City Council Meeting
08-22-22
Item 6.C.

Council Agenda Report

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

Prepared by: Joyce Parker-Bozylinski, Contract Planner
Tyler Eaton, Associate Planner

Reviewed by: Richard Mollica, Planning Director

Approved by: Steve McClary, City Manager

Date prepared: August 15, 2022 Meeting date: August 22, 2022

Subject: Accessory Dwelling Unit Discussion - Local Coastal Program Amendment No. 18-002 and Zoning Text Amendment No. 18-004

RECOMMENDED ACTION: Provide direction to staff on the proposed accessory dwelling unit (ADU) ordinance including on Planning Commission requests for additional studies and referrals related to adopting the draft ADU ordinance and whether to provide additional/alternative direction on the content of the ADU ordinance.

FISCAL IMPACT: There is no fiscal impact associated with this item.

WORK PLAN: This item is included in the Adopted Work Plan for Fiscal Year 2022-2023 as item 4.a.

DISCUSSION: The item before the City Council stems from the Planning Commission data requests and referrals related to the cumulative impact of adopting an ADU ordinance. The data requests include additional studies and referrals that will require additional funding. Staff is seeking direction from the Council on the request to conduct the additional studies and if additional studies are requested, authorization to proceed with a Request for Proposal to hire a consultant to complete the work. The cost to complete the work would be brought back to the Council at a future hearing. The Commission requests also include a referral to the Public Safety Commission to update evacuation routes and a request for the Water Control Board to analyze the need for additional water. Given the length of time since the draft ordinance was originally brought to the Planning Commission, this is also an opportunity for the council to adjust or clarify its direction to staff.

Background

The Planning Commission held its first public hearing on the proposed ADU amendments on September 4, 2018 and directed staff to bring back additional information related to the ordinance. In November 2018, the Woolsey Fire occurred and staff efforts to facilitate the community's recovery and rebuilding efforts forced a delay of work on ADU amendments. On May 20, 2021, staff brought back revised draft amendments to the Planning Commission that incorporated new 2019 State amendments and addressed Commissioner comments from the September 2018 public hearing. The May 20, 2021, public hearing was continued without the Planning Commission reaching a recommendation to City Council and staff was asked to address additional Commissioner comments and questions before bringing the item back to the Commission. The revised draft amendments incorporating Commissioner comments was included on the March 7, 2022, Planning Commission agenda. Instead of hearing the item, the Planning Commission continued the item before opening the public hearing and directed staff to complete substantial additional analysis (Attachment 1).

Cumulative Impact Discussion

Some of the Commission requests were related to whether the adoption of a new ADU ordinance would result in a significant increase in the number of ADUs in the City. And if so, the Commission felt additional studies and analysis should be undertaken to study the cumulative impact of the potential increase. Planning Commission requests related to the potential increase include the following: 1) recommendation that the City Council refer the ADU ordinance to the Public Safety Commission for consideration of updates to the evacuation plan; 2) a traffic study on the impact of additional traffic on Pacific Coast Highway; 3) an analysis by the Water Quality Control Board of the availability of water that can be allocated to ADUs; 4) an account of all of the lots that could be used for ADUs and the services required by the City to service these ADUs; 5) an analysis on the effect on school population and the use of City sports facilities; 6) an estimate of the policing costs involved with additional ADUs; and 7) an analysis of the low-income housing requirements and the projected rental rates in relationship to the intent of the ADU ordinance.

Many of these requests would require additional studies, commission meetings, and coordination with local agencies before they would be properly addressed. A Request for Proposals will be needed for a consultant to complete the work. Staff is requesting if the Council would like to move forward with any or all of the requested studies and coordination before bringing the item back to the Planning Commission or determine if the extra analysis is not needed in order to get a Planning Commission recommendation on the proposed ordinance.

Proposed ADU Ordinance

The proposed amendments will update the City's Local Coastal Program (LCP) and Malibu Municipal Code (MMC) regulations for second units consistent with changes in State law. The City has commonly used the term "second unit" instead of "ADU" in its codes. The proposed amendments will replace the term second units with ADUs. The term second unit will be changed to ADU throughout both the LCP and MMC as provided in the draft amendments.

Second units are currently allowed with an Administrative Coastal Development Permit (ACDP). The proposed ordinance would require attached, detached, and converted (created from an existing accessory building) ADUs to obtain an ADU CDP. An ADU CDP is similar to an ACDP but the permit name was changed for ease of tracking ADU approvals. The proposed permitting process for ADUs will be the same as for second units under the current code. That process includes requirements for public noticing, reporting Director approvals to the Planning Commission where, by majority vote, the Commission can require a full CDP and the ability for the public to appeal the decision of the Director or Planning Commission to the City Council and if in the appeal zone, to the Coastal Commission.

In addition to having the same permitting requirements, the proposed ADU development standards are the same as the current requirements for a second unit except in two areas. To be consistent with State law, studio or one-bedroom units are proposed to be no smaller than 850 square feet and a two or more bedroom unit would need to be at least 1,000 square feet. Currently, the City's code states that the maximum size of a second unit is 900 square feet regardless of the number of bedrooms. The proposed setbacks and maximum building heights for ADUs will be the same as existing second unit regulations. Consistent with State Law, the exception is that no additional setback is required when a legally established accessory structure is demolished and is replaced with a new structure for the purposes of creating an ADU so long as the replacement structure is constructed within the same location and with the same dimensions as the structure it is replacing. Attached, detached, and converted ADUs processed with an ADU CDP will be required to meet all the other development standards in LIP Section 3.10(G) consistent with existing second unit regulations. In addition, the proposed amendment includes a requirement that ADUs be deed restricted to include some of the regulations in the proposed ordinance. There is no deed restriction requirement for second units under the code as written today.

