dwelling unit before the local agency issues a certificate of occupancy for the primary dwelling.

(l) 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 of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit

applications for accessory dwelling units.

(m) A local agency may count an accessory dwelling unit for purposes of identifying adequate sites for housing, as specified in subdivision (a) of Section 65583.1, subject to authorization by the department and compliance with this division.

(n) In enforcing building standards pursuant to Article 1 (commencing with Section 17960) of Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code for an accessory dwelling unit described in paragraph (1) or (2) below, a local agency, upon request of an owner of an accessory dwelling unit for a delay in enforcement, shall delay enforcement of a building standard, subject to compliance with Section 17980.12 of the Health and Safety Code:

(1) The accessory dwelling unit was built before January 1, 2020.

(2) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(o) This section shall ~~remain in effect only until January 1, 2025, and as of that date is repealed.~~ *become operative on January 1, 2025.*

Effective January 1, 2021, Section 4740 of the Civil Code is amended to read (changes noted in strikeout, underline/italics) (AB 3182 (Ting)):

4740.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in that common interest development to a renter, lessee, or tenant unless that governing document, or amendment thereto, was effective prior to the date the owner acquired title to ~~his or~~ *her* ~~their~~ separate interest.

~~(b) Notwithstanding the provisions of this section, an owner of a separate interest in a common interest development may expressly consent to be subject to a governing document or an amendment to a governing document that prohibits the rental or leasing of any of the separate interests in the common interest development to a renter, lessee, or tenant.~~

~~(c)~~ *(b)* For purposes of this section, the right to rent or lease the separate interest of an owner shall not be deemed to have terminated if the transfer by the owner of all or part of the separate interest meets at least one of the following conditions:

(1) Pursuant to Section 62 or 480.3 of the Revenue and Taxation Code, the transfer is exempt, for purposes of reassessment by the county tax assessor.

(2) Pursuant to subdivision (b) of, solely with respect to probate transfers, or subdivision (e), (f), or (g) of, Section 1102.2, the transfer is exempt from the requirements to prepare and deliver a Real Estate Transfer Disclosure Statement, as set forth in Section 1102.6.

~~(d)~~ *(c)* Prior to renting or leasing ~~his or her~~ *their* separate interest as provided by this section, an owner shall provide the association verification of the date the owner acquired title to the separate interest and the name and contact information of the prospective tenant or lessee or the prospective tenant's or lessee's representative.

~~(e)~~ *(d)* Nothing in this section shall be deemed to revise, alter, or otherwise affect the voting process by which a common interest development adopts or amends its governing documents.

~~(f) This section shall apply only to a provision in a governing document or a provision in an amendment to a governing document that becomes effective on or after January 1, 2012.~~

Effective January 1, 2021 of the *Section 4741 is added to the Civil Code, to read (AB 3182 (Ting)):*

4741.

(a) An owner of a separate interest in a common interest development shall not be subject to a provision in a governing document or an amendment to a governing document that prohibits, has the effect of prohibiting, or unreasonably restricts the rental or leasing of any of the separate interests, accessory dwelling units, or junior accessory dwelling units in that common interest development to a renter, lessee, or tenant.

(b) A common interest development shall not adopt or enforce a provision in a governing document or amendment to a governing document that restricts the rental or lease of separate interests within a common interest to less than 25 percent of the separate interests. Nothing in this subdivision prohibits a common interest development from adopting or enforcing a provision authorizing a higher percentage of separate interests to be rented or leased.

(c) This section does not prohibit a common interest development from adopting and enforcing a provision in a

governing document that prohibits transient or short-term rental of a separate property interest for a period of 30 days or less.

(d) For purposes of this section, an accessory dwelling unit or junior accessory dwelling unit shall not be construed as a separate interest.

(e) For purposes of this section, a separate interest shall not be counted as occupied by a renter if the separate interest, or the accessory dwelling unit or junior accessory dwelling unit of the separate interest, is occupied by the owner.

(f) A common interest development shall comply with the prohibition on rental restrictions specified in this section on and after January 1, 2021, regardless of whether the common interest development has revised their governing documents to comply with this section. However, a common interest development shall amend their governing documents to conform to the requirements of this section no later than December 31, 2021.

(g) A common interest development that willfully violates this section shall be liable to the applicant or other party for actual damages, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(h) In accordance with Section 4740, this section does not change the right of an owner of a separate interest who acquired title to their separate interest before the effective date of this section to rent or lease their property.

Effective January 1, 2020, Section 65852.22 of the Government Code ~~is~~ was amended to read (AB 68 (Ting)):
65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence built, or proposed to be built, on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the walls of proposed or existing single-family residence.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the proposed or existing single-family residence.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A cooking facility with appliances.

(B) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine if the junior accessory dwelling unit complies with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. The permitting agency shall act on the application to create a junior accessory dwelling unit within 60 days from the date the local agency receives a completed application if there is an existing single-family dwelling on the lot. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) If a local agency has not adopted a local ordinance pursuant to this section, the local agency shall ministerially approve a permit to construct a junior accessory dwelling unit that satisfies the requirements set forth in subparagraph (A) of paragraph (1) of subdivision (e) of Section 65852.2 and the requirements of this section.

(h) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Effective January 1, 2020 Section 17980.12 is was added to the Health and Safety Code, immediately following Section 17980.11, to read (SB 13 (Wieckowski)):

17980.12.

(a) (1) An enforcement agency, until January 1, 2030, that issues to an owner of an accessory dwelling unit described in subparagraph (A) or (B) below, a notice to correct a violation of any provision of any building standard pursuant to this part shall include in that notice a statement that the owner of the unit has a right to request a delay in enforcement pursuant to this subdivision:

(A) The accessory dwelling unit was built before January 1, 2020.

(B) The accessory dwelling unit was built on or after January 1, 2020, in a local jurisdiction that, at the time the accessory dwelling unit was built, had a noncompliant accessory dwelling unit ordinance, but the ordinance is compliant at the time the request is made.

(2) The owner of an accessory dwelling unit that receives a notice to correct violations or abate nuisances as described in paragraph (1) may, in the form and manner prescribed by the enforcement agency, submit an application to the enforcement agency requesting that enforcement of the violation be delayed for five years on the basis that correcting the violation is not necessary to protect health and safety.

(3) The enforcement agency shall grant an application described in paragraph (2) if the enforcement determines that correcting the violation is not necessary to protect health and safety. In making this determination, the enforcement agency shall consult with the entity responsible for enforcement of building standards and other regulations of the State Fire Marshal pursuant to Section 13146.

(4) The enforcement agency shall not approve any applications pursuant to this section on or after January 1, 2030. However, any delay that was approved by the enforcement agency before January 1, 2030, shall be valid for the full term of the delay that was approved at the time of the initial approval of the application pursuant to paragraph (3).

(b) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in Section 65852.2.

(c) This section shall remain in effect only until January 1, 2035, and as of that date is repealed.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 4, ARTICLE 2
AB 587 Accessory Dwelling Units

Effective January 1, 2020 Section 65852.26 ~~is~~ was added to the Government Code, immediately following Section 65852.25, to read (AB 587 (Friedman)):

65852.26.

