

ATTACHMENT 12: 04-18-2017 California Coastal Commission Memorandum

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CALIFORNIA COASTAL COMMISSION

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TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: New Accessory Dwelling Unit Legislation

DATE: April 18, 2017

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

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

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

1) Update Local Coastal Programs

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



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

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

2) Review of ADU Applications

- A) **Check CDP History for the Site.** The ADU statutes apply to residentially zoned lots that currently have a legally established single-family dwelling. Determine whether a CDP was previously issued for development of the lot and whether that CDP limits, or requires a CDP or CDP amendment for, changes to the approved development or for future development or uses of the site. In such cases, previous CDP requirements must be understood in relation to the proposed ADU, and they may restrict the proposal. If an ADU application raises questions regarding a Coastal Commission CDP, including if an amendment to a CDP issued by the Coastal Commission may be necessary, instruct the applicant to contact the appropriate district office of the Coastal Commission.

- B) **Determine Whether the Proposed ADU Qualifies As Development.** The Coastal Act's permitting requirements apply to development performed or undertaken in the coastal zone. (Pub. Resources Code, § 30600, subd. (a).) Minor changes to an existing legally established residential structure that do not involve the removal or replacement of major structural components (e.g., roofs, exterior walls, foundations) and that do not change the size or the intensity of use of the structure do not qualify as development with the meaning of the Coastal Act. A junior ADU that complies with the requirements of an ordinance enacted pursuant to Government Code section 65852.22 generally will not constitute development because it will not change the building envelope and because it must contain at least one bedroom that was previously part of the primary residence. Such minor changes do not require a Coastal Act approval such as a CDP or waiver unless specified in a previously issued CDP for existing development on the lot. If questions arise regarding whether a

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

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

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

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

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

D) If the Proposed ADU Is Not Exempt From CDP Requirements, Determine Whether A CDP Waiver is Appropriate.

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

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

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