Under the proposed ADU ordinance and consistent with California Coastal Commission guidance, ADUs created from a habitable space inside an existing single-family dwelling such as a bedroom (Junior ADU) are not considered development for purposes of the LCP and as such, will be processed under MMC Section 17.62.030 with an Administrative Plan Review (APR) which is a Director approved ministerial project. In the

case of an ADU proposed in an existing single-family house, height and setbacks would remain the same. However, the ADU may require upgrades to the Onsite Wastewater Treatment System (OWTS), which would require a CDP (LIP Section 13.29). In these cases, the APR would be processed separately from the OWTS CDP. Under current regulations, if a second unit were proposed inside an existing single-family house, an ACDP would be required.

Given that attached, detached and converted ADUs will follow the same approval process as second units currently do and will meet all the second unit development standards, except for a proposed small increase in size and the ability to maintain the same setbacks when replacing an existing accessory building, staff doesn't anticipate a significant increase in number of applications and thus the need to study the cumulative impact of adopting an ADU ordinance may not be needed.

The City Council could also direct staff on anything they would like to see in the proposed ordinance. For example, some of the following issues can be discussed among others:

- Maximum ADU size (currently proposed at 1,200 square feet);
- Whether some ADUs should be exempt from Total Development Square Footage (TDSF), (currently proposed that TDSF is not allowed to be exceeded);
- Whether more options should be available for an administrative approval (currently proposed that all ADUs will require a CDP except for a Junior ADU which can be processed administratively);
- Whether ADUs should have relaxed development standards (currently proposed that ADU CDPs require the same development standards as second units currently do except for Junior ADUs which are to be allowed relaxed standards if the structure is currently existing non-conforming, and a demolition and like-for-like reconstruction of a detached accessory structure which would still require a CDP but may be allowed relaxed standards if the existing structure was non-conforming); and
- Whether incentives should be given for certain types of ADUs.

CEQA

The Planning Commission had several comments concerning the City's need to complete additional CEQA review based on cumulative impact. The adoption of an ADU ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Section 21080.17, which states that CEQA does not apply to the adoption of local ordinances regulating construction of second units and ADUs and by CEQA Section 15282(h) that exempts adoption of an ordinance regarding second units in single-family and multifamily residential zones.

In addition, pursuant to Public Resources Code Section 21080.9, CEQA does not apply to activities and approvals by the City as necessary for the preparation and adoption of an LCP amendment. This application is for an amendment to the LCP, which must be certified by the CCC before it takes effect. LIP Section 1.3.1 states that the provisions of the LCP take precedence over any conflict between the LCP and the City's Zoning Ordinance. In order to prevent inconsistency between the LCP and the City's Zoning Ordinance, if the LCP amendment is approved, the City must also approve the corollary amendment to the Zoning Ordinance. This amendment is necessary for the preparation and adoption of the LCPA because they are entirely dependent on each other.

Summary

Staff is seeking direction from the City Council on whether staff should proceed with the Planning Commission recommendations as they relate to cumulative impacts listed in the Actions from the March 7, 2022 Planning Commission meeting; Action No. 13 (Attachment 1). If the Council directs staff to move forward with these studies, staff will return with a Request for Proposals for a consultant to complete the work. The Council also could determine no additional studies are needed and refer the item back to the Planning Commission to finalize its recommendation to the City Council.

The Council may also provide its direction to change the draft ADU ordinance. Some residents have sought an alternative ordinance that would allow some ADUs to exceed the TDSF limits in the City in some circumstances, gain relief from setback requirements, or include additional administrative processing of ADU permits. Incentives could be made to create ADUs in a particular form that is preferred by the council, but staff would need guidance about the type of ADU that is preferred, which could include criteria such as whether the unit is attached/detached, the size of the proposed unit, the location of the unit (including both on the lot and location in the city or relative to the coast), parking impacts, the size of the lot, etc.

ATTACHMENTS:

1. Actions from March 7, 2022 Meeting
2. Email from Chair Hill

City of Malibu

MEMORANDUM

To: Mayor Grisanti and the Honorable Members of the City Council, Chair Hill and Members of the Planning Commission, City Manager, Department Heads, City Attorney, Planning Department, Malibu Times, Malibu Surfside News and Malibu Patch

From: Rebecca Evans, Administrative Assistant

Date: March 9, 2022

Re: Actions from the March 7, 2022 Regular Planning Commission meeting

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At the Regular Planning Commission meeting on March 7, 2022, the Planning Commission took the actions below with follow-up by various staff members shown in parentheses:

1) Adopted Resolution No. 22-21 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 5418 Horizon Drive (Senior Administrative Analyst Patricia Salazar)

2) Adopted Resolution No. 22-22 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 29350 Heathercliff Road (Senior Administrative Analyst Patricia Salazar)

3) Adopted Resolution No. 22-23 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 6800.5 Westward Beach Road (Senior Administrative Analyst Patricia Salazar)

4) Adopted Resolution No. 22-24 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 5878 Deerhead Road (Senior Administrative Analyst Patricia Salazar)

5) Adopted Resolution No. 22-25 granting a one-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 29636 Cuthbert Road (Senior Administrative Analyst Patricia Salazar)

6) Adopted Resolution No. 22-26 granting a one-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 29715 Cuthbert Road (Senior Administrative Analyst Patricia Salazar)

7) Adopted Resolution No. 22-27 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 5246 Horizon Drive (Senior Administrative Analyst Patricia Salazar)

8) Adopted Resolution No. 22-28 granting a one-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 4615 Via Vienta Street (Senior Administrative Analyst Patricia Salazar)

9) Adopted Resolution No. 22-29 granting a two-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 6760 Dume Drive (Senior Administrative Analyst Patricia Salazar)

10) Adopted Resolution No. 22-30 granting a one-year extension to submit a planning verification for nonconforming structures and uses damaged or destroyed in the Woolsey Fire for the property located at 6351 Kanan Dume Drive (Senior Administrative Analyst Patricia Salazar)