(a) Notwithstanding clause (i) of subparagraph (D) of paragraph (1) of subdivision (a) of Section 65852.2, a local agency may, by ordinance, allow an accessory dwelling unit to be sold or conveyed separately from the primary residence to a qualified buyer if all of the following apply:

- (1) The property was built or developed by a qualified nonprofit corporation.
- (2) There is an enforceable restriction on the use of the land pursuant to a recorded contract between the qualified buyer and the qualified nonprofit corporation that satisfies all of the requirements specified in paragraph (10) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code.
- (3) The property is held pursuant to a recorded tenancy in common agreement that includes all of the following:
 - (A) The agreement allocates to each qualified buyer an undivided, unequal interest in the property based on the size of the dwelling each qualified buyer occupies.
 - (B) A repurchase option that requires the qualified buyer to first offer the qualified nonprofit corporation to buy the property if the buyer desires to sell or convey the property.
 - (C) A requirement that the qualified buyer occupy the property as the buyer's principal residence.
 - (D) Affordability restrictions on the sale and conveyance of the property that ensure the property will be preserved for low-income housing for 45 years for owner-occupied housing units and will be sold or resold to a qualified buyer.
- (4) A grant deed naming the grantor, grantee, and describing the property interests being transferred shall be recorded in the county in which the property is located. A Preliminary Change of Ownership Report shall be filed concurrently with this grant deed pursuant to Section 480.3 of the Revenue and Taxation Code.
- (5) Notwithstanding subparagraph (A) of paragraph (2) of subdivision (f) of Section 65852.2, if requested by a utility providing service to the primary residence, the accessory dwelling unit has a separate water, sewer, or electrical connection to that utility.
- (b) For purposes of this section, the following definitions apply:
 - (1) "Qualified buyer" means persons and families of low or moderate income, as that term is defined in Section 50093 of the Health and Safety Code.
 - (2) "Qualified nonprofit corporation" means a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has received a welfare exemption under Section 214.15 of the Revenue and Taxation Code for properties intended to be sold to low-income families who participate in a special no-interest loan program.

CIVIL CODE: DIVISION 4, PART 5, CHAPTER 5, ARTICLE 1
AB 670 Accessory Dwelling Units

Effective January 1, 2020, Section 4751 ~~is~~ was added to the Civil Code, to read (AB 670 (Friedman)):

4751.

- (a) 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 accessory dwelling unit or junior accessory dwelling unit on a lot zoned for single-family residential use that meets the requirements of Section 65852.2 or 65852.22 of the Government Code, is void and unenforceable.
- (b) This section does not apply to provisions that impose reasonable restrictions on accessory dwelling units or junior accessory dwelling units. For purposes of this subdivision, "reasonable restrictions" means restrictions that do not unreasonably increase the cost to construct, effectively prohibit the construction of, or extinguish the ability

to otherwise construct, an accessory dwelling unit or junior accessory dwelling unit consistent with the provisions of Section 65852.2 or 65852.22 of the Government Code.

GOV. CODE: TITLE 7, DIVISION 1, CHAPTER 3, ARTICLE 10.6

AB 671 Accessory Dwelling Units

Effective January 1, 2020, Section 65583(c)(7) of the Government Code ~~is~~ was added to read (sections of housing element law omitted for conciseness) (AB 671 (Friedman)):

65583(c)(7).

Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, "accessory dwelling units" has the same meaning as "accessory dwelling unit" as defined in paragraph (4) of subdivision (i) of Section 65852.2.

Effective January 1, 2020, Section 50504.5 ~~is~~ was added to the Health and Safety Code, to read (AB 671 (Friedman)):

50504.5.

(a) The department shall develop by December 31, 2020, a list of existing state grants and financial incentives for operating, administrative, and other expenses in connection with the planning, construction, and operation of an accessory dwelling unit with affordable rent, as defined in Section 50053, for very low, low-, and moderate-income households.

(b) The list shall be posted on the department's internet website by December 31, 2020.

(c) For purposes of this section, "accessory dwelling unit" has the same meaning as defined in paragraph (4) of subdivision (i) of Section 65852.2 of the Government Code.

Attachment 2: State Standards Checklist

| YES/NO | STATE STANDARD* | GOVERNMENT CODE SECTION |
|--------|---|---|
| | Unit is not intended for sale separate from the primary residence and may be rented. | 65852.2(a)(1)(D)(i) |
| | Lot is zoned for single-family or multifamily use and contains a proposed, or existing, dwelling. | 65852.2(a)(1)(D)(ii) |
| | The accessory dwelling unit is either attached to, or located within, the proposed or existing primary dwelling, including attached garages, storage areas or similar uses, or an accessory structure, or detached from the proposed or existing dwelling and located on the same lot as the proposed or existing primary dwelling. | 65852.2(a)(1)(D)(iii) |
| | Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing primary dwelling but shall be allowed to be at least 800/850/1000 square feet. | 65852.2(a)(1)(D)(iv), (c)(2)(B) & C) |
| | Total area of floor area for a detached accessory dwelling unit does not exceed 1,200 square feet. | 65852.2(a)(1)(D)(v) |
| | Passageways are not required in conjunction with the construction of an accessory dwelling unit. | 65852.2(a)(1)(D)(vi) |
| | Setbacks are not required for an existing living area or accessory structure or a structure constructed in the same location and to the same dimensions as an existing structure that is converted to an accessory dwelling unit or to a portion of an accessory dwelling unit, and a setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure or a new structure constructed in the same location and to the same dimensions as an existing structure. | 65852.2(a)(1)(D)(vii) |
| | Local building code requirements that apply to detached dwellings are met, as appropriate. | 65852.2(a)(1)(D)(viii) |
| | Local health officer approval where a private sewage disposal system is being used, if required. | 65852.2(a)(1)(D)(ix) |
| | Parking requirements do not exceed one parking space per accessory dwelling unit or per bedroom, whichever is less. These spaces may be provided as tandem parking on an existing driveway. | 65852.2(a)(1)(D)(x)(I) |

Attachment 3: Bibliography

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By the United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. – Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[SECONDARY UNITS AND URBAN INFILL: A Literature Review](#) (12 pp.)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

One of the large impacts of single-use, single-family detached zoning has been to severely shrink the supply of accessory dwellings, which often were created in or near primary houses. Detached single-family dwelling zones—the largest housing zoning category—typically preclude more than one dwelling per lot except under stringent regulation, and then only in some jurisdictions. Bureaucratically termed “accessory dwelling units” that are allowed by some jurisdictions may encompass market-derived names such as granny flats, granny cottages, mother-in-law suites, secondary suites, backyard cottages, casitas, carriage flats, sidekick houses, basement apartments, attic apartments, laneway houses, multigenerational homes, or home-within-a-home.

[Regulating ADUs in California: Local Approaches & Outcomes](#) (44 pp.)

By Deidra Pfeiffer
Turner Center for Housing and Innovation, UC Berkeley

Accessory dwelling units (ADU) are often mentioned as a key strategy in solving the nation's housing problems, including housing affordability and challenges associated with aging in place. However, we know little about whether formal ADU practices—such as adopting an ordinance, establishing regulations, and permitting—contribute to these goals. This research helps to fill this gap by using data from the Turner California Residential Land Use Survey and the U.S. Census Bureau to understand the types of communities engaging in different kinds of formal ADU practices in California, and whether localities with adopted ordinances and less restrictive regulations have more frequent applications to build ADUs and increasing housing affordability and aging in place. Findings suggest that three distinct approaches to ADUs are occurring in California: 1) a more restrictive approach in disadvantaged communities of color, 2) a moderately restrictive approach in highly advantaged, predominately White and Asian communities, and 3) a less restrictive approach in diverse and moderately advantaged communities. Communities with adopted ordinances and less restrictive regulations receive more frequent applications to build ADUs but have not yet experienced greater improvements in housing affordability and aging in place. Overall, these findings imply that 1) context-specific technical support and advocacy may be needed to help align formal ADU practices with statewide goals, and 2) ADUs should be treated as one tool among many to manage local housing problems.

[ADU Update: Early Lessons and Impacts of California's State and Local Policy Changes](#) (8 p.)

