

This letter considers various aspects of the State's recently enacted Accessory Dwelling Unit (ADU) law including: 1) the cited reasons for the law, 2) the meaning and significance of the State's power grab, 3) an analysis of important provision of the Law, 4) alternatives to specific provisions of the law, 5) suggested implementation strategies, and finally 5) suggested actions for the citizenry and locally elected officials.

Background - Population: Understanding both California's and Santa Barbara County's projected population growth is essential to understanding the genesis of the ADU law. In its March 8, 2017 *State Population Projections* press release⁽¹⁾, California's Department of Finance (DOF) projects a 30% increase for all of California's population from 2016 to 2060 and a 21.5% increase for Santa Barbara County during that same period. The report acknowledges a decreasing birth rate and an increasing death rate among those now living in California. The Total Fertility Rate (TFR) of **current** residents of California (irregardless of legal status) in 2000 was 2.1, falling to 1.8 in 2015 and is projected to be 1.6 in 2060. In developed countries, any TFR below 2.1 results in a decreasing population, although it often takes a generation to be felt due to "population lag"⁽²⁾. Even with an increasing life expectancy, California's current population (excluding projected immigration⁽³⁾) is no longer growing; it is actually projected to decrease as the large Baby Boomer population bubble ages and dies. It is **only** when projected immigration is considered that the DOF report is able to arrive at its 30% increase by 2060. But in its February 2, 2017 *Modeling methodology for the 2016 baseline California population projections*⁽⁴⁾, the report acknowledges that future projections of immigrant flow are based on past data. Curiously, the flow of immigrants needed to fulfill the DOF projections seems to be contradicted by the an article in the April 4, 2016 Sacramento Bee⁽⁵⁾ which states:

Net migration into the state has slowed to a trickle. During the last 11 years, California saw a net gain of 136,000 domestic and international migrants. During the prior 11 years, the state saw a net gain of more than 1 million. And from 1980 through 1990, net migration topped 3.5 million.
During the last 15 years, hundreds of thousands of California residents have left for places where it is cheaper to live, IRS data show. Immigration from Mexico, which previously drove much of California's growth, has slowed markedly. In both cases, population growth has shifted disproportionately to Texas.

Most immigrants move to get a better job, yet the DOF report does not address the probable change in the job market as Robotics and Artificial Intelligence replaces workers, particularly low wage earners. I am not suggesting the DOF report is fraudulent nor that the data was manipulated, I am suggesting that conclusions drawn from a report that has not consider all relevant factors may lead policy makers to draw incorrect conclusions resulting in what I consider to be deeply flawed legislation.

Background - Planning: Starting in 1927⁽⁶⁾, California enabled, encouraged , and more recently required local governments to plan their own communities. In the last several decades, the State has tried to force local jurisdictions to increase their local housing supply to meet State projected population growth targets, but because of local citizenry push back, these attempts have been greatly diminished and largely thwarted. Exasperated, frustrated, and citing a true, but seriously misleading statistic that *In the last decade less than half of the needed housing was built*⁽⁷⁾ the State is now imposing (decreeing actually) an autocratic "centralized government" planning mandate - a power

grab of monumental significance. The ADU law eliminates most local government (and all neighbor) input/control of their communities, prohibits all consideration of environmental consequences, and does it using a “one size fits all” approach. Yet the March 8, 2017 DOF report (pages 11 and 12), shows vastly different expected growth rates throughout the State ranging from a high of 39% population increase for some Counties to a low of a 12% population decreasing for others.

California’s local government planning policies and procedures has created world class communities with unique characteristics that are now in full bloom, but that can be deflowered with mere indifference, not to mention intentional disregard. Shifting control away from the time tested, successful planning processes used for 90 years to an untested model stands a good chance of degrading our neighborhoods, our communities.

Background - Miscellaneous Issues: Global warming (notably shifting rain patterns and a projected drying of Southern California⁽⁸⁾) and increasing gridlock top the list. Neither issue is addressed in the DOF report nor the ADU law.

Background - “Its The Economy Stupid”⁽⁹⁾: Governments thrive and politicians are re-elected when economies are growing and jobs are protected. Currently 4% of California’s jobs are construction related⁽¹⁰⁾. But detailed analysis evaluating “energy use” as a proxy for growth clearly demonstrates this is un-sustainable in the mid to long terms⁽¹¹⁾. Realizing that populations are stabilizing, new economic models are being proposed⁽¹²⁾, but none have received wide consideration, much less acceptance. Rather than explore ways to lead the world in creating a sustainable economy with a stabilizing population, the State looked to the past. We deserve more.

