
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair
2021 - 2022 Regular

Bill No:	AB 500	Hearing Date:	June 29, 2021
Author:	Ward		
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Urgency:	No	Fiscal:	Yes
Consultant:	Katharine Moore		

Subject: Local planning: permitting: coastal development: housing

BACKGROUND AND EXISTING LAW

The California Coastal Commission (Coastal Commission) was established by voter initiative in 1972. The Legislature later made the Coastal Commission permanent through the adoption of the California Coastal Act of 1976 (Coastal Act). The Commission plans for and regulates the use of land and water in the coastal zone (which excludes the San Francisco Bay).

The Coastal Commission is an independent, quasi-judicial state agency, and is composed of 12 voting members appointed by the Governor, the Senate Rules Committee, and the Speaker of the Assembly (four each). Six members are public members, and six are locally elected officials from specified coastal areas. There are also three ex officio non-voting members of the Coastal Commission.

The Coastal Commission's mission statement states that it "is committed to protecting and enhancing California's coast and ocean for present and future generations." The Coastal Commission does so "through careful planning and regulation of environmentally sustainable development, rigorous use of science, strong public participation, education, and effective intergovernmental coordination."

Development activities in the coastal zone generally require a coastal development permit from the Coastal Commission or from a local government with a local coastal program certified by the Coastal Commission. Development is broadly defined to include construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters.

In 1977, the Coastal Act's policy provisions included the protection of affordable housing. In implementing this policy, the Coastal Commission prohibited the demolition of low- and moderate-income housing for reasons other than health and safety. The Coastal Commission also included density bonuses and reduced parking requirements in their development guidelines to prioritize new affordable housing opportunities. The guidelines were revised in 1979 and 1981 to require in-lieu fees, land dedication, and housing credits in certain circumstances. In addition, the Coastal Commission required that specified percentages of proposed housing units be set aside for low- and moderate-income households. For the four years between 1977 and 1981, the Coastal Commission's inclusionary housing program resulted in the approval of 5,000 affordable units. During that same time period, the Coastal Commission also prohibited the demolition of more than 1,100 existing affordable housing units, and collected approximately \$2 million in in-lieu fees for affordable housing. In 1981, SB 626 (Mello,

Chapter 1007, Statutes of 1981) repealed the Coastal Commission's authority to protect and provide affordable housing.

According to the California Housing Partnership Corporation, the state needs almost 1.3 million more affordable rental homes to meet the needs of its lowest income renters.

Existing law, pursuant to Coastal Act:

- 1) Establishes the Coastal Commission in the California Natural Resources Agency.
- 2) Establishes numerous Coastal Act policies including that:
 - a) Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.
 - b) New development shall minimize risks to life and property in areas of high geologic, flood, and fire hazards.
 - c) Environmentally sensitive habitat areas (ESHAs) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. Development in areas adjacent to ESHAs shall be designed and sited to prevent impacts that would significantly degrade those areas, as provided.
- 3) Provides for the planning and regulation of development within the coastal zone.
 - a) A person planning to perform or undertake any development in the coastal zone is required to obtain a coastal development permit from the Coastal Commission or local government enforcing a local coastal program (LCP) certified by the Coastal Commission.
 - b) A LCP cannot be required to include housing programs and policies.
 - c) The coastal zone means the coastal land and waters of California, and includes the lands that extend inland generally 1,000 yards from the mean high tide line, as specified, with various exceptions including the San Francisco Bay.
 - d) Development means, among other things, the placement or erection of any solid material or structure on land or in water.
- 4) Requires the Coastal Commission's review of a land use plan to be limited to its administrative determination that the plan does or does not conform to Coastal Act policies, as provided.
- 5) Declares that the Legislature finds that:
 - a) It is important for the Coastal Commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

- b) The Coastal Act is not intended, and shall not be construed as authorizing the Coastal Commission to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor, as provided.
- c) The basic goals of the state for the coastal zone include to assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

PROPOSED LAW

This bill would reinstate the Coastal Commission's affordable housing policies and provide for streamlined permitting for accessory dwelling units by the Coastal Commission, among other things.