By David Garcia (2017)
Turner Center for Housing and Innovation, UC Berkeley

As California's housing crisis deepens, innovative strategies for creating new housing units for all income levels are needed. One such strategy is building Accessory Dwelling Units (ADUs) by private homeowners. While large scale construction of new market rate and affordable homes is needed to alleviate demand-driven rent increases and displacement pressures, ADUs present a unique opportunity for individual homeowners to create more housing as well. In particular, ADUs can increase the supply of housing in areas where there are fewer opportunities for larger-scale developments, such as neighborhoods that are predominantly zoned for and occupied by single-family homes.

In two of California's major metropolitan areas -- Los Angeles and San Francisco -- well over three quarters of the total land area is comprised of neighborhoods where single-family homes make up at least 60 percent of the community's housing stock. Across the state, single-family detached units make up 56.4 percent of the overall housing stock. Given their prevalence in the state's residential land use patterns, increasing the number of single-family homes that have an ADU could contribute meaningfully to California's housing shortage.

[Jumpstarting the Market for Accessory Dwelling Units: Lessons Learned from Portland, Seattle and Vancouver](#) (29 pp.)

By Karen Chapple et al (2017)
Turner Center for Housing and Innovation, UC Berkeley

Despite government attempts to reduce barriers, a widespread surge of ADU construction has not materialized. The ADU market remains stalled. To find out why, this study looks at three cities in the Pacific Northwest of the United States and Canada that have seen a spike in construction in recent years: Portland, Seattle, and Vancouver. Each city has adopted a set of zoning reforms, sometimes in combination with financial incentives and outreach programs, to spur ADU construction. Due to these changes, as well as the acceleration of the housing crisis in each city, ADUs have begun blossoming.

[Accessory Dwelling Units as Low-Income Housing: California's Faustian Bargain](#) (37 pp.)

By Darrel Ramsey-Musolf (2018)

University of Massachusetts Amherst, ScholarWorks@UMass Amherst

In 2003, California allowed cities to count accessory dwelling units (ADU) towards low-income housing needs. Unless a city's zoning code regulates the ADU's maximum rent, occupancy income, and/or effective period, then the city may be unable to enforce low-income occupancy. After examining a stratified random sample of 57 low-, moderate-, and high-income cities, the high-income cities must proportionately accommodate more low-income needs than low-income cities. By contrast, low-income cities must quantitatively accommodate three times the low-income needs of high-income cities. The sample counted 750 potential ADUs as low-income housing. Even though 759 were constructed, no units were identified as available low-income housing. In addition, none of the cities' zoning codes enforced low-income occupancy. Inferential tests determined that cities with colleges and high incomes were more probable to count ADUs towards overall and low-income housing needs. Furthermore, a city's count of potential ADUs and cities with high proportions of renters maintained positive associations with ADU production, whereas a city's density and prior compliance with state housing laws maintained negative associations. In summary, ADUs did increase local housing inventory and potential ADUs were positively associated with ADU production, but ADUs as low-income housing remained a paper calculation.

EXHIBIT G

Exhibit G



U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act¹ (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

² The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.⁴

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them⁵ and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person 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.”⁶ The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

⁴ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (e.g., providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. See U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and “Section 504: Frequently Asked Questions,” (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

⁵ The Fair Housing Act’s protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). See also H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) (“The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities.”). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

⁶ 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.⁷ With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), *aff'd* 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

⁷ This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.⁸ This list of major life activities is not exhaustive. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.⁹ Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

⁸ The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. *See Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See Sutton v. United Airlines, Inc.*, 527 U.S. 470, 492 (1999).

⁹ *See, e.g., United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A “reasonable accommodation” is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual’s disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its “no pets” policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a “fundamental alteration”?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

Example: A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

Example 1: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

Example 2: Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words “reasonable accommodation” are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

Example 1: An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.

Example 2: A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.

Example 3: An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits¹⁰ or a credible statement by the individual). A doctor or other

¹⁰ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g., Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

EXHIBITS H, I, and J

The Public Records Act exempts certain types of documents from disclosure: Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. See Government Code § 6254(c). For this reason, City staff is intentionally withholding the following exhibits from public review:

Exhibit H – Physician’s letter of support for accommodation

Exhibit I – Physician’s letter of support for accommodation

Exhibit J – Disabled Person Placard Identification Card/Receipt

6255 PASEO CANYON DR – CDP 20-034/RRA 21-001 Site Photographs (May 27, 2021 by City Staff)

1. East elevation (front) of existing primary residence



2. Area of proposed ADU and master bath and bedroom addition, southerly side yard, looking east.



3. Area of proposed ADU and master bath and bedroom addition, southerly side yard, looking west.



4. Existing adjacent development on Paseo Canyon Drive, looking south.



5. Existing adjacent development on Paseo Canyon Drive, looking north.



**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Rami Israel
6244 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6244 Paseo Cyn Dr.

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Roy and Janet Ettinger
30717 El Pequeno Drive
Malibu, CA 90265

6/2/21
Date

El Pequeno Dr
30717 ~~Paseo Cyn Dr~~

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Simon & Vickie Barret
6267 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6267 Paseo Cyn. Dr

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,

Mr. & Mrs. Don Fauntleroy
6252 Paseo Canyon Drive
Malibu, CA 90265

6/2/21
Date

6252 Paseo Cyn Dr

RADIUS MAP 500'