11) Continued to a date uncertain - De Minimis Waiver No. 21-016, an application for a new onsite wastewater treatment system for a Woolsey Fire affected parcel (6244 Busch Drive) (Contract Planner Shah)

12) Continued to the March 21, 2022 Regular Planning Commission meeting - An extension of Coastal Development Permit No. 15-057, a request to extend the Planning Commission's approval of an application for the construction of an underground soldier pile wall for the property located at 25000 and 25040 Pacific Coast Highway (Associate Planner Eaton)

13) Continued the Local Coastal Program Amendment No. 18-002 and Zoning Text Amendment No. 18-004, an amendment to the Local Coastal Program and Title 17 (Zoning) of the Malibu Municipal Code to Update Regulations Related to Accessory Dwelling Units public hearing to a date uncertain and provide the following information prior to the opening of a public hearing on the Accessory Dwelling Unit (ADU) ordinance: 1) Explanation of the legal mandate for an ADU Ordinance; 2) Recommend that the City Council refer the item to the Public Safety Commission for consideration of updates to the evacuation plan; 3) Legal explanation of why the proposed ordinance is exempt from the California Environmental Quality Act; 4) Legal discussion on consistency with the General Plan, slow growth density, rural character and other issues contained in the General Plan and Malibu Municipal Code (MMC) ; 5) Conduct a traffic study on the impact of additional traffic on Pacific Coast Highway; 6) Explanation of the contention that the MMC allows ADUs including the fact that guest houses currently cannot be rented, do not allow kitchens and second units require a Coastal Development Permit unless they are not ADUs; 7) Explanation of why Malibu must come into compliance with parking and other key standards since Malibu is not covered by State ADU laws due to the fact that the entire City is in the high fire hazard severity zone; 8) Comparison of north Los Angeles County Coastal Plan amendment adopted by the Coastal Commission including a discussion of exclusion zones which has not been discussed; 9) Explanation of why staff states that Senate Bill (SB) 9 and State ADU laws have any relevance to requirements of the City's Land Use Plan and the necessity to follow either law, Malibu being exempt; 10) Explanation of why ADU and Junior ADU laws will continue to apply to eligible properties; 11) Explanation of why the MMC must be amended to comply with State standards and ministerial processes consistent with the ADU law; 12) Explanation of why the Coastal Commission guidance memo is purported to require ADUs given the fact that only Malibu can amend its Local Coastal Program; 13) Explanation of why habitable floor area is considered rather than total development square footage (TDSF); 14) An analysis by the District 9 Water Quality Control Board of the availability of water that can be allocated to do ADUs; 15) An account of all of the lots that could be used for ADUs and the services required by the City to service these ADUs, given the fact that the staff report states that no parcel in Malibu meets the baseline standard for an ADU; 16) An analysis on the effect on school population and the use of City sports facilities; 17) An estimate of the policing costs involved with additional ADUs; 18) An analysis of the low-income housing requirements and the projected rental rates in relationship to the intent of the ADU law; 19) An estimate of future compliance costs incurred by the City; 20) An explanation of why ADU decisions cannot be appealed to the City Council; 21) An analysis of

the factors considered in recommending a sixteen-foot height for potential two stories; 22) Potential area analysis for where ADUs are not appropriate as the County has done and adopted; 23) An explanation of why fire exit regulations have been recommended to change County requirements from a highway to a road and why lack of two accesses is not prohibited on ADUs; 24) A determination of how many Woolsey Fire projects have placed 1,200 square-foot mobile units with the intent of converting them to ADUs and why 1,200 bedroom units are required to be allowed; and 25) Provide comments on the ADA requirements for parking spaces and the half mile exemption from public transit. (Associate Planner Eaton)

23) Continued to the March 21, 2022 Regular Planning Commission meeting - Coastal Development Permit No. 20-052, an application for the construction of a new swimming pool, spa, onsite wastewater treatment system and other site improvements for the property located at 6800 Wildlife Road (6800 Wildlife LLC) (Contract Planner Aakash Shah)

24) Continued to a date uncertain - Coastal Development Permit-Woolsey Fire No. 18-022, Variance No. 22-003, and Lot Merger No. 18-004, an application for a 1,166 square foot addition to a previously approved fire rebuild residence, 792 square foot detached garage/workshop, swimming pool, spa, an onsite wastewater treatment system, lot merger to combine two lots, and exterior site improvements for the property located at 29846 Harvester Road (Jean-Fabrice Brunel) (Senior Planner Thompson)

Kraig Hill
[redacted]

March 14, 2022

Joyce Parker-Bozylinski
Tyler Eaton
Planning Commission and staff
City of Malibu
23825 Stuart Ranch Road
Malibu, California 90265

Comments and questions re proposed ADU Ordinance

It seems that over the past months and especially the past few weeks, questions about the ADU ordinance have increased to an extent greater than they've been addressed. This memo comprises my notes on matters to be addressed, along with the questions raised by Commissioner Mazza that led to our commission having continued the item. Some of my notes parallel the items he asked for; I include my comments in case they cast different light. Some of my questions might be framed more like assertions only because they might be easier to articulate that way, but they are meant in a spirit of inquiry. Note that I have no economic interest one way or the other.[1]

The first seven pages address "existential" questions about the applicability of any ADU ordinance in Malibu. Pages 8-13 assume that some ordinance is possible, and focus on what its provisions might best be – mainly from the perspective of *community*.

First, a note about nomenclature. We're talking about getting rid of phrases like "second unit." That's not helpful. As it is, we have both Guest Houses and self-contained Second Units. We'll still have both of those things. The phrase "ADU," if used for an ordinance, should mean any structure that's permitted on the *fast-track* model provided by the ordinance, in contrast to what an applicant could otherwise get with a full CDP. So there'd be both ADU Second Units and standard Second Units. It gets more complicated when describing units carved out of a primary residence (JADU) or multi-family structure, but the point is that we'd want our labels to distinguish between the fast-track and standard CDP paths. Anyway, "dwelling" occurs in both guest houses and second units.

