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City's Interpretation of its Ordinance Regarding Coastal Development Permit Requirement for Attached ADU Was Not Entitled to Deference



The City of Malibu determined that an attached accessory dwelling unit (ADU) did not fall within the coastal development permit exemptions set forth in its local coastal program (LCP).

The court overturned the City's interpretation of its own LCP, finding the ADU exempt from the coastal permit requirement. [Riddick v. City of Malibu](#), No. B323731 (2nd Dist., Feb. 1, 2024).

Under the Coastal Act, coastal development permits are required for most development. Owners of a home in Malibu applied to expand their home and add an attached ADU. The City denied the original application, then refused to consider a revised application limited to adding an attached ADU, claiming a coastal development permit was required. The homeowners sued, contending the project was exempt.

Malibu's LCP ordinance exempts from the requirement for a coastal development permit improvements to existing single-family residences, "including 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."

The court ruled that the plain meaning of this text describes two categories of exempt structures: (1) all fixtures and structures directly attached to the house; and (2) structures normally associated with a single-family residence but not including guest houses or self-contained residential units. The court rejected the City's argument that its interpretation of its own ordinance, under which the phrase excluding guest houses and accessory units would be read to modify the first category as well as the second, was entitled to "great deference."

The court acknowledged that it must give deference to an agency's interpretation, but not to the exclusion of other tools of statutory construction. Here, the language and legislative history of the LCP ordinance were unambiguous, so there was no need to defer. The text was not technical, obscure, complex, open-ended or entwined with issues of fact, policy and discretion, so did not require the City's expertise. The City's interpretation was not the result of careful consideration by senior City officials and was not long-standing, but was issued by staff in response to this particular application. The language was not crafted in response to unique local conditions. Instead, it reflected, almost verbatim, a Coastal Commission regulation implementing the Coastal Act, which described the two categories referenced above.

The court found irrelevant another provision of the LCP, which states that coastal development permits for both attached and detached ADUs shall be processed as administrative coastal development permits. The court interpreted this language to indicate how coastal permit applications will be processed and not whether coastal permits are required. Finally, the court rejected the argument that exempting attached ADUs would be inconsistent with the LCP statutory scheme by allowing an increase in the intensity of coastal development without a coastal permit. The court noted that the LCP contained exceptions to its exemptions for projects that involve a risk of adverse environmental impact, including ADUs in locations such as a beach or wetland. It ruled that this language reflects a policy choice to treat single family residences in environmentally sensitive areas differently from other areas in the coastal zone.

The court declined to rule on the question whether approval of the ADU was mandated by Government Code section 65852.2, which it described as establishing standards under which ADUs must receive ministerial approval. Plaintiffs argued that, under that statute, their ADU application must be deemed complete and they were entitled to ministerial approval of their application. However, the court of appeal ruled that the unique procedural stance of the case – the application was allegedly not completed until after the judgment was entered, and plaintiffs' cross-appeal, which was limited to the judgment, did not include the trial court's post-judgment order denying plaintiffs' motion to enforce the judgment by declaring the revised ADU application complete – precluded the court from considering whether plaintiffs were entitled to a permit within 60 days of the completeness date.

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