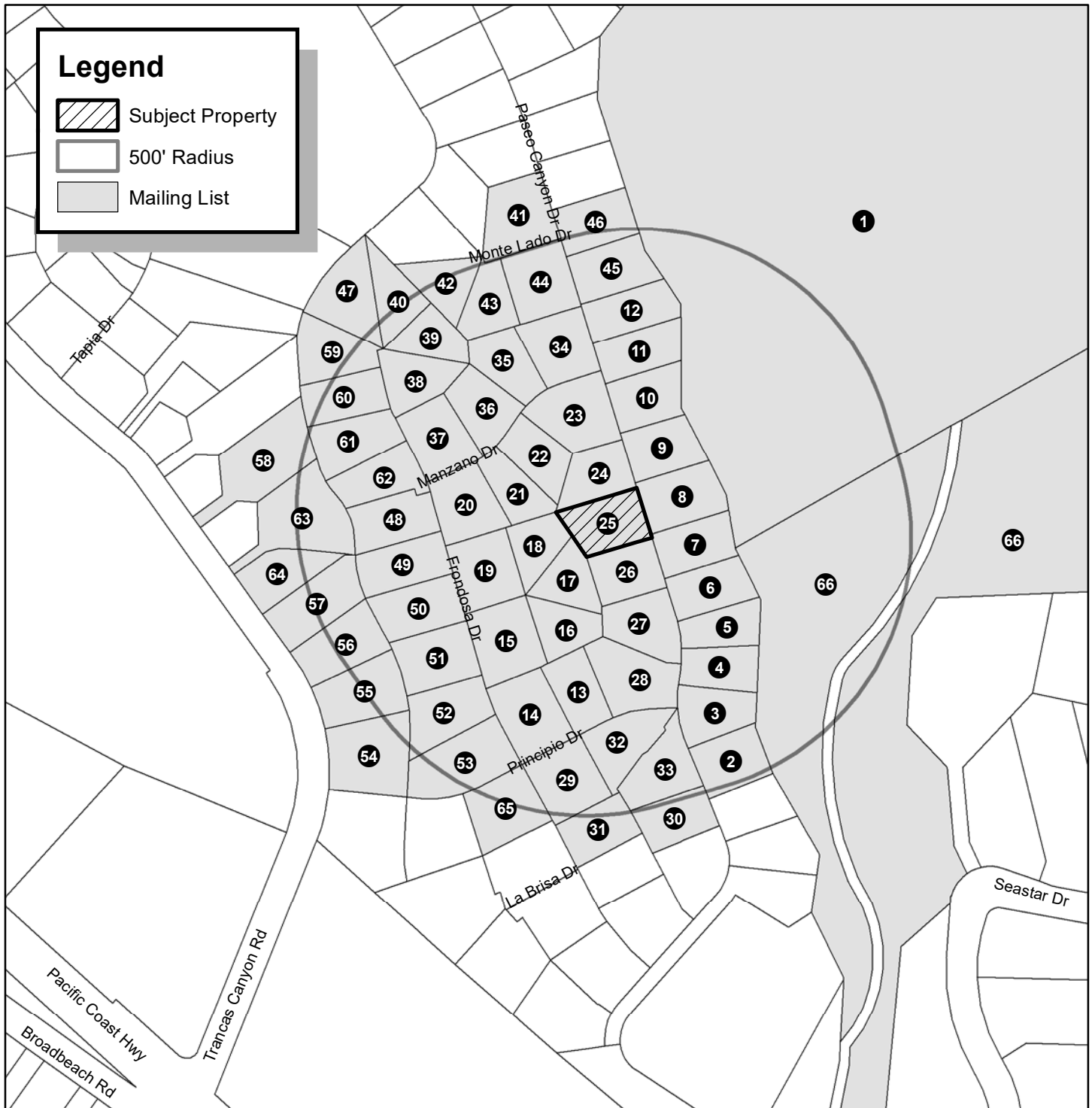
Map Date: 3/1/2021

SUBJECT PROPERTY

ADDRESS: 6255 PASEO CANYON DR., MALBU, CA 90265
APN: 4469-033-013

Graphic Data Source

Los Angeles County Geographic Information System
Base Parcel Database (Derived from APN Maps)
Coordinate System: NAD 1983 StatePlane California V FIPS 0405 Feet
Datum: North American 1983

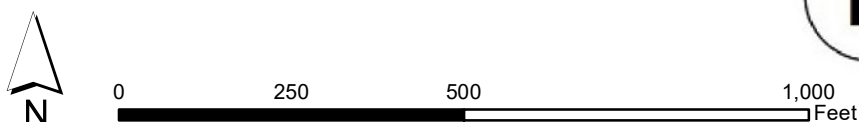


Latest equalized assessment rolls obtained from the Los Angeles County Assessor's Office through ParcelQuest, a vendor service on 3/1/2021

ORDER NO. 2021-32



www.radiusmaps4less.com | (909) 997-9357

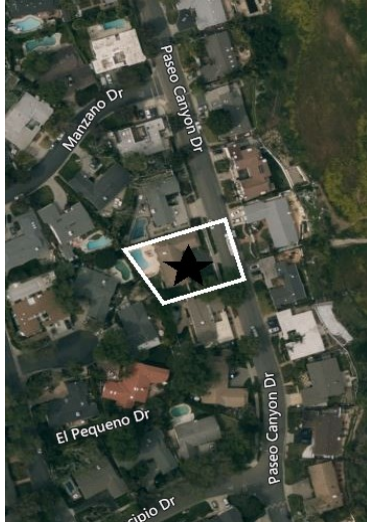


ATTACHMENT 8



City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489
www.malibucity.org

PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING



NOTICE OF PUBLIC HEARING

The Malibu Planning Commission will hold a public hearing on **Monday, June 7, 2021, at 6:30 p.m.** on the project identified below which will be held via teleconference only in order to reduce the risk of spreading COVID-19 pursuant to the Governor's Executive Orders N-25-20 & N-29-20 & the County of Los Angeles Public Health Officer's Safer at Home Order.

COASTAL DEVELOPMENT PERMIT NO. 20-034 AND REQUEST FOR REASONABLE ACCOMMODATION NO. 21-001 - An application to allow a new 469 square foot attached accessory dwelling unit and 157 square foot ground-floor addition to an existing one-story, 3,000 square foot, single-family residence with an attached three-car garage; the project includes a partial remodel and reconfiguration of interior spaces and a Request for Reasonable Accommodation pursuant to City of Malibu Local Coastal Program Local Implementation Plan (LIP) Section 13.30 to allow relief from the requirements of the zoning provisions of the LIP, as they currently apply to an application for a new attached accessory dwelling unit and additions and alterations to an existing one-story, single-family residence; the proposal would result in the dwelling encroaching into the required rear and side yard setbacks and exceeding the maximum allowed total development square footage and total impermeable lot coverage for the parcel

LOCATION / APN / ZONING: 6255 Paseo Canyon Drive / 4469-033-013 / Single-family Low Density (SFL)
APPLICANTS / OWNERS: Elizabeth and Jason Riddick
APPEALABLE TO: City Council
ENVIRONMENTAL REVIEW: Categorical Exemption CEQA Guidelines Sections 15301(e) and 15305
APPLICATION FILED: July 10, 2020
CASE PLANNER: David Eng, Assistant Planner, deng@malibucity.org (310) 456-2489, ext. 372

A written staff report will be available at or before the hearing for the project, typically 10 days before the hearing in the Agenda Center: <http://www.malibucity.org/agendacenter>. Related documents are available for review by contacting the Case Planner during regular business hours. You will have an opportunity to testify at the public hearing; written comments which shall be considered public record, may be submitted any time prior to the beginning of the public hearing. If the City's action is challenged in court, testimony may be limited to issues raised before or at the public hearing. To view or sign up to speak during the meeting, visit www.malibucity.org/virtualmeeting.

LOCAL APPEAL - A decision of the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be emailed to psalazar@malibucity.org within ten days following the date of action and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Payment must be received within 10 days of the appeal deadline. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

RICHARD MOLLICA, Planning Director

Date: May 27, 2021

CITY OF MALIBU PLANNING COMMISSION
RESOLUTION NO. 21-51

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU, DENYING A REQUEST FOR REASONABLE ACCOMMODATION NO. 21-004 PURSUANT TO LOCAL COASTAL PROGRAM LOCAL IMPLEMENTATION PLAN 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 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 ZONING DISTRICT AT 6255 PASEO CANYON DRIVE (RIDDICK)

The Planning Commission 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.

SECTION 2. Environmental Review.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15270, CEQA does not apply to projects which a public agency rejects or disapproves.

SECTION 3. Findings for Denial.

Based on substantial evidence contained within the record and pursuant to Local Coastal Program (LCP) Local Implementation Plan (LIP) including Sections 13.7(B) and 13.9, the Planning Commission adopts the analysis in the agenda report, incorporated herein, the findings of fact below, and denies RRA No. 21-001 and CDP 20-034 for the partial demolition of, and development of a new 469 square foot attached ADU and 157 square foot addition to, the existing primary residence in the single-family (SFL) zoning district located at 6255 Paseo Canyon Drive.

The proposed project has been determined to be inconsistent with all applicable requirements of the LCP, specifically LIP Sections 3.6(F), 3.6(H), and 3.6(I), in that the proposed accessory dwelling unit and addition to the primary residence will encroach into the rear and side yard setbacks, and exceed the maximum allowed total development square footage and (TDSF) and total impervious lot coverage (TILC) for the parcel. The required findings for denial of the RRA and CDP 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 environmental sensitive habitat area (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 RRA 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 RRA 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 RRA by meeting the findings required above.

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

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)

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

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

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)

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 4. Planning Commission Action.

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

SECTION 5. The Planning Commission shall certify the adoption of this resolution.

PASSED AND ADOPTED this 7th day of June 2021.