Some thoughts on the general context.

For a long while, I was focused on the pros and cons of things like building height, floor area, etc., without necessarily acknowledging and questioning some deeper assumptions. Only recently have those questions risen to the fore, giving me a sense that we need to go back to the drawing board rather than thinking we're in the home stretch and just need to do a little tweaking.

1 Or if I do it's incalculable, e.g., I might like to add my own Second Unit some day, but also would not want to add additional groundwater to Big Rock, so can't actually be sure what my most "rationale interest" might be.

The goals of the state ADU law are virtuous. And the Coastal Commission can't be faulted for suggesting that we try to integrate those goals into our existing code framework. Yet as a starting point, we have the ADU law expressly stating that nothing in it supersedes the Coastal Act (including our LCP). Elsewhere there's language limiting the application of the ADU law in VHFHSZ's. And Jack Ainsworth never mentions VHFHSZ's in his letters of suggested guidance,[2] so it's hard to know how to weigh Coastal's suggestions, *i.e.*, have their memos been written for coastal cities that aren't in fire hazard zones, or what? The state ADU legislation is laudable, but its cookie-cutter, one-size-fits-all approach was evidently not crafted with any thought of Malibu's unique circumstances.

It may help to keep in perspective that we are being asked to create a fast-track pathway for applications that could in any case be processed as CDPs. So if we pass a restrictive version of the law, or don't pass anything at all, the only "harm" we would create would be not to make it cheaper to build a Second Unit. And nowhere does our code require that we make it cheaper to build things.

ADU's in Very High Fire Hazard Severity Zones?

One benefit of the state ADU laws would be to promote urban density over increasing suburban sprawl. But with the entirety of Malibu being a VHFHSZ (let's just call it a high fire hazard zone), we should be careful about making it easier to increase density. That would increase the burden on evacuation routes (whether double-eggressed or not), in terms of both the number of cars trying to leave and parked cars that might block fire engine access. Also, fire science is clear that structures propagate fire more readily than does brush – so greater density means quicker fire spread. (And probably no one wants a rule that says you can have an easy ADU only if it's a concrete bunker.)

The high fire hazard concern is underscored by the weight of official commentary. The staff report acknowledges, "State law allows jurisdictions to consider safety in identifying areas where ADUs are either not appropriate or require additional safety regulations."[3] SB 9 prohibits the densification created by lot splits not just in "very high" fire hazard zones, but also in merely "high" hazard zones. The January 21 Ainsworth letter states that Coastal has a priority "to preserve existing density."[4] Also for what it's worth, L.A. County planners believe that Malibu need not have an ADU ordinance due both to having an LCP and being entirely in a VHFHSZ.[5]

Where does affordability come in – if anywhere?

A main goal of the ADU laws is to create affordable housing. Recent legislative modifications have underscored that goal by encouraging more involvement by HCD – whose "ADU Handbook"

2 E.g., Letter of January 21, 2022.
3 At Summary, Attachment 4.
4 Letter at 2.
5 Zoom presentation by Tahirah Farris and Nathan Merrick of LA County Department of Regional Planning, January 27, 2022. Available from Las Virgenes Homeowners Federation.

mentions affordability five times in the first page of text.[6] It goes on to note that "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."[7]

Yet it's not clear that an ADU ordinance in Malibu would get us any closer to providing affordable housing, when a glance at the rental ads in the Malibu Times shows one-bedroom Second Units going for $3,500 to $5,000+ per month (and likely still increasing relative to other geographic areas, given the instabilities in the current economic climate). And I'm aware that some *beachside* one-bedroom apartments now go for $10-$20,000 per month, which may influence the overall rental market to be priced higher than it might otherwise be. So could Malibu "offer affordable rents?"

If an ordinance is not likely to affect affordability, why exactly would we be tweaking our code? As it is, Ainsworth points out that the Coastal Act states that "No local coastal program shall be required to include housing policies and programs."[8]

How many other cities have LCPs and are in VHFHSZ's? What ordinances have they done, and how have they served the goal of affordability? How many of them have a markedly non-affordable housing market like Malibu's? Have any of them said to HCD, "Yeah, nah, we're good as is?"

If affordability is the task, are ADU's the right tool? Is there something else that would work better than making it easier to build a Second Unit? For example, mentioned in the state law that we've read are "affordability covenants." What is that exactly – rent control? Would it be possible (or even advisable) to make an ADU ordinance that would apply only if the owner were to agree to hold the rent at some threshold, e.g., tied to the CPI at ~$1,500 per month? (I suspect there wouldn't be much appetite for that in the community, and enforcement would not be simple. Not least because an owner would likely sooner spend a few extra thousand dollars and an extra year to get a standard CDP for a non-ADU Second Unit, for which they could then charge >$5,000/mo.)

Coastal resource impacts?

First, to clarify the standard, Ainsworth points out that we should try to comply with the ADU law where it doesn't conflict with the Coastal Act, and where it doesn't affect an *identifiable* coastal resource. That's a low bar – it's not, for example, about "significant" or "substantial" impacts; it's those that are merely "identifiable."[9] Elsewhere, he articulates the standard thusly:[10]

6 At PDF 3. available on City's website or at: https://www.hcd.ca.gov/policy-research/docs/adu_december_2020_handbook.pdf
7 *Op Cit*, at 7.
8 Citing to Pub. Res. Code § 30500.1.
9 I don't recall where "identifiable" comes from, but pro-ADU advocate Cynthia Martin (from Schmitz' office) concedes it several times, including in her email of January 4, 2022.
10 Letter at 5 (Staff PDF at 80).

> The Commission has generally allowed a CDP waiver for proposed J/ADUs if the Executive Director determines that the proposed development is *de minimus* (i.e., it is development that has no potential for any individual or cumulative adverse effect on coastal resources and is consistent with all Chapter 3 policies of the Coastal Act). Such a finding can typically be made when the proposed J/ADU project has been sited, designed, and limited in such a way as to ensure any potential impacts to coastal resources are avoided ....(See Pub. Res. Code § 30624.7.)