The Specifics of the ADU Law:

In the State’s *Accessory Dwelling Unit Memorandum December 2016*⁽¹³⁾ provides the rationale for the ADU Law, including:

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, AT BELOW MARKET PRICES within existing neighborhoods. (emphasis added).

Given that greed rules the marketplace, all newly created ADUs will be rented at market rate. The State’s premise is wrong. If the State wants to increase the supply of BELOW MARKET rental housing, it must mandate or at least allowed local communities to require, “long term affordability” as a criteria for approval. This provision is not in the ADU law.

(6) The state is falling far short of meeting current and future housing demand WITH SERIOUS CONSEQUENCES FOR THE STATE’S ECONOMY, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners. (emphasis added).

There is nothing in the ADU law to addresses the reduction in greenhouse gases either by requiring use of low emission vehicles, linking ADU location to job “new jobs” nor does this account for a stabilizing population.

(7) Accessory dwelling units offer lower cost housing to meet the needs of

existing and future residents within existing neighborhoods, WHILE RESPECTING ARCHITECTURAL CHARACTER. (emphasis added).

Architectural character is both a parcel specific and neighborhood wide quality. The ADU law allows, nay requires, that parking litter the neighborhood streets, particularly in the community's smaller parcels. Expect increasing animosity (and potentially outright arguments) between neighbors as the "public's parking" is increasingly claimed by private parcels. There is no provision allowing local jurisdictions to restrict the number of cars per parcel, nor to require alternate transportation methods that technology is enabling. Without these, we can kiss our neighborhood's architectural character and ambience goodbye.

The ADU law does permit local jurisdictions to establish comprehensive design standards that if properly developed will retain the architectural character of the community on mid to larger size parcels (where the cars are parked discreetly on site).

For those regularly involved in planning approvals, it is clear that "problematic" proposals are: 1) too big/too intense, 2) too close to the property lines, 3) too tall, 4) "inconsiderately" placed, and/or 5) too noisy.

- 1) **Too big/too intense - LOT COVERAGE:** "Parcel Intensity" considers both the total square feet of all building(s) on site and their use(s). While there are exceptions to this rule, a parcel used by two families is more intensely used than the exact parcel with only one family. Since the addition of an ADU by definition increases the parcel's "use", the only variable left in determining parcel intensity is total square feet of all building(s) on the parcel. Thankfully, the ADU law specifically permits local jurisdictions to consider "Lot Coverage"⁽¹⁴⁾ as one of the criteria for approval. By accepting the premises that 1) neighborhoods retain their character only if all parcels have similar Intensities from one to the next, and 2) ADUs intensify use, a reasonable conclusion can be drawn that parcels containing ADUs should have a total building size (square feet) at or below the neighborhood average⁽¹⁵⁾. Some will consider the use of "neighborhood average" as being too restrictive, but since the State mandates Ministerial Approval⁽¹⁶⁾, let us err on the side of smallness, at least until we gain experience with the effects this law will have on our community. It is easy to "relax" this standard in the future, but given the "by right" nature of the ADU law, it will be nearly impossible to dial Lot Coverage back if the initial values prove too generous.
- 2) **Too close to the property lines - SETBACKS:** newly constructed ADUs should be at twice the zone's required setback, and if a jurisdiction has some form of setback averaging provisions, this technique should not be allowed for ADUs,
- 3) **Too tall - HEIGHT LIMIT:** newly constructed ADUs should be limited to 12'-0" in height,
- 4) **Inconsiderately placed - SETBACKS COUPLED WITH HEIGHT LIMIT AND HEDGING:** by restricting building height and increasing setbacks lines most views will be unaffected by new ADUs. Even with these additional requirements, all new ADUs should provide dense hedges of between 6-8 feet in height, placed to shield the ADU from adjoining development, and
- 5) **Too noisy - SETBACKS:** ADU "activity areas", not just the building, must be located outside of the ADU setbacks.

Alternative Implementation Strategies:

- 1) **Do as expected:** Each jurisdiction crafts an ordinance closely adhering to the

State's specified standards that applies to all parcels without consideration to local environment, General Plan, or local community characteristics.

2) **Phase-in carefully and thoughtfully:** The ADU law permits local jurisdictions to designate areas where units may be permitted, and "*the designation of areas may be based on criteria, that may include, but are not limited to*"⁽¹⁷⁾ and then specifies certain criteria. Any criteria can be selected to limit the ADU law. Taking advantage of this provision, a community can phase-in the ADU law while monitoring its affect. Start with the 10% largest parcels within its jurisdiction and then after a year or two permit the next largest 10% parcels, etc. During each tranche, the benefits and impacts of ADUs can be assessed, and if needed, tweaks to the local ADU law can be made. Without doubt, as parcels gets smaller, more community/neighborhood impacts are probable. This phased approach enables local jurisdictions to make rational, fact based assessments about ADUs and there affect on the community's health and safety.