JEFFREY JENNINGS, Planning Commission Chair

ATTEST:



KATHLEEN STECKO, Recording Secretary

LOCAL APPEAL - Pursuant to LIP Section 13.20.1 (Local Appeals) a decision made by the Planning Commission may be appealed to the City Council by an aggrieved person by written statement setting forth the grounds for appeal. An appeal shall be filed with the City Clerk within 10 days and shall be accompanied by an appeal form and filing fee, as specified by the City Council. Appeals shall be emailed to psalazar@malibucity.org and the filing fee shall be mailed to Malibu Planning Department, attention: Patricia Salazar, 23825 Stuart Ranch Road, Malibu, CA 90265. Appeal forms may be found online at www.malibucity.org/planningforms. If you are unable to submit your appeal online, please contact Patricia Salazar by calling (310) 456-2489, extension 245, at least two business days before your appeal deadline to arrange alternative delivery of the appeal.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 21-51 was passed and adopted by the Planning Commission of the City of Malibu at the Regular meeting held on the 7th day of June 2021 by the following vote:

AYES: 3
NOES: 2
ABSTAIN: 0
ABSENT: 0

Commissioners: Hill, Mazza, Jennings
Commissioners: Smith, Weil

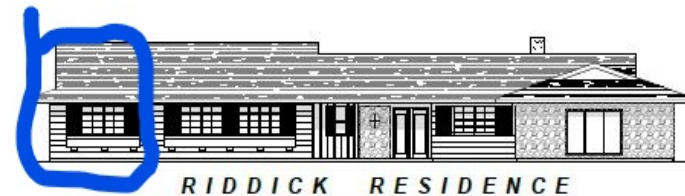

KATHLEEN STECKO, Recording Secretary

RRA for a 469 SF ADU with a 90 SF minor addition to main residence

1

- Compliant with State Law
- Exempt from Current LCP
- Approved by HOA and All Neighbors
- For a Disabled Family Member
- Tiny
- In Backyard
- Consistent W/ Neighborhood Character
- No water/fire access/septic issues
- No Impact on Coastal Resources
- Neighbors Support Project

*Note from Planning Staff:
Public correspondence is shown on
slides 3 to 7 of this presentation.*



Our Neighbors Support Us !

2



**All of our immediate neighbors have
NO OPPOSITION TO OUR PROJECT**

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Simon & Vickie Barret
6267 Paseo Canyon Drive
Malibu, CA 90265

6/2/2021
Date

6267 Paseo Cyn. Dr

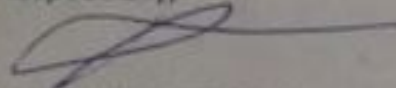
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Thank you.

Respectfully,



Roy and Janet Ettinger
30717 El Pequeno Drive
Malibu, CA 90265

6/2/21
Date

El Pequeno Dr.
30717 ~~Paseo Cyn Dr~~

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,

Mr. & Mrs. Don Fauntleroy
6252 Paseo Canyon Drive
Malibu, CA 90265

6/2/21
Date

6252 Paseo Cyn. Dr


**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you.

Respectfully,



Marc and Catherine Goodman
30710 El Pequeno Drive
Malibu CA 90263

Date:

6/6/21

30710 El Pequeno

**Memo RE: CDP 20-034 and "Request for a Reasonable
Accommodation" No.21-001.**

To the Malibu Planning Commission:

We the undersigned resident of Malibu West who are neighbors of the Riddick family located at 6255 Paseo Canyon Drive do not oppose their application for CDP 20-034 and their "Request for a Reasonable Accommodation" No. 21-001 to allow their family to build an attached ADU and small addition for their 82-year-old mother.

Thank you

Respectfully,


Rosa Isabel

6244 Paseo Canyon Drive
Malibu, CA 90265

06/21/2021
Date

6244 Paseo Cyn Dr.

The purpose of the RRA is to Provide Housing for my mother, an 82-year-old Disabled Senior Citizen

The only “reasonable accommodation” we are asking for is for the City to honor existing law:

- Malibu LCP section 13.4.1 which exempts our project from the requirement to obtain a CDP
- California State ADU Law
- Clear guidance from the California Coastal Commission re meaning of 13.4.1 per Cal. Code Regs., tit. 14, §13250(a)(1) and Cal. Pub. Resources Code § 30610;
- The Federal and State Fair Housing Act

What is LCP Sec 13.30 and Why is it in our LCP?

In 2001 the State of California required that cities and counties implement a procedure to eliminate fair housing violations and implement reasonable accommodations to ensure that overly restrictive land use, zoning, practices, rules, regulations, policies and procedures do not create a barrier for a “disabled person” to have access to what would otherwise be an available housing opportunity.

The Reasonable Accommodation is the mechanism which local governments should use to provide RELIEF from those policies, rules, regulations, zoning and land use restrictions that are creating barriers to housing opportunities for disabled persons.

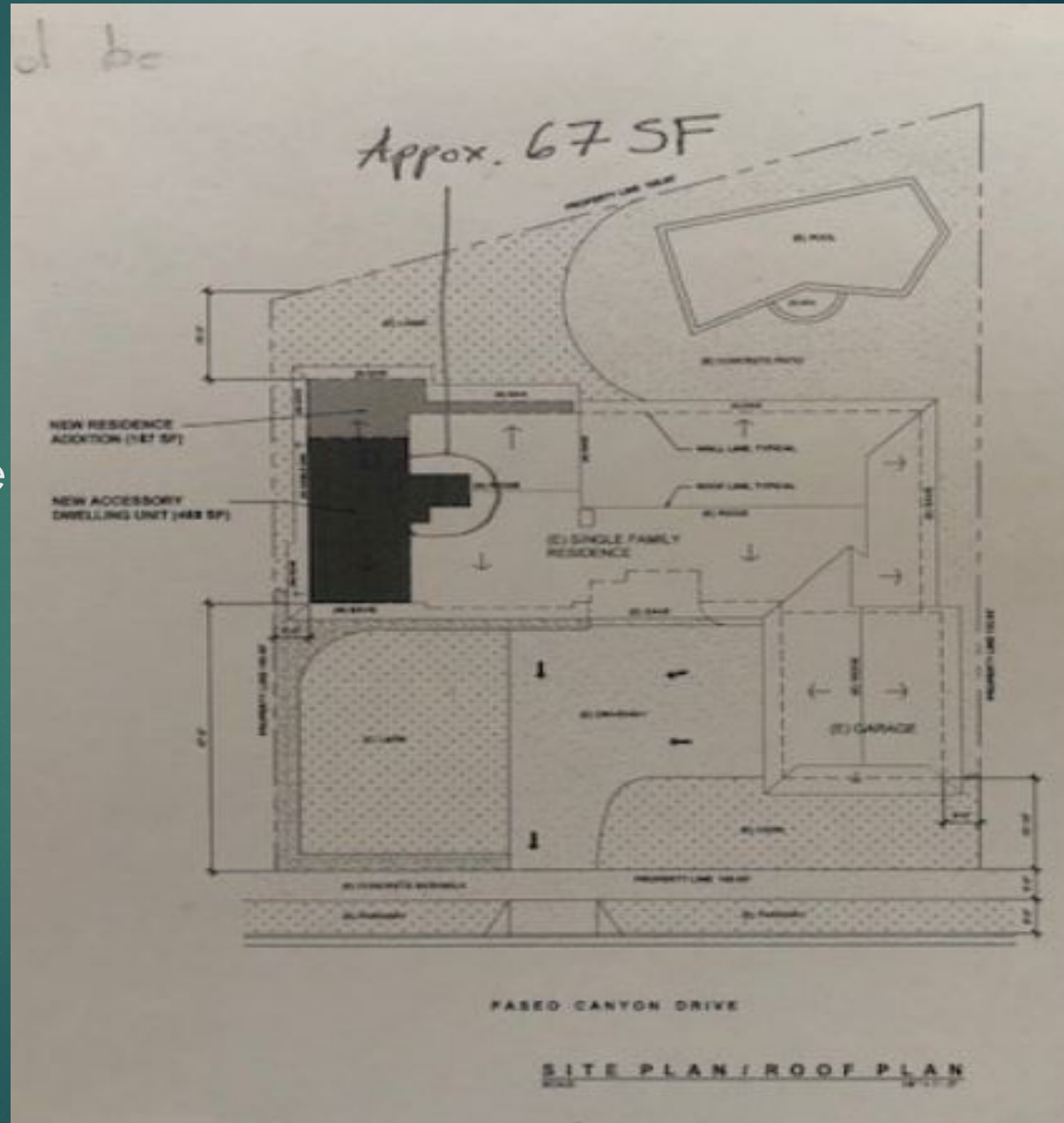
Cal. Gov. Code § 65583(c)(3).