"No potential for any" appears to be roughly synonymous with "no identifiable impacts." Even *potential* impacts are not allowed; and even small ones are significant if they contribute to *cumulative* effects. In those regards, the standard appears to be the same or similar to the one applied in CEQA review (discussed below).

Scope and scale of many potential effects are unknown.

So what are the particular types of impacts that might cause an ADU ordinance to conflict with the Coastal Act? We must speculate, mostly. We've been working in a vacuum, without a clear sense of the stakes involved. Would an ADU ordinance give rise to five additional Second Units in the city, or five hundred? The online SCAG Housing Element Parcel tool[11] is supposed to give some idea, but it's pretty sketchy. It reportedly finds that no parcels in Malibu meet the baseline assumptions[12] for a parcel to be eligible for an ADU. If that's true, then why are we even bothering with an ordinance? If it's not true, and some parcels would be eligible, then we still don't have a clear idea of what the scope and scale of any potential impacts might be.

Commissioner Mazza identified a number of potential impacts in his list of several dozen items wanting further information. Please forgive any redundancy here, as I consider some (other) possible impacts.

- Coastal talks about *Access* in terms of public access to coastal resources, but access is also a matter of *public safety* (which is a category under CEQA analysis). ADU's could decrease public safety access during fires (as noted above) or other disasters – with more cars driving or parked on residential streets.

- The Ainsworth letter suggests[13] that more street parking would limit public *recreational* access, presumably meaning near trailheads in residential neighborhoods. I'm not sure if that's different from *coastal* access(?), but anyway it's another dimension of it that we haven't pinned down.

- *Traffic* is a separate category of CEQA analysis. Along with densification of housing, we'd see some "densification" of traffic, not just during an emergency, but some unknown little bit more every day, potentially affecting quality of life.

11 https://maps.scag.ca.gov/helpr/
12 Staff report at 14.
13 At 7.

• There is potential impact on ESHA, in increasing fuel mod radii. Less obvious is that breaking up ESHA into patchier areas has an affect on wildlife, as habitats benefit from having contiguous areas for territorial movement, hunting, nesting, etc..

• Apart from ESHA and animal habitat, Open Space is also an aesthetic resource for humans – we like living *within Nature*, and not feeling crowded by our neighbors.

• Effects on water supply. What effect would an additional number of ADU's have on the amount or delivery of water to customers of District 29? Already some places e.g., upper Trancas, need to have their water trucked in. How close are other neighborhoods to already using the full capacity and/or pressure of their local water mains?

• Effects on hydrology. One more OWTS might not generate much groundwater, but what if we add several in an area that's already stressed? Big Rock would be an obvious example.

• Related, though not a CEQA-type impact, is the matter of issuing "Assumption of Risk and Release" waivers that don't address potentially affected third-party neighbors. Would an ADU fast-track process short-change the interest of third parties?

• Noise – another CEQA category. If multiple ADU's arise in a given neighborhood, is there a potential significant cumulative impact on residents' quality of life?

• What about less tangible effects on the tourist/visitor experience? To what extent would increased traffic, parking hassle, etc. make Malibu a less desirable destination in the first place? How much would that lead to economic impacts on local businesses?

• Relatedly, what might be the economic impacts to individual homeowners in a neighborhood that has more ADU's? Could home values go down – or not rise as quickly – for being in a more dense, less "natural" setting?

So far, we simply cannot say that ADU's would have no potential significant or cumulative impacts.

CEQA Review is required.

In light of the foregoing potential impacts, and along with the questions raised by Commissioner Mazza, it's clear that CEQA Review is required. (That is, unless there were some savings clause that says that such state legislation is categorically exempt, but I don't believe there is one in this case.) The staff report tends to gloss over the pertinent Findings as though they are mere boilerplate (as they do tend to be in many residential applications, practically), but those findings are fundamental – especially for an ordinance of which any effects could be citywide.

The official CEQA Guidelines provide that a project or ordinance can be exempt when "it can be seen with <u>certainty</u> that there is <u>no possibility</u> that the activity in question <u>may have</u> a significant

effect on the environment"[14] (emphases added). Together, those words and phrases make for a categorically low bar – strictly speaking, almost nothing should be exempt. (What human activity is entirely without environmental significance?)

A recent, precedential California appellate decision underscores that a CEQA exemption cannot be granted lightly. In *Friends, Artists, and Neighbors of Elkhorn Slough v. California Coastal Commission* (December 14, 2021),[15] the court held that the Coastal Commission violated CEQA in several ways. The upshot of the ruling is that in order to claim a CEQA exemption, a permit approval must be preceded by a written report that contains detailed information on the project's environmental impacts, alternatives, mitigation measures, necessary conditions of approval, and other information required to inform [the Coastal Commission's] decision. In other words, even before, and as part of determining whether an EIR Initial Study is required, the application must explain how and why it deserves to be exempt. That suggests the report must contain specific evidence, and not just assertions of exemption (as we often see).

As a result, several basic Findings cannot be made (yet).

Without having made an express showing of CEQA exemption, it's impossible, or at least premature, to make several basic Findings. For example, Resolution Finding 3.A, that the proposed amendments to the LCP are "in conformance with the goals, objectives and purposes of the LCP."[16] Even without having more detail about potential impacts, it should be apparent that the increased urbanization, density, and land use intensity that are implied by the ordinance are squarely in opposition to the Vision and Mission Statement's "goals, objectives and purposes" of maintaining rural character, avoiding suburbanization, and so forth.

For the same reasons, Findings about the ordinance being "in conformance with" the General Plan[17] and MMC 17.40.030(C)[18] are also unmakeable.

