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March 11, 2020

TO: Coastal Commission and Interested Persons

FROM: Legislative Unit and Legal Division

SUBJECT: **LEGISLATIVE REPORT: 2019 Chaptered Legislation, Housing**

The 2019 California legislative session resulted in five pieces of chaptered legislation (AB 68, AB 587, AB 670, AB 881, SB 13) that made substantive changes to statutes governing residential housing development (the Government Code's Planning and Zoning Law, the Health and Safety Code and the Civil Code). These will affect local governments' review and approval of accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), both within and outside of the coastal zone. Some of these changes took effect on January 1, 2020, while others will take effect January 1, 2025.

While these changes apply only to local agencies, and do not lessen or supersede the application of the Coastal Act, they will have a material effect on Local Coastal Program (LCP) implementation at the local level, and will, or should be, reflected in future LCP amendments that will come before the Commission.

The 2019 ADU/JADU bills did not change the basic structure of the statute. Local governments still have the discretion whether or not to adopt an ADU/JADU ordinance consistent with the standards in Government Code Section 65852(a). If they don't, the state standards become the direct standard of review. In either case, applications for most ADUs/JADUs are ministerial. Adopting an ordinance gives local governments a modest degree of additional discretion over objective requirements such as height, size, etc., as well as where ADUs will be allowed within the jurisdiction, based on adequacy of water, sewer and public safety.

Overall, the circumstances under which ADUs/JADUs must be allowed by local governments has been expanded, and the 2019 bills were designed, in the aggregate, to facilitate the construction of more units in more circumstances, increase unit size, reduce cost, and decrease processing times. For example, multiple ADUs must now be allowed within portions of existing multifamily dwellings that are not used as livable space, and up to two detached ADUs are allowed on a lot with an existing multifamily dwelling (65852.2 (e)(1)(C) and (D)). In addition, ADUs must be

ministerially approved in both residential and mixed-use zones, if certain requirements are met (65852.2(e)); ADUs cannot be restricted by parcel size; and, pursuant to AB 587 (Friedman), ADUs may be conveyed separately in limited circumstances (Sec. 65852.26).

One significant addition required by AB 881 (Bloom), is that the Department of Housing and Community Development (HCD) now has a new oversight and approval role to ensure local ordinances are consistent with the statute, similar to the Commission's role in reviewing LCPs. Local governments must submit their ordinances to HCD within 60 days of adoption. If a local government adopts an ordinance that HCD deems non-compliant, and a local government does not accept the suggested modifications, HCD may notify the Attorney General's office. (Sec. 65852(h)). Of particular significance to the Coastal Commission, new ADUs cannot be rented for periods of less than 30 days (Sec. 65852 (e)(1)(D)(4)).

Finally, the existing Coastal Act "savings clause" has been renumbered, but remains otherwise unchanged. Section 65852 (l) provides that:

Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for accessory dwelling units.

Some jurisdictions have incorrectly assumed that this language allows local governments to avoid compliance with the statute by merely opting to not amend their certified LCP. The Commission's position has always been and continues to be that this is not the case. Local governments must comply with both the ADU laws and the Coastal Act. While ADUs cannot conflict with Coastal Act Chapter 3 policies, such as those protecting wetlands, habitat, public access, and coastal agriculture, the majority of ADU/JADU applications will not raise any of these issues. Therefore, LCPs should be amended as soon as possible to incorporate and comply with the state standards and procedures in Section 65852.2 in a manner that will not create Chapter 3 conflicts. In the meantime, many ADU/JADU applications will not constitute development, will be exempt from coastal permitting requirements, or may be approved through a waiver of CDP requirements, thereby allowing the streamlining of such applications, consistent with both the new ADU laws and the Coastal Act.

For these reasons, staff has prepared a memo (attached) to all coastal city and county planning directors, updating two earlier 2017 memos and describing the most relevant changes to these statutes, for the purpose of providing guidance and best practices in the coastal zone for processing ADU and JADU applications prior to making conforming amendments to LCPs. This coastal specific memo complements and builds upon the January 10, 2020 memo prepared by HCD and sent to planning departments statewide.