Specifically, this bill would:

- 1) Establish Coastal Act policies that:
 - a) Housing opportunities for persons and families of low and moderate income, as defined, shall be protected, encouraged, and, where feasible, protected. The Coastal Commission is prohibited from expressly demonstrating preference for housing projects or policies that directly compete with visitor-serving facilities.
 - b) New development in areas with adequate public transit shall preserve and enhance the supply of higher density residential, multifamily residential or mixed-use development.
- 2) Remove the prohibition on the requirement that local coastal programs include housing policies and programs.
- 3) Require, no later than January 1, 2024, that a local government in the coastal zone that has a certified land use plan or a fully certified local coastal program adopt an amendment to that plan or program specifying streamlined permitting procedures for approval of the following, as specified:
 - a) Accessory dwelling units or junior accessory dwelling units.
 - b) 100% affordable housing projects where at least 25% of the units are designated for supportive housing, as specified.
- 4) Require that the amendment required by (3) be submitted to and processed and approved by the Coastal Commission and shall include provisions for the issuance of administrative permits, coastal development permit waivers or other streamlined permitting procedures in nonhazardous areas, as provided.
 - a) The Coastal Commission retains the authority to deny a permit waiver or exemption, process an appeal, or impose conditions to achieve consistency with Coastal Act policies, as specified.
- 5) Require the Coastal Commission to provide guidance that include sample language to all local governments subject to (3) by July 1, 2022, as provided.

6) Provide for reimbursement of certain state mandated local costs.

ARGUMENTS IN SUPPORT

According to the author, “California continues to experience a severe affordable housing crisis, with a deficiency of three million homes and growing. This issue is exacerbated in residential areas of the coastal zone, where developments face various challenges. The Legislature has passed laws to streamline the development processes for ADUs and supportive housing – however while those helped cities, they did not extend to CDPs, which are a state process.”

“AB 500 will require local jurisdictions to update and streamline the regulatory CDP process for ADUs, junior ADUs, and supportive housing within the coastal zone. I am working with the Commission to make sure the requirement itself is simple and expeditious.”

“The bill also reinstates the Coastal Act affordable housing policies that were repealed 40 years ago and will give the Commission the authority to protect existing affordable housing and ensure that new affordable housing is consistent with Coastal Act policies.”

ARGUMENTS IN OPPOSITION

The League of California Cities, writing in opposition, states, “AB 500 disregards the housing element process and instead adds an additional bureaucratic agency to an already complex process involving [the Department of Housing and Community Development] and local governments.”

The letter continues, “Cal Cities and RCRC oppose legislation that grants authority to the Commission that is inconsistent, duplicative, and overlapping with the authority of other regulatory agencies.” They further object to the removal of the provision banning housing policies and programs from being required content within a LCP. “California desperately needs more housing at all income levels. Unfortunately, AB 500 will not help spur much needed construction. Rather, this measure will further complicate the planning and zoning process, which will lead to additional uncertainty and delay.”

Additional opponents make similar arguments and express concerns that the Coastal Commission will impose “unreasonable” environmental restrictions or other requirements that will delay housing production, and that the Coastal Commission will impose excessive in-lieu fees, among other things. Recommendations include amendments to speed the required LCP approval process, and limit the Coastal Commission’s ability to impose affordable housing requirements in excess of those required by the local jurisdiction.

COMMENTS

This bill is triple-referred. The Senate Governance and Finance Committee received the second referral for this bill, and the Senate Housing Committee received the third. The Senate Housing Committee staff has submitted a comment which is included below. Elements of the bill outside of this Committee’s jurisdiction are included herein for completeness and context only.

