

CALIFORNIA COASTAL COMMISSION

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LCP-6-CAR-20-0077-2 (ADU UPDATE)

MARCH 9, 2022

CORRESPONDENCE



March 4, 2022

Donne Brownsey, Chair, and Commissioners
California Coastal Commission
455 Market Street, Suite 300
San Francisco, California 94105

**SUBJECT: SUGGESTED MODIFICATIONS FOR CARLSBAD ACCESSORY DWELLING UNIT UPDATE
(LCP-6-CAR-20-0077-2)**

Dear Chair Brownsey and Members of the Commission,

The City of Carlsbad thanks the Coastal Commission for postponing the Carlsbad Accessory Dwelling Unit Update (LCP-6-CAR-20-0077-2) from the commission's February meeting to the March meeting; the city appreciates the opportunity to resolve city concerns with the related suggested modifications. After successfully working with commission staff, the suggested modifications have been revised to address the majority of city concerns, and city staff support the revised modifications, except for the modifications to coastal development permit (CDP) exemptions (suggested modification #7).

The Carlsbad Local Coastal Program (LCP) Implementation Plan (Carlsbad Municipal Code Section 21.201.060.B) currently exempts attached accessory dwelling units (ADU) from a coastal development permit (CDP), except in the circumstances identified in Carlsbad Municipal Code Section 21.201.060.B., such as in environmentally sensitive areas or within Coastal Commission appeal areas. The city's proposed Accessory Dwelling Unit Update (LCP-6-CAR-20-0077-2) does not change the types of improvements that are currently exempt from a CDP, other than to add reference to "junior accessory dwelling units (JADU)."

The suggested modifications to LCP-6-CAR-20-0077-2 would require a minor CDP for all ADUs and JADUs, unless they are entirely within an existing dwelling and do not expand existing habitable space. The city requests that the Coastal Commission retain the city's existing CDP exemption for ADUs, and include JADUs, that are attached to or within an existing dwelling, for the following reasons:

1. The existing CDP exemption for improvements to an existing residential building, including ADUs that are attached to the primary residence or converted from existing space, does not apply in sensitive coastal resource areas, as listed below. With these exceptions to the CDP exemption, there is no significant need to require a CDP in order to ensure protection of coastal resources.

Exceptions to CDP exemption:

- a. On a beach, wetland or seaward of the mean high tide line;

Community Development Department

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- b. Where the residence or proposed improvement would encroach in an environmentally sensitive habitat area or within fifty feet of the edge of a coastal bluff;
 - c. Improvements that would result in an increase of ten percent or more of internal floor area of an existing structure or an additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to PRC Section 30610(a), or an increase in height by more than ten percent of an existing structure and/or any significant nonattached structure such as garages, fences, shoreline protective works or docks, and such improvements are on property located:
 - i. Between the sea and the first public road paralleling the sea,
 - ii. Within three hundred feet of the inland extent of any beach or of the mean high tide of the sea where there is no beach, whichever is the greater distance, or
 - iii. In significant scenic resources areas as designated by the Commission;
 - d. Significant alteration of landforms including removal or placement of vegetation on a beach, wetland, or sand dune, or within fifty feet of the edge of a coastal bluff;
 - e. Expansion or construction of water wells or septic systems;
 - f. Improvements to establish an accessory dwelling unit that is attached to the primary residence, or converted from the existing space of a primary residence or attached accessory structure where such primary residence or attached accessory structure is nonconforming with respect to habitat preserve buffers or geologic stability setbacks in the certified local coastal program.
2. Requiring a CDP for all attached ADUs, which are currently exempt from a CDP, is an unnecessary deterrent to the construction of ADUs. As described above, the protection of coastal resources is addressed by excluding certain areas from the CDP exemption.
3. The suggested modifications will require a CDP for any ADU or JADU that increases existing habitable space; however, a room addition or other expansion of habitable space would be exempt from a CDP, unless in the areas listed above. As an example, a 400 square foot ADU addition vs. a 400 square foot room addition results in the same habitable space, but one has a kitchen. A homeowner could construct a room addition to an existing dwelling, and after construction of the room addition the added space could be converted to an ADU without a CDP. This situation could be avoided by retaining the city's existing CDP exemption for attached ADUs, which are currently subject to the same exemption provision as room additions or other improvements to an existing dwelling. The city's proposal would provide the same protection to coastal resources, with the addition of encouraging the natural affordable housing that accessory dwellings provide.
4. The suggested modifications will result in an increase in the number of CDPs that the city must process in a compressed timeframe, as the 2020 changes to state law (Government Code Section 65852.2) requires all accessory dwelling units be processed within 60 days (120 days prior to 2020), if there is an existing dwelling on the property. City staff have difficulty meeting the 60-day processing requirement for the ADUs that require a minor CDP today. Increasing the number of CDPs for ADUs and JADUs will be an added burden to the city's already heavy workload.