3) **Consider the law's intent and meaning, and implement it properly:** Implement the State's ADU law as minimally as possible.⁽¹⁸⁾ But if the community accepts the premise that affordable housing needs to and can be solved by ADUs, the local jurisdiction immediately implements its own ADU law adopting the good provisions of the State's law but correcting the egregious provisions.

For instance the following provisions can be **added:** 1) long term affordability is required for approval, 2) target community health and safety employees (hospital workers/police/fire) as owners/occupants within the community, 3) link housing to work proximity similar to Cottage Hospital's condo project on Micheltorena, 4) discretionary review mandated, 5) provide sensible parking requirements by: A) restrict the number of motor vehicles of all types for the entire parcel, or B) require all parking to be on site, C) require that when an all electric "ride sharing" capability is available, that it be used, D) requires energy efficient vehicles⁽¹⁹⁾.

And the following provisions should be **deleted:** 1) ADUs are granted "by right", 2) no other planning law to be considered, 3) no environmental review permitted, 4) parking standards provisions, exemptions, etc. within existing ADU law removed.

Earlier, concerns were expressed that the State's ADU law focused solely on the production of new housing while ignoring other Challenges that are integrally connected to our well being.

Challenges We Face	State's ADU Law	"Improved" ADU Law
1) Insufficient Supply of "Affordable" Housing	Attempts to Solve affordability by flooding the market with smaller, widely distributed housing. Uses the same thinking process as "widening the 405 freeway"... in the early 2000s. Likely to result in many more medium to upper income residents in Coastal California, without producing any meaningful increase in Affordable Units.	Directly Addresses this core issue. Mandates units be long term affordable.

2) An Increasing World Population	<p>Provides new housing possibly as much as 30% of existing. Paves the way for increasing population even in a stabilizing environment.</p>	<p>Does produce housing, but probably less than the State's program. Is concerned with local issues, is "neutral" about macro-population trends. Allows the local community to determine its own future.</p>
3) Increasing Gridlock	<p>Makes Gridlock Worse - more housing without any link to occupant's job, no ride-sharing required.</p>	<p>Links housing location to employment - addresses the core issue directly. Will reduce gridlock.</p>
4) Global Warming	<p>Does address through California's Energy Building Standards applied to ALL construction, not just ADUs.</p> <p>Does Not mandate, require, etc. any changes to number, type (hybrid/all electric), linking ADU occupants to work that is "close" to the ADU, or ride sharing. Note: transportation related greenhouse gas emission account for 27% of all greenhouse gases⁽²⁰⁾.</p>	<p>Does addressed through California's Energy Building Standards applied to ALL construction, not just ADUs and targets new occupants to work within community, reducing gridlock and increasing transportation energy efficiency. Specifies energy efficient vehicles for occupants.</p> <p>Does require ride sharing when available, does require all energy efficient vehicles.</p>
5) Uncertain Water Supply, at least in Southern California	<p>Prohibits any Environmental Review which would enable planning and implementation of timely water infrastructure. Since ADUs are "by right", no ADUs can not be stopped until there is a crisis throughout the entire community.</p>	<p>Permits Environmental Review to anticipate and solve these exact kind of issues. If issues of water availability arise, ADUs can be throttled back or stopped through the discretionary review process.</p>
6) Robotics and AI	<p>Is blind to probable changes in how "work" is done and whether or not more low income workers are even needed in tomorrow's economy. Even if all new work is accomplished by automation, the population of California continues to expand.</p>	<p>Allows continuous monitoring of the local economy and permits changes to be made to only allow needed affordable housing.</p>

7) Economic Considerations and Consequences	Facilitates the belief that unlimited growth is not only possible, but good. Is blind to probable global capacity constraints of at least fresh water and maybe food.	Is neutral to changing economic considerations. Can be used to promote or limit economic activity as deemed wise at the time.
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Summation: Citizens of Santa Barbara County, please consider the significant and probable devastating affect that centralizing planning law will have on our communities. This paternalistic/autocratic approach does not celebrate all that is great about California, it flies in the face of it. Please contact your local leaders and ask them to adopt the alternatives to the ADU law that I have suggested above, tailored to their communities . Then, please contact our local State Assembly Member and State Senator and ask them to repeal or revise the existing ADU Law by returning all planning functions to local governments. Emboldened by their success with the ADU law, the Legislature is extending its consolidation of state wide centralized planning to all multifamily development with SB 35 Weiner, now being considered. Please contact your State representatives to stop this legislation. We are not in a housing crisis as is portrayed by the State, we are in a transitional phase to a sustainable economy with a stabilized population. Spread the word, send this letter to your friends around the State.

