

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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June 22, 2023

Samuel Dea, Supervising Regional Planner
Department of Regional Planning
County of Los Angeles
320 W. Temple St
Los Angeles, CA 90012

Dear Samuel Dea:

**RE: County of Los Angeles Very High Fire Hazard Severity Zone (VHFHSZ) and
Accessory Dwelling Units – Letter of Technical Assistance**

The California Department of Housing and Community Development (HCD) thanks the County of Los Angeles (County) for submitting the County's Board of Supervisors' Adopted Hearing of August 4, 2020, which contained findings relevant to Very High Fire Hazard Severity Zones (VHFHSZ) and the development of accessory dwelling units (ADUs). HCD appreciates the time and effort the County took in meeting with HCD team members on this issue.

Nevertheless, HCD has significant concerns with the County's response as it fails to address substantial inconsistencies between the County's zoning code and State ADU Law. HCD is providing this Letter of Technical Assistance in hopes that it will serve as a guide to the steps specific to the Fire Hazard issue that the County must take to comply with state law.

Background

On April 14, 2022, HCD received a complaint from a resident who applied for an ADU in Agua Dulce that is in a VHFHSZ. The application was denied on or before February 4, 2022 on the grounds that the County municipal code prohibited ADUs in VHFHSZs "unless it has two distinct means of vehicular access from the lot to a highway." (LACMC, section 22.140.640, sub. (C)(2)(b).) HCD met with County staff on October 27, 2022, to discuss the issue and was provided Ordinance number 2020-059, adopted October 13, 2020. Upon asking specifically for findings in support of the above-mentioned restriction, staff provided HCD with the staff report¹ of

¹ Los Angeles County Department of Regional Planning, Hearing on the Accessory Dwelling Unit Ordinance, Project No. 202-000600 (1-5), Aug. 4, 2020, available at <https://file.lacounty.gov/SDSInter/bos/supdocs/147452.pdf>.

August 4, 2020, entitled “Hearing on the Accessory Dwelling Unit Ordinance Project No. 2020-000600 (1-5) Advance Planning Case No. PPL2020001003,” which presented Ordinance 2020-059 to the Board of Supervisors.

The following quote from the “Key Components” section on page 4 of the staff report was provided for further context:

Prohibited Areas: In order to promote public health and safety in fire-prone areas, the County's previous ADU Ordinance prohibited the construction of new ADUs, and the conversion of existing spaces to ADUs, within VHFHSZs with substandard roads and limited access. The proposed Ordinance further clarifies the language in the previous ordinance by requiring two distinct means of access not overlapping with each other, as measured from the lot frontage to the point of intersection with a highway. Each means of access must contain pavement of at least 24 feet in width, exclusive of sidewalks, if the lot is located in a VHFHSZ and a Hillside Management Area (HMA). For lots that are located in a VHFHSZ and not an HMA, the two distinct means of access may include unpaved roads of at least 24 feet in width maintained by Public Works. The proposed Ordinance also allows ADUs and JADUs on lots with a single means of access if such lots front onto a highway and vehicles enter directly from the highway.

This passage contains no evidence or statements regarding the need for restrictions beyond the promotion of “public health and safety in fire-prone areas.” A review of the ADU ordinance confirms that ADUs in VHFHSZs must include two distinct means of vehicular access,² and no findings appear on the County's website.

After meeting in person on October 27, 2022, to discuss the issue further, County staff sent the Safety Element portion of the most recent General Plan. However, this document outlines programs intended to mitigate fire risk and contains limited information specific to ADUs.

Designating Areas Where ADUs May Be Permitted

Government Code 65852.2, subdivision (a)(1)(A), allows local jurisdictions to designate areas where ADUs may be permitted based on “the impact of accessory dwelling units on traffic flow and public safety.” However, while HCD is sympathetic to concerns about fire safety and the need to ensure adequate evacuation in the event of a fire, the County has not adequately demonstrated that ADUs will impact public safety in the VHFHSZ and that a prohibition based on two vehicular routes of egress is therefore justified.

² Los Angeles County, Ordinance No. 2020-0059, Oct. 13, 2020, available at https://case.planning.lacounty.gov/assets/upl/project/adu_certified.pdf.