City staff support the suggested modifications to LCP-6-CAR-20-0077-2, except for the modifications to CDP exemptions. Therefore, the city respectfully requests, for the reasons described above, that the Coastal Commission support the city's LCPA to Carlsbad Municipal Code Section 21.201.060, as submitted, which retains the existing CDP exemption for attached ADUs and adds JADUs to the exemption.

Sincerely,



JEFF MURPHY, Director
Community Development Department

cc: Gary Barberio, City of Carlsbad Deputy City Manager
Don Neu, City of Carlsbad City Planner
Eric Lardy, City of Carlsbad Principal Planner
Jennifer Jesser, City of Carlsbad Senior Planner
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Diana Lilly, California Coastal Commission, District Manager
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PACIFIC LEGAL FOUNDATION

February 4, 2022

Chair Donne Brownsey & Commissioners

California Coastal Commission
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San Francisco, CA 94105-2219

VIA E-MAIL to SanDiegoCoast@coastal.ca.gov
(submitted as comment via link at [https://
www.coastal.ca.gov/meetings/agenda/#/2022/2](https://www.coastal.ca.gov/meetings/agenda/#/2022/2))

Re: February 10, 2022, Agenda Item #Th13B, City of Carlsbad LCP Amendment
No. LCP-6-CAR-20-0077-2 (ADU Update)

Dear Chair Brownsey and Commissioners:

I write representing Pacific Legal Foundation (PLF) to express concern about Coastal Commission Staff's suggested modifications to the City of Carlsbad's (City) LCP Amendment, which propose that the City eliminate provisions in its existing LCP which exempt attached ADUs from the requirement to obtain a CDP. PLF is the nation's most experienced public interest law firm dedicated to the defense of property rights, with particular expertise litigating aspects of the Coastal Act (*e.g.*, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987)). PLF also represents Elizabeth and Jason Riddick in the Superior Court challenging the City of Malibu's improper denial of their application to construct an attached ADU on their existing single-family home. *Jason Riddick, et al. v. City of Malibu, et al.*, No. 21SMCP00655.

California faces a severe housing crisis of epic proportion. Cal. Gov't Code § 65852.150(a)(5); *Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 708–09 (2019) (citing *California Building Industry Assn. v. City of San Jose*, 61 Cal. 4th 435, 441 (2015)). To address this dire situation, the California legislature enacted a series of reforms enabling owners of existing single-family homes to speedily obtain by-right permits to construct ADUs. In adopting these reforms, the legislature declared its intent that ADUs be free from burdensome regulation which would unreasonably restrict their creation by homeowners. Cal. Gov't Code § 65852.2(b).

The exemption for attached ADUs in Carlsbad's existing LCP was approved by the Coastal Commission in 2017. At that time, and consistently until late last December, this Commission in a series of guidance memos advised that local jurisdictions interpret their exemption provisions in precisely the manner that Carlsbad does.

That guidance appropriately struck the difficult balance between preserving coastal resources while implementing the critical statewide policy encouraging the use of ADUs as an "essential component of California's housing supply." Cal. Gov't Code

§ 65852.150(a)(8). It was also perfectly consistent with the text of the Coastal Act and with its implementing regulations adopted by this Commission.

Unfortunately, the Commission's sudden about-face threatens both to undermine the imperative need to ease restrictions on ADU development and to violate the plain text of the Coastal Act. PLF therefore respectfully urges the Commission to reconsider its latest position and clarify that attached ADUs are not required to obtain coastal development permits.