Local elected officials, thankfully the ADU does provide ways to significantly minimize its negative impacts on our communities. Seize them! I know Land Use decisions are fraught with controversy and by slowly rolling out the ADU law as suggested it will put you under the gun multiple times, but it is the right thing to do. For the good of your community, please tread carefully and slowly. The State’s approach is unwarranted, unjustified, poorly considered, and does not even achieve its primarily stated goal of providing below market rate rental housing. Please use your political skills to bring together community minded individuals to find the best solution for your jurisdiction.

FOOT NOTES:

- (1) http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/P_PressRelease.pdf
- (2) Total Fertility Rate: https://en.wikipedia.org/wiki/Total_fertility_rate
 Lowest Fertility Rate in 2017: <http://www.cnn.com/2017/08/08/health/fertility-rate-lowest-recorded-2017/index.html>
 Major Population Trends in the US and World: <http://www.pewresearch.org/fact-tank/2017/04/27/10-demographic-trends-shaping-the-u-s-and-the-world-in-2017/>
 Also see: Sub replacement Fertility https://en.wikipedia.org/wiki/Sub-replacement_fertility
- (3) “Immigration” in the DOF report includes all ethnicities, income levels, “legal status” and the migrant’s place of origin. Place of origin may be “international” (from any foreign country) or “domestic” (from any of the other 49 States).
- (4) http://www.dof.ca.gov/Forecasting/Demographics/Projections/documents/P_MethodologyReport_v12.pdf
- (5) <http://www.sacbee.com/site-services/databases/article69054977.html>
- (6) Milestones of Planning in California - see page 9
https://www.opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf
 When the United States granted Statehood to California, it transferred its “policing powers” to the of state; powers that include regulating land use. While retaining all policing powers for itself, starting in 1927, the State permitted local jurisdictions to formulate, codify, and enforce their own

land use regulations once they adopted their own “General Plan”. This “local first” jurisdictional hierarchy has resulted in the communities we love today.

- (7) The drop in new housing was directly related to the near collapse of the banking system, a slowing of net immigration and a reduction in TFR resulting in a stabilizing current population, not some nefarious and simultaneous conspiracy of ALL local jurisdictions throughout the State. The quoted passage comes from the Accessory Dwelling Unit Memorandum, <http://www.hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf> Page 1
- (8) <https://www.epa.gov/sites/production/files/2016-09/documents/climate-change-ca.pdf>
AND
http://www.ucsusa.org/sites/default/files/legacy/assets/documents/global_warming/preparing-for-climate-change-impacts-in-los-angeles.pdf
- (9) Its the economy stupid: https://en.wikipedia.org/wiki/It%27s_the_economy,_stupid
- (10) California Labor Force Statistics: <https://www.bls.gov/eag/eag.ca.htm>
- (11) <https://dothemath.ucsd.edu/2011/07/can-economic-growth-last/>
AND
<https://dothemath.ucsd.edu/2011/07/galactic-scale-energy/>
- (12) One example can be found at: <http://www.steadystate.org/>
- (13) Accessory Dwelling Unit Memorandum December 2016, See Page 7
<http://www.hcd.ca.gov/policy-research/docs/2016-12-12-ADU-TA-Memo.docx.pdf>
- (14) “Lot Coverage” is specifically permitted in 65852.2(a)1(B)(i), but never defined in that law. For the purposes of this missive, “Lot Coverage” is total gross square feet of ALL buildings on site divided by a gross lot area, e.g. if you have 2234 square foot house + garage + storage shed + ADU, etc. on a 5000 square foot parcel, the lot coverage is .4468.
- (15) The County Assessor’s Office has a computerized database for all parcels in the county. These records can be obtained in “spreadsheet” format for easy manipulation. With this data, each community can develop a “locally relevant” determination for Lot Coverage.
- (16) https://en.wikipedia.org/wiki/Ministerial_act AND 65852.2 (a)(3)
- (17) California Statute: 65852.2 (a)(1)(A)
- (18) The ADU law prohibits TOTAL preclusion of ADUs in a jurisdiction - *Accessory Dwelling Unit Memorandum December 2016 Page 8* - How far can this be taken?
- (19) ALSO, please do an internet search “single occupant vehicle”.
- (20) <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>