Similarly, it seems perverse that the Resolution could claim that "An ADU that conforms to the standards in this section will be:.....Considered not to be subject to the application of any local ordinance, policy, or program to limit residential growth."[19] So we're to just ignore, for example, the Vision and Mission Statements insistence on resisting suburbanization and maintaining rural character? Indeed, the main point of much of the City's foundational documents is that we shouldn't be making it too easy to develop more. As laudable as the State ADU goals are, in terms of affordability and limited sprawl generally, they run directly counter to the goals of preservation and self-determination upon which the City of Malibu was formed in the first place.

14 CEQA Guidelines 15061(b)(3). https://www.califaep.org/docs/2022_CEQA_Statue_and_Guidelines.pdf
15 72 Cal.App.5th 666, the Sixth District Court of Appeal; WL 5905714 (No. H048088, December 14, 2021).
16 Draft Resolution, Exhibit A, at 3.
17 Finding 4A, Resolution at 3.
18 In Exhibit B at 14.
19 Exhibit A, B.3, at 14.

It's all "Development" by LIP definition.

Whatever we might do, let's not allow it to be too complicated, with separate rules for the LCP and the MMC. Ainsworth's letter states, "local governments are encouraged to streamline J/ADU processes as much as feasible."[20] (It might turn out that the most streamlined version is none at all.)

Indeed, there's good reason not to create a separate regime for the MMC. It's a false distinction to propose, as the draft does at 3.10.E.1[21], that "an ADU or JADU created from habitable space and located entirely within an existing single-family residence which does not change the building envelope is not considered *development*." (Emphasis added.) By the LIP definition, that creation of an ADU within an existing residence is certainly *development*, as defined by the placement of any and all pipes or wires, *i.e.*:

> DEVELOPMENT - means, on land, in or under water, the placement or erection of a solid material or structure;...change in density or intensity of use of land….; change in the intensity of use of water; or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure….
>
> As used in this section "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

No ADU can be created without at least some amount of that "placement of material or structure." (If you haven't done any such "placement," you're just renting out a room in your existing house.)

Thus, every created ADU and JADU is covered by the LIP. Indeed in Ainsworth's letter he makes the same point, then states that even

> the conversion of an existing, uninhabitable, attached or detached space to a J/ADU (such as a garage, storage area, basement, or mechanical room)...generally constitute[s] development in the coastal zone that requires a CDP or other authorization. (Pub. Res. Code § 30600.)[22]

A prior letter from Denise Venegas says the same thing.

Ainsworth explains:

> the Commission reevaluated its position and found that "the creation of a self-contained living unit, in the form of an ADU, is not an 'improvement' to an existing SFR. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing SFR or is in a detached structure on the same property.[23]

20 Letter at 3.
21 At 14.
22 January 21, 2022, at 4.
23 *Op cit*, at 5.

So the creation of *any* ADU (short of renting out an existing bedroom) is development susceptible to the LIP. There appears to be no basis for a separate MMC regime.

If indeed there is no other realm of jurisdiction (*i.e.*, the MMC) in which an ADU ordinance would operate outside the scope of the LCP, then clearly there is no requirement for an ADU ordinance at all – as the state ADU law is expressly superseded by the LCP.

Nonetheless, from here on, let's assume that somehow an ADU ordinance would be possible – for instance, if HCD were to lean on the legislature to amend and loosen the strictures of the Coastal Act and the VHFHSZ designation. Again, it cannot be emphasized enough that the ordinance describes what would be possible on a fast track; yet however much we might limit the options, a less limited project could still be done under a standard CDP.

Size – units defined?

Several different issues pertain to size, each addressed below in turn.

In our May 21 hearing, the Commission came close to finding consensus on how to define size, but "put a pin in it" pending further review of various other matters. Commissioner Jennings preferred using "floor area" over TDSF; I agreed, as did at least one other, I believe. Whether we're talking about 750sf, 900sf or 1,200sf, we should mean the habitable space (whatever we call it), as opposed to areas of storage or those under 6ft height. A good, existing measure of habitable space is "floor area," as used for the 2/3 Rule (according to the Coastal Commission). It seems suitable for most measures. (For examples of area in the draft ordinance, see *e.g.*, Appendix A at 3,13, and 16.)

In contrast, when measuring the combined built structures in relation to the overall parcel, TDSF remains the appropriate measure. That term encompasses other development, such as barns, studios, etc. – we've called even just a block wall development[24] – to measure the overall impact on the parcel. So, it would not be inconsistent to say that a Second Unit has, say, a Floor Area of 800sf *and* a TDSF of 900sf (counting its walls and misc storage, for instance).

The question then would be, if we're limiting some structure to 900sf (or whatever), would we use Floor Area or the TDSF? Is our main concern the area of the space, or its relationship to the rest of the parcel? (I'm ecumenical, as long as it's simple and consistent.)

I see no call to use the separate term "living area," as staff has proposed. Also, especially confusing would be a nomenclature of "floor area" that includes exterior walls, at it appears staff has proposed(?) That would be TDSF under a different name. Also, staff proposes to use "living area" so as not to conflict with State law,[25] but what exactly would the conflict be?

24 I'm thinking of last year's application in the Colony adjacent to the Lagoon.
25 Staff report, at 9.

In cleaning up the area language, references to "habitable spaces" should also likely be conformed.[26]

Size – total

We put a pin in total SF (however measured). Only Commissioner Mazza was ready to commit to nothing bigger than 900sf in any circumstance. At the time, I thought it made sense to allow up to 1,200sf under a "disaster exception" available for rebuilds after fire, earthquake, etc. Now, however, I think 900sf is sufficient even in cases of disaster (after the Woolsey Fire, only a negligible few were done at 1,200sf). Still, I would like to see a limited option under a standard CDP to go as high as 1,200 if the circumstances warrant it, *e.g.*, if the lot were at least 2 acres, with no view impacts, etc. Perhaps a variance would be required. In any case, that would be a matter for ZORACES to take up – it's not something we'd want to include in the ADU fast-track.