I. Requiring a CDP for Attached ADUs Will Have Severe Consequences on the State's Ongoing Housing Crisis

The imposition of a requirement that attached ADUs must obtain a CDP undermines the legislative goals of simplifying and streamlining the permitting process for ADUs. On its own, however, it may appear somewhat innocuous; ADUs may still be developed, so long as they comply with a given jurisdiction's LCP. But that is highly misleading. In certain jurisdictions, it will have the intolerable effect of prohibiting the vast majority of new construction ADUs regardless of whether those projects pose any threat to coastal resources.

Some jurisdictions, like Malibu and Half Moon Bay, are located entirely within the coastal zone. Therefore, every attached ADU in those jurisdictions will be subjected to their respective LCPs. But LCP provisions are often written in such ways as to make any expansion of a residential dwelling beyond its existing development footprints impossible.

Malibu, for example, employs a unique measurement tool called "Total Development Square Footage" (TDSF). TDSF is a type of lot coverage maximum which places strict limits on the allowable area of development depending on the size of the lot. Many if not most residential properties in Malibu are already built out at or near this maximum figure. That means those properties will be absolutely foreclosed from development non-conversion ADUs regardless of whether or not the development is likely to have any impact on coastal resources.

That is precisely what happened to Elizabeth and Jason Riddick. They sought to build an attached ADU on their existing SFR so that Elizabeth's elderly mother, Renee, could age safely near her family, who provide her with full-time care. Throughout the process, Malibu planning staff repeatedly found that the project would have no negative impact on coastal resources whatsoever. Yet they nevertheless denied the project because it

violated their TDSF and coastal zone setback regulations—regulations from which the project *should have been exempt* as an improvement to an SFR under the Coastal Act, under Malibu’s LCP, and under this Commission’s guidance in place throughout the process.

Lot coverage maximums and excessive setbacks are explicitly and specifically prohibited by California law in the ADU permitting process. It is unacceptable that regulations of the same nature are nevertheless imposed to prohibit ADUs within the coastal zone even where there is no demonstration of any negative environmental impact. The result is not harmony between the Coastal Act and the Government Code, but dissonance.

Yet harmony should not be difficult to achieve. After all, ADUs are a “valuable form of housing” that provides residential space “for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.” Cal. Gov’t Code § 65852.150(a)(1), (2). They “provide additional rental housing stock” and “offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.” *Id.* § (a)(4), (7). The cumulative effect of all this is not only the provision of a crucial pressure valve to ease the state’s housing crisis, but also an opportunity to expand equitable access to the coasts. *See* Cal. Pub. Res. Code § 30210 (“[M]aximum access . . . shall be provided for *all the people*[.]”) (emph. added); Cal. Const. art. 10, § 4 (“[T]he Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.”).

II. The Coastal Act Prohibits the Requirement of a CDP for the Development of an Attached ADU

Harmonization should also be easy to achieve on this point because the Coastal Act simply does not require that attached ADUs be required to obtain a CDP. On the contrary, the Act prohibits such a requirement.

The Coastal Act at Section 30610 provides that “[n]otwithstanding any other provision of [the Coastal Act], no coastal development permit shall be required” for “[i]mprovements to existing single-family residences[.]” Cal. Pub. Res. Code § 30610(a). Its implementing regulations clarify that “[a]ll fixtures and other structures directly attached to a residence” constitute a part of that residential structure. 14 Cal. Code Regs., § 13250(a)(1). A separate subdivision explains that other structures, *i.e.*, those which are not directly attached to the residence, also constitute part of the residential structure if they are normally associated with a single-family residence. *Id.* § 13250(a)(2).

It is clear from the text and organization of these regulations that the subdivision (a)(2) refers only to detached structures. After all, by definition, most “fixtures and other structures directly attached to a residence,” (subd. (a)(1)), are also “normally associated with a single-family residence,” (subd. (a)(2)). An attached garage, for example, indubitably falls under subdivision (a)(1), even though garages in general would otherwise fall under subdivision (a)(2). By the same token, ADUs which are directly attached to the primary residence fall under subdivision (a)(1), even if detached ADUs might fall under subdivision (a)(2) and be subject to that subdivision’s language excepting “guest house or self-contained residential units.”