The Project:

Under the RRA the ADU should not count towards TDSF, TILC or Setbacks as all details of the ADU comply with State Law.

We are willing to reduce the Main Residence by 5 SF to accommodate the 3085 SF max for the primary residence TDSF.

Minor variance on the setbacks occurred as an accommodation to our HOA. All neighbors support the project as proposed.



How to determine if the RRA should be Granted.

Disability –

Does the person requesting have a disability as defined by fair housing laws? **Yes**

Accommodation –

Does the request require an accommodation in the local governments rules, policies, practices and procedures to facilitate the development of housing for the individual with disabilities -**Yes**

Necessary –

Is the accommodation or modification necessary for full use and enjoyment of the disabled person? **Yes**

Cost –

Does the accommodation or modification impose an undue financial and administrative cost on the City? **No Compliance with State Law not require Staff administration or monitoring!**

Effect –

Would the accommodation or modification effect a fundamental change in the City's business? **No**

If the answer to the first three questions is YES and the answer to the last two questions is NO, **THEN THE LOCAL GOVERNMENT SHOULD GRANT THE REQUEST AS DETERMINED BY THE FEDERAL AND STATE FAIR HOUSING LAWS**

The Malibu LCP states that the following projects are **EXEMPT** from the requirement to obtain a Coastal Development Permit. 13.4.1

Improvements to Existing Single-Family Residences

A. “Improvements to existing single-family residences” includes all fixtures **and structures directly attached to the residence**.....

Guidance to Coastal City Planning Directors from the California Coastal Commission RE: Attached ADUs

“[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.”

**April 21, 2020 Memo From Coastal Comm. to the
Planning Directors of Coastal Cities Re How To Evaluate
Attached ADUs Under Existing LCPs**

REASONABLE ACCOMMODATION UNDER FEDERAL AND STATE FAIR HOUSING LAW

The Act makes it unlawful
to refuse to make reasonable
accommodations to rules, policies,
practices when accommodations may
be necessary to afford persons with
disabilities an equal opportunity to
housing.

Common Mistakes and Violations of the anti-discrimination law include the following:

- Refusal to make reasonable accommodations in housing rules, policies, practices, where necessary to afford a disabled person equal opportunity to use and enjoy a dwelling.

(d) A denial cannot be based on the fact that provision of a reasonable accommodation might be considered unfair by other individuals or might possibly become an undue burden if extended to multiple other individuals who might request accommodations.

California State Law

Lot coverage formulas cannot be used to block otherwise compliant ADUs up to 800 square feet in size. “No lot coverage, floor area ratio, open space, or minimum lot size will prevent the construction of a statewide exemption ADU” (Cal. HCD Handbook at p. 11; Gov. Code, 65852.2, subd. (c)(2)(C))

California State Law

A setback of no more than four feet from the side and rear lot lines shall can be required for an attached or detached ADU.” (See Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)

TDSF And Set Back Rules do not apply
to otherwise compliant attached
ADUs under the existing LCP at Section
13.4.1

TDSF and Cumulative Setbacks would NOT apply under our RRA to accommodate the State ADU Law and the Exemption Language in the LCP

- ▶ The existing LCP Does Not Impose TDSF and Setbacks On Attached ADUs
- ▶ Why? Because attached ADUs that are California law compliant already fall within the class of CDP exempt “structures attached directly to the residence” under existing LCP Section 13.4.1 (A). Per the Coastal Commission “**[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).)” (April 14, 2020 Memo From Coastal Commission)
 - ▶ **IF TDSF and Setbacks Were Already Imposed On Attached ADUs, WHY did Staff attempt to amend the ordinance by ADDING language at 3.10(G)(1)(C) and 3.10(G)(3) trying to apply TDSF and Setbacks to otherwise exempt attached ADUs?**

Conclusion:

We Respectfully ask the Commission to Approve our Request for a Reasonable Accommodation on behalf of my 82-year-old, disabled mother by Accommodating the Exemption Language in 13.4.1 of Malibu's LCP and Complying with the California State ADU Law her protections under the Federal and State Fair Housing Act.

Note: Contradictory to what Staff recommends, The Commission cannot reasonably deny based on fear of setting a precedent. The Commission cannot reasonably deny based on the false claim of undue financial burden as ADUs require no additional administration by City Staff and, lastly, the Commission cannot reasonably deny based on Setbacks, TDSF or TIC as these cannot be legally used to block an exempt attached ADUs per our current LCP.

OUR REQUEST IS NOT A “BIG ASK” FOR TWO REASONS

- Our Attached ADU Is Already Exempt Under the Existing LCP
- Granting Our Request Creates No Possibility of Setting an Undesirable “Precedent”

1. OUR ADU IS ALREADY EXEMPT

- Attached ADUs With No Impact On Coastal Resources Are Exempt From Requirement To Obtain a CDP Under The Existing LCP 13.1.4 Language
- Why? Because Coastal Says So (See 4/21/2020 Memo From Coastal To Malibu at. P. 5) Why else? The plain words of existing LCP 13.4.1 say so (Exempt “Improvements to existing single-family residences” include “all fixtures and structures directly attached to the residence...”)
- So why does that matter? This means that the two reasons the City is blocking our Project – slight violations of local setbacks and TDSF are preempted by new statewide laws that say 1) no setbacks of more than four feet and 2) you can’t use TDSF or TILC to block an 800 sq foot or smaller attached ADU (See Gov. Code, 65852.2, subd. (c)(2)(C); Gov. Code, § 65852.2, subd. (a)(1)(D)(vii).)
- **CONCLUSION: SAYING “YES” IS JUST FOLLOWING EXISTING LAW – NOT A SIGNIFICANT ACCOMMODATION BECAUSE WE ARE ALREADY ALLOWED TO BUILD OUR PROJECT WHETHER IT IS FOR A DISABLED FAMILY MEMBER OR NOT.**

2. THERE WILL BE NO UNDESIRABLE “PRECEDENT” FROM SAYING “YES”

➤ Our Project Is a Unicorn In Malibu, Unlikely to be Repeated:

- Approved by HOA and All Neighbors
- For Disabled Family Member
- Tiny (under 500 square feet)
- In Backyard
- Camouflaged – Looks Just like House - Consistent W/ Neighborhood Character
- No water/fire access/septic issues
- No Impact on Coastal Resources

➤ The Amended LCP As Drafted Block Any Future ADUs That Exceed TDSF/Setbacks

- See (I) New Section 3.10(G)(1)(c) “Application of TDSF or impermeable coverage development standards further limits the size of the ADU...” and (2) New Section 3.10(G)(3) “Setbacks. All ADUs remain subject to the setback standards...”
- Our Project was the reason why these two more restrictive sections were added by Staff after meeting with us. They are designed to block any future ADU like ours – again meaning granting our request cannot create any “precedent”

Kelsey Pettijohn

Subject: August 9th Public Hearing, Appeal No. 21-008 RE Elizabeth & Jason Riddick Appellants-6255 Paseo Cyn. Dr.
Attachments: PLF Summary of Argument.pdf; My Mother, Renee Sperling-Letter to the Council.pdf

From: Elizabeth Riddick [REDACTED]
Date: August 3, 2021 at 2:15:02 PM PDT
To: Karen Farrer <kfarrer@malibucity.org>, Bruce Silverstein <bsilverstein@malibucity.org>, Mikke Pierson <mpierson@malibucity.org>, Steve Uhring <suhring@malibucity.org>, Paul Grisanti <pgrisanti@malibucity.org>
Cc: Jason Riddick [REDACTED], psalazaar@malibucity.org
Subject: FW: August 9th Public Hearing, Appeal No. 21-008 RE Elizabeth & Jason Riddick Appellants-6255 Paseo Cyn. Dr.

