



Need for EIR to Convert Bonus ADU Code to SDAs

Executive Summary

In the opinion of Neighbors For A Better San Diego, an environmental impact report (EIR) should have been conducted before approval of the 2020 Accessory Dwelling Unit (ADU) Code, which far exceeded California ADU code. The city claimed that it was “statutorily exempt from CEQA pursuant to CEQA Guidelines 15282(h), which includes the adoption of ordinances to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code.”¹

This omission should not be repeated. With the introduction of one mile Sustainable Development Areas (SDAs), an EIR is required given the dramatic geographic expansion of the ADU Bonus Program beyond the confines of the Transit Priority Areas (TPAs).

Scope of San Diego Bonus ADU Program Beyond State ADU EIR Exemption

In 2020, the City’s 15162 Evaluation claimed the ADU and JADU ordinances were exempt from CEQA because they were aligning local code with state regulations. However, the Planning Department (Planning) also acknowledged that the ADU regulations would “fully comply with and **exceed the requirements of state law.**”¹

Staff specifically noted this to be the case regarding setbacks and parking requirements. However, when it came to affordable ADU incentives, Staff stated:

“AB 671, passed in late 2019, requires local jurisdictions to incentivize the construction of deed-restricted affordable ADUs, without specific parameters or direction as to what those incentives should be.”¹

It is true that AB671 was not explicit in defining the incentives required to produce affordable ADUs, leaving it up to the local entities:

65583(c)(7) Develop a plan that incentivizes and promotes the creation of accessory dwelling units that can be offered at affordable rent, as defined in Section 50053 of the Health and Safety Code, for very low, low-, or moderate-income households. For purposes of this paragraph, “accessory dwelling units” has the same meaning as “accessory dwelling unit” as defined in paragraph (4) of subdivision (i) of Section 65852.2.³

This left the door open for municipalities to be creative in their approaches and they have been. The attached appendix illustrates that San Diego’s approach was and is, by far, the most

neighborhood-intrusive incentive, creating backyard and, in some cases, front yard ADU apartment complexes in older neighborhoods with investor-favorable ratios of existing houses to lot sizes. Where other California governments provide ready-made ADU blueprints and streamlined permits as their affordability incentives, San Diego provides **unlimited bonus ADUs** in exchange for, to date, **only moderate-income ADUs that are rented at 110% AMI, which are equivalent to market-rate.**

Because no parameters were provided for affordable ADU incentives, Planning chose to focus on that and not to mention that CA ADU code requires a municipality to permit **only one ADU** and one JADU on a single-family lot:

65852.2(e)(1) Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit within a residential or mixed-use zone to create any of the following:

(A) One accessory dwelling unit and one junior accessory dwelling unit per lot with a proposed or existing single-family dwelling...⁴

As such, the San Diego ADU Bonus Program, which permits up to three ADUs on a single-family zoned lot outside of a Transit Priority Area and **unlimited ADUs** on single-family lots (up to the FAR) inside the TPA, **far exceeds California ADU law and represents a huge potential density increase versus state law.** Similarly, San Diego’s ADU Bonus Code allows unlimited ADUs (up to the FAR) inside the TPA on multi-family lots, whereas state code allows two (not counting in currently uninhabited space).

To make clear the difference in possible environmental impacts the San Diego Bonus ADU code represents, the City is now receiving permit requests for up to 11 ADUs on single-family parcels and up to 148 ADUs on multi-family parcels. This increase in density was not factored into the CA ADU law, nor could it have been considered in the San Diego 2008 General Plan referenced in the 15162 Evaluation.¹ (The ADU Bonus Program was never mentioned in the CAP FEIR.)

No.	Code Section(s)	AMENDMENT DESCRIPTION and CEQA 15162 EVALUATION
11	<ul style="list-style-type: none"> <li data-bbox="349 1598 451 1625">• 141.0302 	<p data-bbox="560 1442 802 1465"><u>Affordable ADU Incentives</u></p> <ul style="list-style-type: none"> <li data-bbox="560 1493 1430 1549">• Amended ADU regulations will provide an ADU bonus that allows for 1 additional ADU for every affordable ADU deed-restricted for 15 years, with a maximum of 1 bonus ADU outside of TPAs <p data-bbox="560 1581 1448 1812">CEQA 15162 Evaluation: AB 671 requires local jurisdictions to incentivize the construction of deed-restricted affordable ADUs, without specific parameters or direction as to what those incentives should be. The proposed amendment would allow the construction of 1 additional ADU for every ADU deed-restricted to very low, low, or moderate income households for a period of 15 years, with a maximum of 1 bonus ADU outside of TPAs. Additional dwelling units within TPAs would comply with General Plan and CAP goals of providing new residential units in TPAs. The proposed amendments would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects beyond those covered by the 2008 General Plan EIR and CAP FEIR.</p>

At a walking distance of 1 mile, and using the 2035 Regional Transportation Plan, over 50% of all single-family parcels in San Diego would be included in the SDA. Based on the characteristics of bonus ADU projects that have been built since the ordinance went into effect in 2021, Neighbors For A Better San Diego estimates that over 700,000 ADUs could be built inside the SDA and over 300,000 outside the SDA, for a total of roughly 1 million units. (See Attachments B.1 and B.2 for details.)