The County is relying on the fact of the VHFHSZ's existence as evidence to justify restrictions. However, while the California Department of Forestry and Fire Protection (CalFire) maps establish the VHFHSZ boundaries, the intent of these maps is not to limit the locations where ADUs or other dwellings may be permitted. Rather, the CalFire maps focus on identifying areas in which hazard mitigating building design standards will apply. For example, the 2022 FHSZ model adds a buffer of FHSZ from the surrounding wildland into water bodies to account for potential threat of embers to buildings on docks and house boats and variation in reservoir height due to drought.³ The new maps also include new factors such as land use changes, and an interactive, more detailed spatial model comparing VHSZs from 2007 and 2022.⁴ None of these updates speak to ADU feasibility or permission in VHFHSZs. Additionally, the note on the CalFire Local Responsibility Area map for Los Angeles County states, "In late 2005 to be effective in 2008, the California Building Commission adopted California Building Code Chapter 7A requiring new buildings in VHFHSZs to use ignition resistant construction methods and materials.... The updated zones will also be used to identify property whose owners must comply with natural hazards disclosure requirements at time of property sale and 100-foot defensible space clearance. It is likely that the fire hazard severity zones will be used for updates to the safety element of general plans." This further illustrates the primary intent of the VHFHSZ maps to dictate safety considerations aside from ADU development.

Furthermore, ADU restrictions through local development standards provided by the Ordinance pursuant to Government Code section 65852.2, subdivisions (a) through (d), would not apply to ADUs created under Government Code section 65852.2, subdivision (e). Therefore, ADUs created under subdivision (e) cannot be restricted by local ordinance. HCD has corrected similar restrictions on the same grounds in letters to Rancho Palos Verdes⁵ and Berkeley.⁶

³ CalFire, *Frequently Asked Questions About: 2022 Fire Hazard Severity Zones*, Jan. 23, 2023, available at <https://osfm.fire.ca.gov/media/qkmn1glc/2022-fhsz-faqs-jan-23-2023.pdf>.

⁴ Ibid.

⁵ California Department of Housing and Community Development (HCD), City of Rancho Palos Verdes' Accessory Dwelling Unit (ADU) Ordinance – Letter of Technical Assistance, Aug. 29, 2022, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/RanchoPalosVerdesADU-TA082922.pdf>.

⁶ HCD, Review of Berkeley's Accessory Dwelling Unit (ADU) Ordinance under State ADU Law (Gov. Code, § 65852.2), Oct. 17, 2022, available at <https://www.hcd.ca.gov/sites/default/files/docs/policy-and-research/ordinance-review-letters/Berkeley-ADU-101722.pdf>.

Requirement to Approve or Deny an ADU Application

The enactment of Senate Bill (SB) 897 (Chapter 664, Statutes of 2022) changed State ADU Law effective January 1, 2023, and a cursory review of the County's municipal code shows other sections of ADU governance that are not in compliance with current state law.⁷ (HCD may follow up with a more in-depth review of the County's ADU ordinance.) However, The County remains obligated to process ADU applications per Government Code section 65852.2, subdivisions (a)(3)(A) and (b)(1), which require a permitting agency to "either approve or deny [an] application to create or serve an accessory dwelling unit or a junior accessory dwelling unit within 60 days from the date the permitting agency receives a completed application." Notably, Government Code section 65852.2, subdivision (a)(7), states, "No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit under this subdivision." The absence of a compliant ordinance therefore cannot preclude the County from acting to approve or deny a permit to create an ADU.

Housing Crisis Act

Denying ADUs in this manner would likely also constitute a violation of provisions of the Housing Crisis Act of 2019 (HCA). The HCA prohibits a local government from "enact[ing] a development policy, standard, or condition" that would have the effect of "[c]hanging 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 in effect at the time of the proposed change, below what was allowed under the land use designation or zoning ordinances ... in effect on January 1, 2018." (Gov. Code, § 66300, subd. (b)(1)(A).) The statute defines "reducing the intensity of land use" to include "any other action that would individually or cumulatively reduce the site's residential development capacity." (*Ibid.*) According to the County general plan, outlined in the most recent Housing Element⁸ on page 51, the County intends to use ADUs to meet its housing goals and has a goal of 450 ADUs annually. A prohibition in this manner does indeed reduce the intensity of land use of parcels within the affected areas and may interfere with implementation of the County's housing element.

⁷ Although it is not the scope of this letter to provide complete findings of noncompliance, it should be noted that sections 22.140.640 (C), (E), (F)(1), (G)(1)(B), (G)(1)(d)(ii)(2) and (3) conflict with current state law.

⁸ Revised County of Los Angeles Housing Element (2021-2029), May 17, 2022, available at <https://planning.lacounty.gov/wp-content/uploads/2022/11/housing-element-20220517.pdf>.

Conclusion

In summary, the County may not deny ADU applications in VHFHSZ areas due to a lack of two vehicular means of egress without making the necessary findings to justify such a restriction. HCD welcomes the opportunity to assist the County in fully complying with State ADU Law. Please contact Nicholas Green of our staff at Nicholas.Green@hcd.ca.gov for more information.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Zisser', with a stylized flourish extending to the right.

David Zisser
Assistant Deputy Director
Local Government Relations and Accountability