While the Commission's memo enumerates changes to the statutes and reiterates the recommendation to update LCPs accordingly, it does not anticipate nor give legal advice regarding every conceivable question that may arise within specific LCPs or zoning ordinances. Nor does it resolve every internal ambiguity within Sections 65852.2

and 65852.22. As occasionally happens when multiple bills amending the same statute get signed into law simultaneously, some sections are vague, have inconsistent terminology, or appear contradictory. These sections will require subsequent legislative action to fully resolve.

In the meantime, local governments and the Commission will have to consider any proposed LCP amendments, coastal development permits or appeals that involve conflicting statutory directives on a case-by-case basis, with the goal of maximum compliance with the Government Code to achieve its objectives in a manner that protects coastal resources.

Staff has identified the following sections that would benefit from further statutory clarity:

Zone v. Use:

Section 65852.2(a) refers to preparing ADU ordinances for “areas zoned to allow single family or multifamily dwelling residential use.” Section 65852.2(e) refers to ministerial approval of ADU applications “within a residential or mixed-use zone”. The difference between zone vs. use is significant, particularly for agricultural lands with single family dwellings. Single family dwelling units are “allowed” under multiple types of zoning, including agricultural zones. One way to harmonize these two sections is to assume that while local governments may prepare an ordinance to provide for the creation of ADUs in any zoning type that allows for residential use, it must provide for *ministerial* approval in areas under residential or mixed-use zoning designations. Other areas could presumably require discretionary approval, or disallow ADUs for reasons stated in (a)(1)(A).

“May require” (§ 65852.2(a)(6)) vs. “shall require” (§ 65852.2(e)(4)) rental terms longer than 30 days:

Section 65852.2(a) applies where a local govt adopts an ADU ordinance. As previously noted, if they adopt an ordinance, they must follow the rest of Section 65852.2(a).

The language of 65852.2(a)(6) establishes the maximum standards that local agencies shall use to evaluate a proposed ADU on a lot that includes a proposed or existing single family dwelling, and provides that no additional standards may be imposed, except that the local govt “may require” that such a property be used for rentals of longer than 30 days (existing law). In other words, the law previously provided that local governments had the discretion to determine by ordinance whether or not to prohibit ADUs from being used as short-term rentals.

However, as amended by AB 881, newly enacted Section 65852.2(e)(4) provides as a condition of the ministerial granting of ADU applications, that a local govt “shall require” that rental of such ADUs be for longer than 30 days.

Absent further legislative clarification, this raises the question of how to harmonize “shall” with “may.” Given that the Legislature has continued to pass ADU legislation as

one way to respond to California's urgent housing shortage, the intent of this recent amendment seems to be aimed at making more affordable housing units available as rental stock by prohibiting their use as vacation rentals. However, by failing to amend (a)(6), this creates an apparent internal inconsistency. A local government may or may not prohibit ADUs as short-term rentals by ordinance at their discretion. But whether they adopt such an ordinance or not, Sec. 65852.2 seemingly prohibits the rental of ADUs for less than 30 days.

800 square feet vs. 850 square feet discrepancy:

WITH AN ORDINANCE

Section 65852.2(a)(1)(B)(i) states that if a local government is going to adopt an ADU ordinance, the ordinance shall impose standards including height and maximum size. One size restriction is that if there is an existing primary dwelling, an ADU cannot be greater than 50% of the primary dwelling's square footage. (Section 65852.2(a)(1)(D)(iv).) For a detached ADU, the maximum size is 1,200 square feet. (Section 65852.2(a)(1)(D)(v).)

WITHOUT AN ORDINANCE/ LOCAL GOVT MINISTERIAL APPROVAL OF ADU BUILDING APPLICATIONS

Section 65852.2(c)(1) states: A local agency may establish minimum and maximum unit size requirements for both attached and detached ADUs, subject to (c)(2).