Extending the Distance to Transit to One Mile is Outside State ADU EIR Exemption

The city's adoption of SDAs up to one mile from mass transit significantly increases the need to understand the environmental impacts of San Diego's ADU Bonus Program. The 15162 Evaluation by Planning stated:

“Additional dwelling units within TPAs would comply with General Plan and CAP goals of providing new residential units in TPAs. The proposed amendments would not result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects beyond those covered by the 2008 General Plan EIR and CAP FEIR.”¹

However, the additional dwelling units will no longer be within the TPAs and, of course, ADUs were not a part of San Diego municipal code at all when the 2020 General Plan EIR was conducted. Because these new SDAs extend up to 1 mile away from transit, they no longer meet the goals of the Climate Action Plan (CAP) or the San Diego General Plan/City of Villages/Compact Walkable Neighborhoods goals and it is highly likely that the EIRs cited to support this ADU Bonus program in 2020 would not do so now. The 2022 CAP FEIR² is inextricably linked to the TPA. The CAP's strategies focus on development close to transit and within the TPA:

Focus new development in areas that will allow residents, employees and visitors to safely, conveniently and enjoyably travel as a pedestrian, or by biking, or transit, such as **in Transit Priority Areas (TPAs)**, and areas of the city with the lowest amount of vehicular travel.²

To **increase housing production in areas located closest to transit**, and to provide more pedestrian, cyclist, and transit investments, particularly in areas with the greatest needs, and where such investments would serve the most people.²

Focus on delivering new mixed-use development on sites, including vacant and underutilized lots, **located near transit, such as in TPAs and areas of the City of San Diego with the lowest amount of vehicular travel.**²

SDAs will, by definition, encourage dense development ½ to one mile farther from transit stops than TPAs, rather than “increasing housing production in areas located closest to transit.”² SDAs will also add at least 6,603 new acres of land previously ineligible for the ADU Bonus Program. These new areas may be in high fire areas, flood prone, etc. and cause extreme impacts. Based on its analysis, Neighbors For A Better San Diego estimates that over 40% of all parcels in the SDA are in Very High Fire Hazard Severity Zones. State law gives San Diego the discretion to exclude fire hazard zones from transit-oriented housing programs, but San Diego to date has not considered it.

An EIR evaluating both the impact of the San Diego ADU code, including the Bonus Density Program, and its expansion with the adoption of SDAs should be done to gauge the impacts of this increasingly neighborhood-invasive program. Further, this EIR should consider the cumulative impacts of the Complete Communities program, which is also contributing significant density increases into mature neighborhoods with aging infrastructure. All of this is happening without supportive infrastructure improvements by the City.

Conclusion

San Diego’s ADU code significantly exceeds the state’s ADU law, which was limited to a single ADU and JADU on a single-family zoned property. San Diego allows 2 additional outside of a TPA and an unlimited number inside the TPA. San Diego waived parking regulations on all ADUs. Because San Diego claimed that it didn’t need to do an EIR because it was “implementing state law”, no estimates of how many ADUs could be built inside and outside of the TPA were provided, which Neighbors For A Better San Diego estimates could be in the range of 700,000 to 1 million additional homes, including over 75,000 more homes just on the acreage added to the SDA over the TPA.

Given the magnitude of these estimates, and the profound impacts that ADUs are already having on many neighborhoods, San Diego should not have excused itself from conducting an EIR and assessing the impacts of its ADU bonus incentives.

Sources

¹https://sandiego.hylandcloud.com/211agendaonlinecouncil/Documents/ViewDocument/CEQA_15162_Memo_Housing_Legislation_Code_Update_Revised_20200827_Cor.pdf.pdf?meetingId=4082&documentType=Agenda&itemId=192833&publishId=440086&isSection=false

² https://www.sandiego.gov/sites/default/files/san_diegos_2022_climate_action_plan_0.pdf

³ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB671

⁴

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65852.2&lawCode=GOV