Size – minimum

Here there seem to be inherent inconsistencies. On one hand, the draft Resolution proposes that "no application of lot coverage or open space requirements may require the ADU to be less than 800 square feet."[27] On the other hand, the minimum size of an efficiency in state law is reportedly 220sf. Ideally, we'd be able to set the minimum allowed at, say, 400sf. Otherwise, in tight neighborhoods, such as lower Big Rock or La Costa, we'd effectively have to throw out our setback requirements. So a minimum requirement of 800sf would be yet another way in which the ADU ordinance would fail to meet this Finding:

> An ADU that conforms to the standards in this section will be:
> ..…Considered not to be subject to the application of any local ordinance, policy, or program to limit residential growth.[28]

Further, does the first quote in the paragraph above mean that the minimum must be 800sf, or that there shall be "no application of lot coverage or open space requirements" (or both)? As I've followed the evolution of ADU laws over the past five years, the possibility of a "lot coverage" criteria has been written in and out of successive versions, such that I'm not certain where the law now stands. For example, what is the status of this clause in AB-494, 65852.2. (a) (1):

> [An ADU] ordinance shall do all of the following:
> …. (B) (i) Impose standards on accessory dwelling units that include, but are not limited to, parking, height, setback, <u>lot coverage</u>, 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 Historical Places."

26 *E.g.*, Exhibit A, at top of 15.
27 17.44.090(A)(3), Exhibit B, at 19.
28 Exhibit A, B.3, at 14.

If we cannot legislate a proportional lot coverage, could we at least specify a minimum lot size – say, one acre?[29] That would go a long way towards inhibiting over-densification of our already dense areas, and allowing us to continue applying and enforcing our setback rules. Indeed, that same section of AB 494 used to have a clause that stated, "These standards shall not include requirements on minimum lot size," but that clause was subsequently stricken – suggesting that we could specify a minimum lot size.

Size – proportion to main house

Evidently ADU size can be regulated in proportion to the main house. Staff has proposed that it should be 50%; attorney Todd Kesselman suggested that "comes from" state law (in some manner not further clarified). I renew my observation that 50% seems too arbitrary – in some individual cases it may seem too low, and in others too high. My recommendation would be to omit it, and let size be constrained by other factors.

My own house serves as an example of why 50% is problematical. My house is 1,500sf. If it burned in a fire, I'd currently be allowed to build a 1,200sf ADU to live in, while rebuilding a substantially larger main house (I'm on 2 acres). Whereas, in a non-disaster situation I'd be limited to 50%, i.e., 750sf. What does a rule serve that would prevent someone in my situation, being on 2 acres, from building even 900sf instead of 750sf?

Height

In our May 21 hearing, the Commission came close to finding consensus on height, but "put a pin in it" pending further review of various other matters. Several commissioners argued for a height cap at 16 feet, the lowest maximum height that would be allowed by the state law. Some also agreed that we could apply the 16 ft maximum to a sloped roof. One or a few thought that, if sloped, a roof should be able to go up to 18 ft.

My own view is that height should be limited as much as possible – so, 16 ft. max – with the exception that if the existing house (not a new house) is taller, then the ADU should be allowed to be as tall as the house, up to 18 ft. max.

If there were a way to further limit height, we should pursue it. Otherwise, with 18 feet above grade, we'd likely see "sleeping lofts" modified/bootlegged into practical second stories, creating the possibility of double the number of occupants.

29 Patt Healy suggested this in a letter, which she continued, "Small lot subdivisions are not suited for ADUs. They are most suited for JADUs and garage conversions and [we] recommend limiting ADUs to this."

Setbacks

In our VHFHSZ, all Setbacks should be minimum 6 feet, not 4 ft.[30] This would allow for the 5 ft of walk-around required by the fire dept plus 1 ft for a planted fence or wall. Let's save people headaches – accommodate the FD requirement from the first moment of design.

We could also say that if the applicant wants a view-blocking side-yard hedge up to 6 ft height, then the setback must be 8 ft, on the presumption that a hedge would be ~3 feet thick.

Meanwhile, the draft ordinance states, "...Director may grant minor modification permits to reduce setback requirements."[31] No. There is no call for additional wiggle room, where safety and privacy are affected. If an applicant wants a variance, they can apply for a full CDP.

Egress / Access / Density

The County imposed a requirement of dual egresses to a main through-road.[32] Staff suggests a similar requirement, but which could be circumvented by inclusion of several measures such as installation of indoor sprinklers. That could aid in survival within a given structure, but wouldn't address neighborhood access issues per se. We could still have more cars trying to evacuate, with more parked cars blocking the way.

With respect to wildfire, the concepts of *access* and *density* are related – the more dense the housing, the greater the pressures on emergency access. (And as noted, housing density promotes fire spread.) By state law, we can't base ADU structure size on lot coverage directly (assuming that law hasn't been revised recently), but perhaps we could link structure size with neighborhood density: if the neighborhood is dense already, with access issues, then ADU's could be size-limited, e.g., only one bedroom units, not two bedrooms. Or, as a proxy for density, the Zoning designations could be used, e.g., in RR-1, we'd allow an ADU up to 500sf, in RR-2, up to 900sf. In that way, the size of a specific lot would not even be referenced.

By a rough analogy, the Fire Code provides that where there is more than one dwelling unit per acre, no lot can be more than 450 ft. from a fire hydrant, but where there is less than one dwelling per acre the hydrant can be up to 750 ft away.[33] The less dense the existing neighborhood, the less the "access pressure." In short, the more dense the existing neighborhood, the less additional structure should be allowed.

30 MMC Exhibit B, at 16, 20. (Also in LCP version.)
31 G.3.b Setbacks.
32 I don't recall the exact terminology offhand.
33 LA County Fire Code, C105.2 – One- and two-family dwellings, and Group R-3 buildings.