Even if that were not so, an attached ADU does not constitute a “guest house or self-contained residential unit” anyway. The term “guest house” is not defined anywhere in California’s statutes or regulations, but it plainly refers to *guests*, implying only a temporary stay. That is likely why under local regulations, the term “guest house” is defined in a way that excludes ADUs. The Carlsbad Municipal Code defines “[g]uest house” to mean “living quarters within an accessory building for the sole use of persons employed on the premises, or for temporary use by guests of the occupants of the premises,” which “have no kitchen facilities and shall not be rented or otherwise used as a separate dwelling unit.” Carlsbad Muni. Code § 21.04.165. Similarly, the City of Malibu’s LCP also defines “guest house” as a unit containing no kitchen and which may not be “rented or otherwise used as a separate dwelling.” Malibu LIP § 2.1. By contrast, under state law, ADUs are defined to include “permanent provisions for . . . cooking,” Cal. Gov’t Code § 65852.2(j)(1), and by right may be “rented separate from the primary residence.” *Id.* § (a)(1)(D)(i). Thus, an ADU as defined by California law is mutually exclusive with the common understanding of a “guest house.”

Neither can an attached ADU be considered a “self-contained residential unit.” Like “guest house,” that term is not defined anywhere in California law or regulations. But by its plain meaning, an attached ADU cannot be “self-contained” because it shares one or more walls with the primary residence. Moreover, ADUs are not required to install new or separate utility connections.¹ Cal. Gov’t Code § 65852.2(f)(4), (5); *see also id.* § (f)(2)

¹ For certain categories of ADUs, local agencies are prohibited from requiring new or separate utility connections have discretion, but are not mandated, to require new or separate utility connections. Cal. Gov’t Code § 65852.2(f)(4). For others, local agencies may, but are not mandated to, require new connections. *Id.* § (f)(5). In either case, an ADU is not to be considered a new residential use for utilities purposes, unless they are constructed contemporaneously with a new single-family dwelling. *Id.* § (f)(2).

(ADUs “shall not be considered by a local agency, special district, or water corporation to be a new residential use for purposes of calculating connection fees or capacity charges for utilities[.]”).

The countervailing considerations in the Staff’s recommendation are misplaced. While it is true that the construction of an attached ADU constitutes “development” under Coastal Act Section 30106, that does not resolve the question whether it is the kind of development exempted from CDP procedures by Section 30610. Non-development activities have no need for exemption from the CDP requirement because that requirement is only triggered by development in the first place. Indeed, *everything* covered by the exemption in Section 30610 otherwise fits the definition of development in Section 30106; otherwise, there would be no need for an exemption.

Moreover, Staff does not explain why an attached ADU carries an inherently greater risk to coastal resources than other residential improvements. For example, with specific exceptions for properties located on inherently environmentally sensitive lots, 14 Cal. Code Regs. § 13250(b)(1), (4), a project seeking to construct a residential expansion to add a bedroom to an existing SFR is inarguably exempt from the CDP permit requirement under Section 30610. *Venice Coalition to Preserve Unique Community Character v. City of Los Angeles*, 31 Cal. App. 5th 42, 53–54 (2019). And that is so even if the addition is constructed with the intent of increasing use or density by adding another resident to occupy the new addition. Why should an attached ADU—specifically encouraged by California law—be treated as more environmentally hazardous than any other residential expansion? Neither does Staff explain how it arrived at two opposite interpretations of the same exemption language.

Pursuant to Section 30610, this Commission has already adopted regulations identifying specific classes of development which are unsuited to exemption due to their heightened risk of negative environmental impact. 14 Cal. Code Regs. § 13250(b). It evidently did not consider ADUs as such to be among those classes. Nevertheless, those regulations do encompass categories of development which might include ADUs—for example, ADUs built on a beach, in a wetland, in an environmentally sensitive habitat area, or within 50 feet of the edge of a coastal bluff. *Id.* § (b)(1). Thus, ADUs in these areas are properly excluded from the exemption provision and must obtain a CDP. For all other attached ADUs however, there is no legal or environmental reason to treat them differently than any other improvement to a single-family residence.

Conclusion

This Commission's recent reversal in its interpretation of the CDP exemption provision burdens an essential element of California's housing market without any certainty that doing so will be protective of coastal resources, and without any legislative authorization to impose such a requirement on an improvement to a single-family residence. We respectfully urge you to reconsider this recent stance and to approve the City of Carlsbad's LCP without requiring the elimination of attached ADUs from its CDP exemption provisions.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Deerson", with a long horizontal flourish extending to the right.

DAVID J. DEERSON
Pacific Legal Foundation