Section 65852.2(c)(2)(B) says: A local agency shall not establish by ordinance a maximum square footage requirement for either an attached or detached ADU that is less than 850 sq. ft., or 1,000 sq. ft. if the ADU has more than 1 bedroom. In other words, if a local govt sets a maximum square footage, it must be 851 sq. ft. or greater, or 1,001 sq. ft. or greater for ADUs with more than 1 bedroom.

WITH OR WITHOUT ORDINANCE

Section 65852.2(e)(1)(B) states that a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create a detached, new construction ADU on a lot with a proposed or existing single family dwelling. The local agency may impose an 800 sq. ft. total floor area limit. Clearly, (e)(1)(B) conflicts with (c)(2)(B).

SB 330 (Skinner) – Housing Crisis Act of 2019

A sixth bill, [**SB 330 \(Skinner\), enacted the Housing Crisis Act of 2019**](#), which took effect January 1, 2020. This bill made extensive, detailed findings about the extent and consequences of California's housing crisis, and amended or added several Government Code sections of General Plan law addressing the local application process for housing projects. It streamlined the administrative process, planning and regulatory functions of local agencies, shortened timeframes for review, and made numerous changes to increase housing stock of all types, including emergency shelters, affordable housing and market rate housing throughout California. One of its primary

goals was to add certainty regarding what information applicants are required to provide in a completed application and how local fees will be applied. It did not provide for any CEQA or Coastal Act exemptions.

SB 330 was extremely lengthy, complex and highly specific, and much of it is beyond the scope of this report. Most relevant to the Commission, the Housing Crisis Act prohibits a city or county from approving a housing development project that will require the demolition of occupied or vacant residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished. (Gov. Code § 66300, subd. (d)(1).) It also prohibits the downzoning of land to a less intensive use unless other areas within the jurisdiction are correspondingly upzoned to achieve a no net loss of existing or potential units. (Gov. Code § 66300, subd. (b)(1)(A).) While these prohibitions apply to local agencies, and do not apply to state agencies, the Commission is mindful that local application of these new requirements will be shaping local plans and projects coming to the Commission for review or appeal.

The new Government Code sections 66300, subdivisions (b)(1) and (d)(1) require no net loss of existing units or zoning density as follows:

(b)(1) Notwithstanding any other law except as provided in subdivision (i), with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:

(A) Changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018, except as otherwise provided in clause (ii) of subparagraph (B). For purposes of this subparagraph, “less intensive use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, or new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or anything that would lessen the intensity of housing.

(...)

(d) Notwithstanding any other provision of this section, both of the following shall apply:

(1) An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.

(2) An affected city or an affected county shall not approve a housing development project that will require the demolition of occupied or vacant protected units, unless all of the following apply:

(A) (i) The project will replace all existing or demolished protected units.

(ii) Any protected units replaced pursuant to this subparagraph shall be considered in determining whether the housing development project satisfies the requirements of Section 65915 or a locally adopted requirement that requires, as a condition of the development of residential rental units, that the project provide a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households, as specified in Sections 50079.5, 50093, 50105, and 50106 of the Health and Safety Code.

(iii) Notwithstanding clause (i), in the case of a protected unit that is or was, within the five-year period preceding the application, subject to a form of rent or price control through a local government's valid exercise of its police power, and that is or was occupied by persons or families above lower income, the affected city or affected county may do either of the following:

(I) Require that the replacement units be made available at affordable rent or affordable housing cost to, and occupied by, low-income persons or families. If the replacement units will be rental dwelling units, these units shall be subject to a recorded affordability restriction for at least 55 years.

(II) Require that the units be replaced in compliance with the jurisdiction's rent or price control ordinance, provided that each unit is replaced. Unless otherwise required by the affected city or affected county's rent or price control ordinance, these units shall not be subject to a recorded affordability restriction.