Parking – all off-street

Generally, staff recommends one off-street parking space per ADU. But given that we're in VHFHSZ, and don't want additional cars parked on the street, the requirement should be one additional off-street parking space per bedroom.[34] I recall there being some state requirement that we can't require more than one extra space for an entire ADU – but our VHFHSZ status should give us bargaining leverage to say in effect to HCD (or whomever), "Look, do you want us to provide for ADUs or not?" One space per bedroom is standard in other parts of code, IIRC.
Indeed, if we'd be required not to require more than one space, we could limit ADU's to one bedroom, and require a two-bedroom version to get a standard CDP.

We could cite to the Ainsworth memo: "In many impacted coastal neighborhoods, development patterns over the years have not adequately accounted for off-street parking needs, and adding J/ADU parking to the mix will only exacerbate such public parking difficulties."[35] And in saying that, Coastal is not even referencing VHFHSZ's!

For the same reasons, I disagree with the draft Resolution's offering:

> ...when a garage, carport, or covered parking structure is demolished to allow the construction of an ADU or converted to an ADU in an existing single-family dwelling, those off-street parking spaces are not required to be replaced.[36]

No, all off-street parking must be replaced. ADU's should generally not be allowed to create any on-street parking. If there's cause to do that in a given circumstance, that would be reason for a CDP with variance (or minor mod, as the case may be).

With respect to 5.b.iii, Parking permits are currently not required anywhere. But if we anticipate they might be someday, then ADU's should not be excepted.

If any neighborhood were somehow allowed to increase on-street parking, they should at least be required to have roads of 24-ft+ width, so as not to impede emergency access.

Parking – no "donut hole"

State law requires parking spaces to be provided at locations more than ½ mile from public transport. The presumption being that residents can be expected not to need cars if they can walk a reasonable distance to transport. At the same time, the state law also requires parking to be provided within ¼ mile of the beach, where public parking can be hard to find. That leaves a "donut hole" between ¼ mile from the beach and ½ a mile from PCH, where theoretically an ADU wouldn't need to provide parking.

34 Revise Exhibit A, 5.23, at 4.
35 Jan 21, 2021, at 8
36 Exhibit B, MMC 17.44.090.E.3.

My understanding of the Americans with Disabilities Act is that where the government (and some private entities fulfilling quasi-public roles) regulates and/or provides for access, that access must not discriminate against disabled people, so must provide reasonable accommodations. Thus, if the government expects residents to walk up to half a mile between home and transport, I would expect that any such route must be ADA-compliant.
ADA regulations require that all access routes must be no steeper than 5% along the direction of travel, and no steeper than 2% on the cross slope.[37] This means that any ADU up many or all of Malibu's canyon roads would not qualify as having ADA-compliant access, so would be required to provide offstreet parking, including those within 1/2 mile of PCH bus stops. Otherwise, the City could be found to be discriminating against people who are endurance-compromised (e.g., have COPD), in wheelchairs, or otherwise not able to walk 1/2-mile.

Also, I don't know for sure, and don't relish poring through Federal regulations for this one point, but I suspect that for an access route to be ADA-compliant it must have a sidewalk sufficient for wheelchair travel. I can't think of any canyons in Malibu that have sidewalks.

Miscellaneous

Rental rate reporting[38] – In the May, 2021 hearing, the Commission was clear that the request for rental rate reporting must be accompanied by an explanation of why the City is asking for the information, as owners will be more likely to comply if they understand why.

Notice and hearings – Why is there no mailing required in noticing ADU CDP's? At minimum, notice should mailed to adjacent properties and those on the same "block" of the street (but defined better, in terms of shared access). Also, public hearings should be allowed to the extent possible.

Neighborhood self-determination – There could be some provision for a limited overlay concept by which individual HOA's could impose stricter rules for ADA's only, by some greater majority vote of their members, within state requirements. For example, if somehow it's decided that ADU's can be up to 18 feet, then an HOA could impose an "ADA overlay" limiting them to 16 ft., the state minimum requirement.

Dwellings only, not offices, etc. – For an ADU CDP, there should be a condition that the structure can be used solely for "dwelling," not as an office, studio or the like. This might be difficult to enforce but not impossible, and it underscores that the goal is affordable *housing*.

Only one garage per ADU should allowed. (Exhibit A, 5.22 refers to "garages," plural.)

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37 ADA Standards, CHAPTER 4: ACCESSIBLE ROUTES
https://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm
38 3.10.F.4, at 15; and MMC Exhibit B, at 17.

Exhibit A, at 18, para 5.c: the Commission (and Council?) have denied or at least discouraged the use of parking lifts for safety reasons, given that the City is in a VHFHSZ now formally subject to So Cal Edison's PSPS power cuts.

Exhibit A, at 18, para 5.d: the limitation to high on-street parking demand only East of Kanan Dume Rd seems arbitrary. Omit unless expressly justified.

Exhibit B, at 4,6, – Remind me why MMC would allow for guest houses of up to only 750 SF, but LCP would allow 900 SF? [I get it if that's only the limit in multi-family zoning context (at 7,8)]

Exhibit B, at 17. 17.44.070 Process and timing – This is specified at 60 days; could we extend it to 90 days (or longer), given that the Planning Dept is currently stretched thin, and might be so at any time in the future?

Exhibit B, at 20, paragraph No.3: To the phrase "Legally established must be verified with building permits," append: "or comparably reliable documentary evidence." This would address cases like my own 75-year old house, for which building permits may be difficult or impossible to track down. Also, put in quotes the second "legally established" in that paragraph, as it has become a unitary phrase referring back to the prior usage.

A few housekeeping edits

LIP 2.1 Definitions, at 5, awkward grammar: "share" and "or as."

At 6, no definition of either floor area or square footage. Grammar – should be "not including."

"Wet bar" mentions refrigerators twice.

At 7, keep "one" – "one guest house…"

At 12, grammar – "established concurrently with"

At 14, 3.10, separate paragraph for VHFHSZ.

Respectfully,
Kraig Hill