

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



F17f

ADDENDUM

December 10, 2021

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item F17f**, Local Coastal Program Amendment No. **LCP-6-SAN-21-0005-5 (2019 Housing Legislation)**, for the Commission Meeting of December 17, 2021.

The purpose of this addendum is to make minor adjustments to the City's proposal to exempt certain categories of accessory dwelling units from coastal development permit requirements and the City's streamlined approval process for accessory dwelling units outside of the appealable area of the coastal zone, and to specify that the City will look to the Commission's sea level rise guidance in determining whether new accessory dwelling units and moveable tiny houses will be subject to hazards. Commission staff worked closely with the City to make these adjustments internally consistent with the City's LCP and with the resource protection policies of the LCP. It is staff's understanding that the City is in agreement with the suggested modifications as revised herein.

To provide context for the suggested modifications, the below suggested modifications are to the City's **proposed** LCPA, and except where specified, replace entirely the suggested modifications recommended by staff in the original staff report. Deletions shall be marked by ~~strikethrough~~ and additions shall be underlined:

1. On Page 11, Suggested Modification No. 1 shall be replaced with the following:

1. Section 126.0704 Exemptions from a Coastal Development Permit

The following coastal development is exempt from the requirement to obtain a Coastal Development Permit:

- (a) Improvements to existing structures, ~~including the construction of attached Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance~~

with ~~Section 141.0302~~ are exempt, except if the improvements involve any of the following:

- (1) through (8) [No change in text]
- (9) Accessory dwelling units and junior accessory dwelling units that are not completely contained in the existing primary structure or include increases in habitable area or include conversion of non-habitable space. Such ADUs and JADUs are considered self-contained residential units within new construction and are therefore ineligible for an exemption.

2. On Page 12, Suggested Modification No. 3 shall be replaced with the following:

3. Section 126.0708 Findings for Coastal Development Permit Approval

~~An~~ Except for Coastal Development Permits issued in accordance with Section 126.0707(g), an application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development. Coastal Development Permits issued in accordance with Section 126.0707(g) shall be approved if the administrative findings in Section 126.0708(c), and if applicable, the supplemental findings in Section 126.0708(b) are satisfied.

- (a) Through (b) [No change in text]
- (c) The following administrative findings shall be made for Coastal Development Permits required for Accessory Dwelling Units and Junior Accessory Dwelling Units permitted in accordance with Section 126.0707(g) in order to find that the development conforms to the Local Coastal Program:
 - (1) The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan.
 - (2) The proposed coastal development permit will preserve existing public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan and Chapter 13, Article 2, Division 4.
 - (3) The proposed coastal development complies with the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1.
 - (4) The proposed coastal development does not involve any of the activities in Section 126.0704(a)(1)-(2) or Section 126.0704(a)(4)-(8)

3. On Page 13, Suggested Modification No. 4 shall be partially replaced as follows:

4. Section 141.0302 Accessory Dwelling Units and Junior Accessory Dwelling Units

[...]

(a) The following regulations are applicable to both ADUs and JADUs:

[...]

(2) Development Regulations

[...]

(D) The following setback allowances are applicable:

- (i) Conversion of existing structure to an ADU or JADU. No setback is required for an existing dwelling unit or accessory structure that is converted to an ADU or JADU, or to a portion of an ADU or JADU. An ADU or JADU that is constructed in the same location and to the same dimensions as an existing structure may continue to observe the same setbacks as the structure it replaced. An existing structure may not be converted to or reconstructed as an ADU or JADU if the structure does not conform to the wetland regulations in Section 143.0141(b), the sensitive coastal bluffs regulations in Section 143.0143, the coastal beaches regulations in Section 143.0144, or the Supplemental Regulations of the Coastal Overlay Zone in Section 132.0403.

(E) [No change in text]

(G) Within the Coastal Overlay Zone, the following regulations apply to ADUs or JADUs constructed outside of Special Flood Hazard Areas and within an area of future sea level rise (with a 75-year horizon) as determined by the City Manager based on the Sea Level Rise Policy Guidance adopted by the California Coastal Commission, as it applies to residential development:

[remaining suggested modifications to Section 141.0302 to be as shown in Suggested Modification No. 4 in the original staff report]

4. On Page 16, Suggested Modification No. 5 shall be replaced as follows:

5. Section 141.0318 Moveable Tiny Houses

[...]

(a) Development Regulations

(1) A moveable tiny house shall be:

[...]

(B) exempt from parking regulations unless the moveable tiny house is located in the Beach Impact Area of the Parking Overlay Zone but outside of the Transit Priority Area, in which case one off-street parking space shall be required if there is already an accessory residential unit present on the same premises.

[...]

(12) Within the Coastal Overlay Zone, the following regulations apply to moveable tiny houses constructed outside of the Special Flood Hazard Areas and within an area of future sea level rise (within a 75-year horizon) as determined by the City Manager based on the Sea Level Rise Policy Guidance adopted by the California Coastal Commission, as it applies to residential development:

(i) Hard shoreline armoring shall not be constructed to protect a moveable tiny house from the effects of coastal hazards, including but not limited to sea level rise.