(B) The housing development project will include at least as many residential dwelling units as the greatest number of residential dwelling units that existed on the project site within the last five years.

(C) Any existing residents will be allowed to occupy their units until six months before the start of construction activities with proper notice, subject to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1. (...)

Pursuant to Section 66300, subdivision (d)(4), the new, no net loss standards shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020.

The Housing Crisis Act provides that nothing in the section shall be construed to prohibit an affected county or an affected city from enacting a development policy, standard, or condition necessary to implement or amend a certified local coastal program consistent with the California Coastal Act of 1976. (Gov. Code § 66300, subd. (h)(2). The bill also provides that nothing in this section supersedes, limits, or otherwise modifies the requirements of the California Coastal Act of 1976 (Gov. Code § 65913.10, subd. (c)(2)), or be construed to relieve the local agency from complying with ... the California Coastal Act of 1976 (Gov. Code § 65589.5, subd. (e)).

Some additional changes include the following:

- Prohibits a local agency from holding more than five (5) hearings for a proposed housing project that meets the applicable, objective general plan and zoning standards. A continued hearing shall count as one of the five hearings.
- Requires a local agency to determine whether the site of a proposed housing development is a historic site at the time the application is deemed complete, unless archeological or cultural resources are discovered as a result of site disturbance activities.
- Specifies the components necessary for the submission of a preliminary application, and prohibits the inclusion of any additional components. Relevant to the coastal zone, the list includes the identification of any Environmentally Sensitive Habitat Areas, tsunami run-up zones, and use of the site for public access to the coast.
- Requires local agencies to develop a checklist or form listing all of the required components necessary for a completed application.
- Specifies that a housing development project shall be subject only to the ordinances, policies, and standards adopted and in effect when a preliminary application including all of the required information was submitted, except in specified circumstances.
- Requires a local agency to make specific findings in order to deny or impose a condition on a housing project that reduces density.
- Requires a local agency to inform an applicant for a project of 150 units or fewer in writing within 30 days of a completed application if the proposed project is inconsistent with the applicable plan, policy or ordinance.
- Requires a local agency to inform an applicant for a project of more than 150 units in writing within 60 days of a completed application if the proposed project is inconsistent with the applicable plan, policy or ordinance.
- Provides that a proposed housing project that is inconsistent with the underlying zoning shall not require a zoning change if the project is consistent with the

objective general plan standards and criteria but the zoning for the project site is inconsistent with the general plan.

- Authorizes an applicant, a person who would be eligible to apply for residency in the development or emergency shelter, or a housing organization to bring an action to enforce this section.
- Specifies the timeframes for local agency approval or denial.
- Prohibits a city or county from approving a housing development project that will require the demolition of occupied or vacant residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished.

The full text of [SB 330](#) was included in the [Commission's December 2019 New Laws Memo](#), and is also available online.

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TO: Planning Directors of Coastal Cities and Counties

FROM: John Ainsworth, Executive Director

RE: Implementation of New Accessory Dwelling Unit Law

DATE: November 20, 2017

On April 18, 2017, we circulated a memo intended to help local governments interpret and implement new state requirements regarding regulation of “accessory dwelling units” (ADUs) in the coastal zone. Following the enactment of AB 2299 (Bloom) and SB 1069 (Wiekowski), changes to Government Code 65852.2 now impose specific requirements on how local governments can and cannot regulate ADUs, with the goal of increasing statewide availability of smaller, more affordable housing units. Our earlier memo was intended to help coastal jurisdictions and members of the public understand how to harmonize the new ADU requirements with LCP and Coastal Act policies. This memo is meant to provide further clarification and reduce confusion about whether and how to amend LCPs in response to these changes.