Dear City Council Members,

In an effort to spare you 436 pages of the cumbersome and complicated staff report, as well as, the fact that staff omitted the correct legal brief from your package, we submit the two short letters attached to this e-mail, which crystalize the reasons why our project should be approved at the August 9th hearing regarding appeal No. 21-008. In short, TDSF does not apply to our attached ADU.

We look forward to seeing you on Monday.

Thank you.

Warmest regards,
Elizabeth & Jason Riddick

P.S.

Patricia,

Per our e-mail exchange yesterday, please send the Council members the correct legal brief from The Pacific Legal Foundation, the one I hand delivered to your office over a month ago.

Thank you again.

Elizabeth Riddick



August 3, 2021

VIA EMAIL

Malibu City Council
23825 Stuart Ranch Road
Malibu, CA 90265

To the City Council:

Pacific Legal Foundation (PLF) represents the Riddick family in this appeal. PLF is a national, nonprofit law firm with nearly fifty years' experience defending the property rights of Americans from government overreach. Unfortunately, PLF's June 28, 2021 statement of the grounds for Appeal No. 21-008 was erroneously omitted from the Council Agenda Report submitted by Planning Staff on July 29, 2021. As a result, the report does not accurately identify or adequately address the issues on appeal. The following is a summary of the most important points that the Council must understand to adjudicate the appeal.

TDSF requirements do not apply to an attached ADU

- Total Development Square Footage (TDSF) requirements are part of Malibu's Local Coastal Program (LCP). But the proposed project, as an **attached ADU**, is **exempt** from the design standards in the LCP.
- Planning staff insists that the project is not exempt because it is an "accessory self-contained residential unit." **That is incorrect.** A self-contained unit is one which is *detached* from the primary dwelling. The proposed ADU, by contrast, is *directly attached* to the primary dwelling.
- Without the primary dwelling, the proposed ADU would have no northern wall. In other words, **the proposed ADU is not self-contained.**
- The California Coastal Commission (CCC) supports this understanding. The LCP's exemption provision is taken directly from a regulation originally passed by the CCC.¹ According to the CCC:
 - 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.**
 - 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.***

¹ Cal. Code Regs. tit. 14, § 13250(a)(2).

Appellants are flexible regarding proposed modification of the primary dwelling

- The proposed minor modification of the main residence to accommodate the proposed ADU was not the basis of staff's recommendation or of the Planning Commission's decision. Rather, the decision was based on the mistaken view that "[t]here is no provision in the existing, certified Malibu LCP that allows your ADU project as proposed to go forward[.]"
- Throughout the planning process, the Riddicks have communicated their willingness to adjust the proposed minor modification of the main residence to accommodate the ADU.
- Review of the proposed modification was cut short by the Planning Commission's erroneous interpretation of the LCP and their refusal to review the project according to mandatory state law.
- Discounting the ADU from TDSF calculations as required by state law, the proposed modification only exceeds TDSF by fewer than 50 sq. ft. As stated throughout the permitting process, the Riddicks can easily adjust the proposal to eliminate any remaining TDSF issue.
- Therefore, the Council should either allow the project to move forward, or should remand to the Planning Commission for further adjustment of the proposal consistent with state law as applicable to the proposed ADU.

Malibu must permit ADUs under California State Law and Policy

- California's severe housing crisis is a matter of statewide importance. The state legislature has declared that ADUs are "an essential component of California's housing supply," in part because they "provide housing for **family members**," as well as for "**the elderly**, in-home health care providers, **the disabled**, and others at below market prices within existing neighborhoods."
- Between 2014 and 2021, the City of Malibu failed to meet its objectives under California's Regional Housing Needs Allocation program. For example, its quantified goals for "Extremely Low," "Low," and "Moderate" housing were 15 units, 23 units, and 23 units respectively. In each of these categories, zero units were actually developed.
- Because the attached ADU is exempt from the requirements of the LCP, and because Malibu has not yet promulgated a local ordinance providing for the creation of ADUs, state law controls. The proposed project is well within the maximum limits set by state law.

Sincerely,



DAVID J. DEERSON
Attorney

August 3, 2021

To the Malibu City Council:

Our lawyers at the Pacific Legal Foundation will tell you about California's housing crisis, about why our proposed ADU must be permitted under state law, about how our project is exempt from the Local Coastal Program, and about several other legal and policy issues.

I just want to tell you about my mom.

Renee Sperling is a woman who raised two children as a single mom with little to no help. She was the one person my brother and I could rely on, lending her seemingly endless support through our childhood, adolescence, college years, and beyond. My mother has been our family's "Rock of Gibraltar" and now it is our turn to be hers.

She has been a staple of the greater Los Angeles community for decades. After obtaining her master's degree in education from USC, she taught English at Paul Revere Jr. High School in the Pacific Palisades here on the Westside. She later took positions teaching composition and literature at Moorpark Junior College and early childhood education at Ventura College.

Too prodigious a woman for just one career, mom enrolled at Southwestern University Law School in her middle-ages and spent the last four decades as an attorney working hard to help families through difficult divorce. She served as the Chair of the Family Law Section of the West Los Angeles Bar Association and has been invited to speak internationally in countries such as Norway, England and New Zealand on the topics like shared parenting and fathers' custody rights.

In the 1990s, she served on the board of the Global Children's Organization (GCO). She flew to Bosnia in 1995—toward the end of the war—and drove from Dubrovnik up to Sarajevo through the war-torn, bombed-out and damaged country to transport vulnerable children from three separate orphanages to a therapeutic camp sponsored by GCO on the island of Badija. The camp provided a temporary safe-haven where traumatized children could heal with food, shelter, music, and art. The next year, she did it all again.

My mom is a loving, kind, and giving woman. She is a vital part of our family and of this community.

To me, that is what the state's ADU legislation is all about. The legislature specifically addressed the need to care for our parents in their senior years and the vital importance of providing them with housing so they can age in place alongside their families. No one deserves that more than my mom.

City Staff and some of the Commission members have missed the humanitarian aspect of the ADU legislation. Beyond TDSF and side-yard set-backs, there is a genuine human element to this law. In this instance it is my mother—a staple of her community, a mother, a grandmother, a teacher, a lawyer, a humanitarian, and a one-of-a-kind human being who deserves empathy and dignity.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Elizabeth Riddick', with a stylized, flowing script.

Elizabeth Riddick



August 6, 2021

Malibu City Council
23825 Stuart Ranch Road
Malibu, CA 90265

via EMAIL

To the City Council:

In order to properly adjudicate Appeal No 21-008, it is important to understand the mechanics of the state law governing ADUs.

