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**Re:** Proposed Accessory Dwelling Unit at 34516 Via Verde

Dear Dana Point Planning Staff and Planning Commission,

The California Housing Defense Fund (“CalHDF”) writes regarding the application to construct an accessory dwelling unit (“ADU”) at 34516 Via Verde. In sum: the City must process the application in accordance with state law, which requires ministerial approval of ADUs.

### Background

The law gives local governments authority to enact zoning ordinances that implement a variety of development standards on ADUs. (Gov. Code, § 66314.) The standards in these local ordinances are limited by state law so as not to overly restrict ADU development. (See *id.*) Separately from local ADU ordinances, Government Code section 66323 prescribes a narrower set of ADU types that cities have a ministerial duty to approve. “Notwithstanding Sections 66314 to 66322 ... a local agency shall ministerially approve” these types of ADUs. (*Id.* at subd. (a).) This means that ADUs that satisfy the minimal requirements of section 66323 must be approved regardless of any contrary provisions of the local ADU ordinance. (*Ibid.*) Local governments may not impose their own standards on such ADUs. (Gov. Code, § 66323, subd. (b) [“A local agency shall not impose any objective development or design standard that is not authorized by this section upon any accessory dwelling unit that meets the requirements of any of paragraphs (1) to (4), inclusive, of subdivision (a).”].)

In addition, ADUs that qualify for the protections of Government Code section 66323, like other ADUs, must be processed by local governments within 60 days of a complete permit application submittal. (Gov. Code, § 66317, subd. (a).)

State law also prohibits creating regulations on ADU development not explicitly allowed by state law. Government Code Section 66315 states, “No additional standards, other than those provided in Section 66314, shall be used or imposed, including an owner-occupant requirement, except that a local agency may require that the property may be used for rentals of terms 30 days or longer.”

### **Duty to Process Application Ministerially for Building Permit Only**

California law sets clear rules for ADU applications. (See Gov. Code, § 66317.) State law clearly states that ADUs are to be permitted ministerially. (*Id.* at subd. (a).)

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.

Furthermore, the City must obey strict timelines in processing the application. The City “shall either approve or deny the application to create [...] an accessory dwelling unit [...] within 60 days” of receiving the application. (Gov. Code, § 66317, subd. (a).)

Because the project is a conversion of existing space in single family dwelling, the City must process the application via building permit only pursuant to Government Code section 66323, subdivision (a)(1).

While the staff report does not state exactly when the unpermitted ADU was converted from existing space, if it was created before January 1, 2020, then Government Code section 66332 further constrains the City’s ability to apply its own code on the ADU.

The City must therefore process this application on a ministerial basis with a building permit only.

### **The City Code Violates State Law**

The staff report cites four sections of the municipal code to independently justify requiring a site development permit. In addition to the aforementioned prohibition on discretionary processing of ADU applications, each of these four sections of the city code violates state ADU law.

“1. Pursuant to Dana Point Zoning Code (DPZC) Section 9.07.210(f)(1)(C), lots with existing developments that are nonconforming with respect to parking development standards and located within specified areas, must obtain a Site Development Permit.

The site is located in the RD14 Zoning District, which is within the boundary of Map #5, and thus this project requires a SDP since the subject property does not meet the required parking standards.”

Of note, given that the home at 34516 Via Verde is non-conforming, “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.” (Gov. Code, § 66323, subd. (c); see also Gov. Code, § 66322 at subd. (b) [“The local agency shall not deny an application for [...] an accessory dwelling unit due to the correction of nonconforming zoning conditions”].)

“2. The project does not comply with DPZC Section 9.07.210(f)(6)(B)(i), since the total floor area of the proposed one-bedroom attached ADU exceeds 850 square feet.”

Government Code section 66323 subdivision (a)(1) allows conversion of existing space into ADUs without size limitation. And section 66323 subdivision (b) forbids the application of any local development standards on ADUs eligible for the protections of section 66323.

From the staff report, page four: “[the ADU] does not result in any physical expansion of the existing structure since it is a conversion of existing habitable area.”

The project is therefore eligible for building permit-only processing under section 66323 subdivision (a)(1).

“3. The project does not comply with DPZC Section 9.07.210 (f)(7)(H) since the existing roof deck, permitted by the City in 1992, will only be accessible by the ADU.”

As stated supra, Government Code section 66323 subdivision (b) forbids the application of any local development standards on ADUs eligible for the protections of section 66323. This includes any provisions regarding access to roof decks.

“4. Pursuant to DPZC 9.07.210(h)(4), an attached ADU on a property zoned Multi-Family upon which an existing Single Family Dwelling exists is permitted pursuant to the approval of a Site Development Permit.”

Government Code section 66323, subdivision (a): “Notwithstanding Sections 66314 to 66322, 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 ...” Given that the property is in a residential zone, the City must approve the application ministerially.



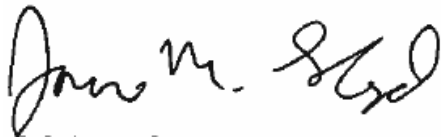
Requiring a public hearing and discretionary review to process this application for an ADU is contrary to the requirements of state ADU law, as discussed above. CalHDF notes this is not the first, or even the sixth, ADU application where we have had to remind the City of its legal duties, and the City is facing at least one lawsuit for its conduct around ADU permits, as well as action by the State Department of Housing and Community Development. We urge the City to follow the law and process the application to construct an ADU in accordance with the law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at [www.calhdf.org](http://www.calhdf.org).

Sincerely,



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