(ii) The record owner of the moveable tiny house shall enter into an acknowledgement agreement with the City in a form that is approved by the City Attorney. The agreement shall include the following acknowledgements and provisions: 1) that the moveable tiny house is located in an area of future sea level rise that may become hazardous in the future; 2) that sea level rise could render it difficult or impossible to provide services to the site; 3) that the boundary between public land (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land; 4) that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP; 5) that the owner waives any right under Coastal Act Section 30235 and related LCP

policies to hard shoreline armoring to protect the moveable tiny house; and 6) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe.

- (iii) The record owner of the moveable tiny house shall provide notice to all occupants of the moveable tiny house of the acknowledgements and provisions specified in Section 141.0318(a)(12)(A) and (B).

5. On Page 30 of the staff report, starting with the second paragraph, the report shall be revised as follows:

Thus, in order to streamline the approval of the above described ADUs and JADUs that have the least likelihood to create adverse impacts to coastal resources while ensuring continued coastal permitting review of the remaining majority of ADU and JADU types, suggested modification no. 1 allows ADUs and JADUs that are located within the existing primary structure and do not increase the existing habitable area of the structure or convert non-habitable area to be exempted from obtaining a coastal development permit, while ADUs and JADUs that do not meet all of that criteria will still be required to obtain a coastal development permit. Unlike new construction, the conversion of an existing, legally established habitable space to an ADU or JADU within an existing residence, which does not change the intensity of use of the structure, may not constitute development within the definition in the Coastal Act. Furthermore, Ssuch wholly internal units do not pose much risk of adverse impacts and constitute a minority of accessory unit design, as the size and configuration of many properties in the coastal zone require that some alteration or conversion of existing structures in order to accommodate a new attached accessory dwelling unit.

With regards as to the manner in which the remaining majority of accessory units that do not meet the above exemption criteria would obtain a coastal development permit, the City and Commission coordinated closely in devising an ADU and JADU-specific manner of permit review that would fit into the City's existing permit processing procedures. The revised process emulates while emulating the more streamlined waivers that the Commission uses for developments that are not anticipated to create substantial adverse impacts and warrant a more administrative review. This will result in significant time and financial savings for property owners who wish to construct ADUs and JADUs in the coastal zone while still ensuring public access, public views, and other coastal resources will be protected, and meeting the Coastal Act's regulatory requirements that required findings regarding consistency with the critical provisions of the LCP are made.

After meetings with the City, they are no longer proposing to wholly exempt all ADUs and JADUS city-wide from coastal permitting requirements, no longer wishing to amend the coastal development permit requirements for ADUs and JADUs located in the portions of the City's coastal zone that are appealable to the Commission, as those properties represent the minority of the coastal zone but contain the properties with the highest potential to adversely impact public access, public views, and sensitive habitat.

Instead, the City wishes to only streamline coastal permitting review of ADUs and JADUs located in the portions of the coastal zone not appealable to the Commission. For ADUs and JADUs in the non-appealable area of the coastal zone, the City has worked with the Commission to draft Suggested modification nos. 2 and 3. Suggested modification no. 2 will allow ADUs & JADUs to streamline the coastal permit decision process. Coastal development permit applications for ADUs and JADUs in the City's coastal zone areas not appealable to the Commission would be reviewed under Process One, the City's lowest, staff-level permitting process. This coastal permitting process would be akin to a building permit administrative review, and the sections of the LCP that require recordation of the coastal development permit, place an expiration date on the permit, allow time extensions on the permit, and allow amendments of the permit would not apply to this new ADU-specific permit. In this way, this new permit would function much like the Commission's own permit waivers, as both are a form of approval for projects that do not have the potential for impacts to coastal resources, and as a streamlined approval, do not have expiration dates, and do not allow for future amendments. However, the new ADU and JADU-specific coastal development permit will still be required to make explicit findings regarding conformity to coastal resource and public access policies of the LCP in order to be able to find that the development conforms to the LCP and can be issued.

6. On Page 32 of the staff report, the paragraph under Floodplain shall be revised as follows:

After discussion and coordination with the City, it was noted that while the certified environmentally sensitive land regulations regarding development in the Special Flood Hazard Area (SHA) would apply to ADUs and JADUs developed on the currently mapped floodplain, that such units developed in areas not currently in the mapped floodplain but identified as vulnerable to future sea level rise would not be subject to those regulations. To address this impact, suggested modification no. 4 requires that ADUs and JADUs identified as being located outside of the SFHA but in an area identified as vulnerable to sea level rise ~~based on current best available science~~ as determined by the City Manager based on the Sea Level Rise Policy Guidance adopted by the California Coastal Commission, must comply with the same construction standards of the LCP's SFHA regulations as structures within the SFHA. Furthermore, because the base flood elevation for areas vulnerable to sea level rise but outside of the SFHA is not currently known, it will be based on the base elevation of the SFHA closest to the development. Finally, shoreline protection for ADUs and JADUs in the sea level rise vulnerability area will be prohibited, and because ADUs and JADUs are projected to have a 75-year economic life, the property owner will be required to enter into an agreement with the City and give notice to tenants acknowledging the risk of coastal hazards, the resultant impact on future services, a waiver of shoreline protection, and potential requirement to remove or relocate the ADU.