Although Government Code Section 65852.2(j) states that it does not supersede or lessen the application of the Coastal Act, it would be a mistake for local governments with certified LCPs to interpret this as a signal that they can simply disregard the new law in the coastal zone. The Commission interprets the effect of subdivision (j) as preserving the authority of local governments to protect coastal resources when regulating ADUs in the coastal zone, while also complying with the standards in Section 65852.2 to the greatest extent feasible. In other words, ADU applications that are consistent with the standards in Section 65852.2 should be approved administratively, provided they are also consistent with Chapter 3 of the Coastal Act as implemented in the LCP. Where LCP policies and ordinances are already flexible enough to implement the provisions of Section 65852.2 directly, local governments should do so. Where LCP policies directly conflict with the new provisions or require refinement, those LCPs should be updated to be consistent with the new ADU statute to the greatest extent feasible while still complying with Coastal Act requirements.

Bear in mind that Section 65852.2 still preserves a meaningful level of local control by authorizing local governments to craft policies that address local realities. It allows local governments to designate areas where ADUs are allowed based on criteria such as the adequacy of public services and public safety considerations. It also explicitly allows local governments to adopt ordinances that impose certain standards, including but not limited to standards regarding height, setbacks, lot coverage, zoning density, and maximum floor area. In the coastal zone, local governments can incorporate such standards in LCP policies in order to protect Chapter 3 resources while still streamlining approval of ADUs.

Therefore, the Commission reiterates its previous recommendation that local governments amend their LCPs accordingly, using Section 65852.2 as a blueprint for crafting objective

standards related to design, floor area, parking requirements and processing procedures for ADUs in a manner that protects wetlands, sensitive habitat, public access, scenic views of the coast, productive agricultural soils, and the safety of new ADUs and their occupants. Depending on the individual LCP, such amendments might include:

- Updating the definition of an ADU (variously referred to in existing LCPs as second units, granny units, etc.)
- Implementing an administrative review process for ADUs that includes sufficient safeguards for coastal resources
- Re-evaluating the minimum and maximum ADU floor area and related design standards
- Specifying that ADUs shall not be required to install new or separate utility connections
- For ADUs contained within existing residences or accessory structures, eliminating local connection fees or capacity charges for utilities, water and sewer services.
- Providing for ministerial approval of Junior Accessory Dwelling Units (JADUs)
- Clarifying that no more than one additional parking space per bedroom is required
- Eliminating off-street parking requirements for ADUs located within a ½ mile of public transit, an architecturally significant historic district, an existing primary residence or accessory structure, one block of a car share vehicle, or where on-street parking permits are required but not offered to the occupant of an ADU

This is just a partial list, as specific changes will depend on existing LCP policies as well as unique local resource constraints. See our earlier memo for additional recommendations.

We are currently conducting a survey to identify the number of local governments which have already initiated the amendment process. For those that have not, Commission staff strongly urges those jurisdictions to do so in the very near future.

To expedite the process, the Commission will process ADU-specific LCPAs as minor or de minimis amendments whenever possible. We realize that procedural requirements for public review and participation can be time consuming, and will strive to complete the Commission's review process expeditiously. In the interim, we urge local governments to consider which provisions of Section 65852.2 might be implemented administratively, through existing procedures, definitions, or variances. Because each LCP is distinct and unique to its particular jurisdiction, some are inherently more flexible than others. We strongly suggest applying any existing discretion in a manner that conforms to Section 65852.2 as well as your LCP.

We acknowledge that because of the nature of our state/local partnership the Commission cannot compel local governments to undertake these amendments. The foregoing advice is offered in the spirit of our mutual goals and responsibilities of preserving both Coastal Act objectives and local control of planning and permitting decisions. We are grateful that the Legislature elected to preserve the integrity of the Coastal Act when it passed these bills. We are also mindful that this did not reflect any intent to discourage ADUs in the coastal zone, but rather to ensure that new ADU incentives are implemented in a way that does not harm coastal resources. In order to maintain the Legislature's continued support for this approach, and avoid the imposition of unilateral coastal standards for ADUs in the future, it is essential to demonstrate that these housing policies can and will be responsibly implemented in the coastal zone.

My staff and I remain ready and available to assist in this effort.

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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.)