Cal. Gov't Code 65852.2(a) permits local governments to adopt an ordinance providing "for the creation of accessory dwelling units in areas zoned to allow single-family or multifamily use." Subdivision (a) goes on to outline several requirements that such an ordinance must satisfy, including "maximum standards that local agencies shall use" to evaluate proposed ADUs on residential lots that include an existing single-family dwelling, and provides that "[n]o additional standards, other than those provided in this subdivision, shall be used or imposed[.]"¹

While local governments have some leeway to establish unit size and setback requirements within statutory parameters,² they may only do so through adoption of an ordinance in full compliance of the statute.³

However, for local governments such as Malibu which have not adopted an ordinance in compliance with the statute, applications to create an ADU must be evaluated *only* based on the maximum standards listed in the statute.⁴

In other words, as explained in the Department of Housing and Community Development's ADU Handbook: "Should a local government choose not to adopt an ADU ordinance, any proposed

¹ Cal. Gov't Code 65852.2(a)(6).

² *See, e.g.*, Cal. Gov't Code 65852.2(c) (providing that a local agency may establish unit size requirements within certain constraints).

³ Cal. Gov't Code 65852.(a)(4) (providing that an ordinance which "fails to meet the requirements of this subdivision . . . shall be null and void and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance that complies with this section.").

⁴ Cal. Gov't Code 65852.2(b) ("When a local agency that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives an application for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a)."). (emphasis added).

ADU development would be only subject to standards set in state ADU law.”⁵

As relevant to this Appeal, the maximum standards in subdivision (a) include the following:

- If there is an existing primary dwelling, the total floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling. Cal. Gov’t Code 65852.2(a)(1)(D)(iv).
- A setback of no more than four feet from the side and rear lot lines shall be required for an accessory dwelling unit that is not converted from an existing structure. Cal. Gov’t Code 65852.2(a)(1)(D)(vii).

The Riddicks’ modest proposal fits well within these statutory parameters.

Sincerely,



DAVID J. DEERSON
Attorney

⁵ The Handbook is reprinted in the Council Agenda Report at PDF page 122. The quoted material is found at page 20 of the Handbook, located at page 142 in the Council Agenda Report PDF. *See also* Best, Best & Kruger, *California Paves the Way for More ADUs*, BBKLaw.com (Oct. 16, 2019), <https://www.bbklaw.com/news-events/insights/2019/legal-alerts/10/california-paves-way-for-more-adus> (“Nearly every—if not every—city in the state will need to amend its ADU ordinance in time to take effect before Jan. 1, or the ordinance will be void and the agency will have to approve ADUs ministerially without applying any architectural, landscaping, zoning or development standard.”).

August 4, 2021

Malibu City Council
23825 Stuart Ranch Road
Malibu, CA 90265

RE: Accessory Dwelling Units

Dear Members of the Malibu City Council,

On behalf of over 1,950 AARP members in Malibu, I am reaching out to emphasize the importance of accessory dwellings units (**ADU**) as a viable affordable housing option and urge the City Council to encourage building of ADUs in the City of Malibu.

AARP supports the wider availability of ADUs as an affordable, accessible housing option for people of all ages. ADUs are small houses or apartments that exist on the same property lots as a single-family residence but still provide separate living and independent quarters, and because they tend to be smaller and more affordable than single-family houses, they can be a good housing option for older adults who want to downsize but still live in a neighborhood setting. AARP's most recent Home and Community Preference Survey indicates that nearly seven in ten adults would like to remain in the community for as long as possible as they age, and 63% would like to stay in their current residence. Additionally, AARP's publication '[The ABCs of ADUs](#)' provides a guide to ADUs and how they expand housing options for people of all ages.

ADUs are also good options for individuals who want to live near a caregiver (with caregivers occupying either the ADU or the main residence) or who want to use their property to generate extra income.

Furthermore, the current on-going pandemic has exposed the vulnerability of our older adults and has demonstrated the importance of ADUs as they can provide a safe, comfortable alternative. ADUs can fill a number of roles including providing a place for aging parents to live instead of a nursing home, separate quarters for multi-generational household, or a space to work remotely.

The state of California has been one of the leaders in [providing ADUs as a viable housing option](#). The number of ADU permits issued across California increased from almost 9,000 in 2018 to 12,392 in 2020. From 2018 to 2020, California jurisdictions permitted 33,881 ADUs and 22,695 ADUs were added to the state's housing supply. Furthermore, the recent changes to California's ADU funding law, which became effective January 1, 2021 emphasize the importance of ADUs in our community. The California Health and Safety Code (HSC), Section 65583 (c) (7), requires that cities and counties develop a plan that incentivizes and promotes the

creation of ADUs that can be offered at affordable rent for very low to moderate-income households. In relation to developing a plan, State of California Department of Housing & Community Development (HCD) has developed a list of existing state [grants and financial incentives](#) in connection with the expenses for the planning, construction and operation of an ADU with affordable rent for very low to moderate- income households.

We would like to thank the Councilmembers for this opportunity to talk about the importance of ADUs and how it can help Malibu's housing production to keep pace with the demand for affordable and accessible housing. We would also like to thank the Councilmembers for their leadership and work accomplished in these trying times. AARP California is committed to working with you to effectively address Malibu's housing needs. If you have questions or wish to discuss these items further, please contact Rafi Nazarians, Interim Advocacy Manager at rnazarians@aarp.org or 626-585-2638.

Thank you.

Sincerely,

A handwritten signature in black ink, reading "Nancy McPherson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "McPherson".

Nancy McPherson
State Director



City Of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Phone (310) 456-2489
www.malibucity.org

PLANNING DEPARTMENT
NOTICE OF PUBLIC HEARING



NOTICE OF PUBLIC HEARING

The Malibu City Council will hold a public hearing on **Monday, August 9, 2021, at 6:30 p.m.** on the project identified below via teleconference only in order to reduce the risk of spreading COVID-19, pursuant to the Governor's Executive Orders N-25-20 and N-29-20 and the County of Los Angeles Public Health Officer's Safer at Home Order.

APPEAL NO. 21-008 - An appeal of the Planning Commission's denial of Coastal Development Permit No. 20-034 and Request for Reasonable Accommodation No. 21-001 for a new 469 square foot attached accessory dwelling unit and 157 square foot ground floor addition to an existing one-story, 3,000 square foot, single-family residence with an attached three-car garage; partial remodel and reconfiguration of interior spaces and a request for reasonable accommodation pursuant to City of Malibu Local Coastal Program Local Implementation Plan (LIP) Section 13.30 to allow relief from the requirements of the zoning provisions of the LIP, as they currently apply to an application for a new attached accessory dwelling unit and additions and alterations to an existing one-story, single-family residence; including an encroachment of the dwelling into the required rear and side yard setbacks and exceedance of the maximum allowed total development square footage for the parcel

LOCATION / APN / ZONING: 6255 Paseo Canyon Drive / 4469-033-013 / Single-family Low Density (SFL)
OWNERS / APPELLANTS: Elizabeth and Jason Riddick
ENVIRONMENTAL REVIEW: Categorical Exemption CEQA Guidelines Sections 15301(e) and 15305
APPLICATION FILED: July 10, 2020
APPEAL FILED: June 17, 2021
CASE PLANNER: David Eng, Assistant Planner, deng@malibucity.org
(310) 456-2489, ext. 372

A written staff report will be available at or before the hearing; typically 10 days before the hearing in the Agenda Center: <http://www.malibucity.org/agendacenter>. All persons wishing to address the Council regarding these matters will be afforded an opportunity in accordance with the Council's procedures. Related documents are available for review by contacting the case planner during regular business hours. Written comments, which shall be considered public record, may be submitted any time prior to the beginning of the public hearing. If the City's action is challenged in court, testimony may be limited to issues raised before or at the public hearing. To view or sign up to speak during the meeting, visit www.malibucity.org/virtualmeeting.

RICHARD MOLLICA, Planning Director

Date: July 15, 2021