Hazards and new development in the coastal zone. Last year, over 8,000 wildfires burned almost 4.4 million acres of the state. This broke the previous record of 1.8 million acres set in 2018. Five of the six largest fires in the state's modern history burned at the same time in 2020. In the last five years alone, wildfires have destroyed tens of thousands of structures (mostly homes), resulted in insured losses in the billions of dollars, damaged prime wildlife habitat, exposed millions to poor air quality, and, tragically, resulted in the deaths of hundreds of Californians. Destruction and damage of homes due to wildfires have exacerbated the state's housing crisis. In the last several years, the state has taken and continues to take decisive action to address catastrophic wildfire by seeking to mitigate the hazards posed by wildfire through mandating improved building standards and planning to mitigate risks. Catastrophic wildfires, such as the 2018 Woolsey Fire and the 2017 Thomas Fire, impact the coastal zone too.

Existing Coastal Act policies require the Coastal Commission to minimize the risks to life and property from hazards, including from wildfire. In areas of the state where the local jurisdiction has responsibility for fire protection, CAL FIRE is required to identify those areas of very high risk as "very high fire hazard severity zones" (VHFHSZ) using specified criteria that include fuel loading, terrain, and the presence of Santa Ana winds, among other factors. The coastal zone includes VHFHSZ in some locations. A recent study by Next10 evaluating the impacts of wildfire and development in the state, suggests, in part, that providing for infill development and avoiding development in very hazardous areas may, in some instances, be a more sustainable method to provide for housing and public safety, among other things. A review of Coastal Commission staff reports of a few proposed development projects suggests that wildfire and other hazards are rigorously addressed in their analyses and incorporated, as feasible, into staff recommendations.

Nevertheless, the Committee may wish to clarify that significant fire risk – in addition to sea level rise and particularly in the VHFHSZ – poses a hazard and should be specifically considered in the proposed new Coastal Act policy regarding higher density housing. [Amendment #1]

Recent Coastal Commission memos regarding Accessory and Junior Accessory Dwelling Units (ADUs, JADUs). State law changed in recent years to promote the building of ADUs and JADUs (see, for example, SB 1069 (Wieckowski, Chapter 720, Statutes of 2016) and AB 2299 (Bloom, Chapter 735, Statutes of 2016), among others). In response to these changes, the Executive Director of the Coastal Commission issued two memos dated April 18, 2017, and November 20, 2017, respectively, providing guidance to local jurisdictions on how to incorporate these changes into LCP amendments, and facilitate the addition and approval of ADUs and JADUs in the coastal zone. These memos provided examples of when a CDP exemption or waiver could be applicable to a proposed ADU or JADU, and, therefore, where permit streamlining would be possible. In addition, the later memo stated that "whenever possible" the Coastal Commission would review a local jurisdiction's proposed LCP amendments to address ADU and JADUs as minor or "de minimus" changes. Minor changes to LCPs can be approved administratively.

Affordable housing and the Coastal Commission. When Coastal Act policies specific to affordable housing were in place from 1977 – 1981, the Coastal Commission approved

5,000 affordable units and prevented the demolition of another 1,100 units in the coastal zone. (It is unclear that all of the approved units were built, although at least 1,000 were built by 1984.) In guidance provided by the Coastal Commission at the time, the general rule stated was that larger multi-unit projects (e.g. more than 20 units built for sale) would have a 25% affordable housing requirement. Smaller multi-unit projects of 10 – 20 units built for sale would likely be subject to in-lieu fees for affordable housing. If the proposal was to build 9 or fewer units for sale, the general rule was that an affordable housing component would be infeasible unless otherwise required by the local jurisdiction. Housing built specifically for the rental market would not be subject to these requirements.

The Coastal Commission's lower cost accommodation program. Although the Coastal Commission's ability to implement affordable housing policies was removed in 1981, its ability to protect and provide lower cost visitor-serving accommodations was retained. Over the years, the Coastal Commission, while ensuring coastal development permits have conformed with the Coastal Act's lower cost accommodation policies, has denied some coastal development permits that would have eliminated existing lower cost accommodations, and has, in other instances, required lower cost accommodation to be constructed in conjunction with new higher cost hotels.

In addition, the Coastal Commission has collected over \$24 million in in-lieu fee mitigation for impacts to lower cost accommodations, and more than \$10 million of those fees have been used to provide lower cost accommodations along the state's coast. The Coastal Commission has collaborated with State Parks, the State Coastal Conservancy, regional agencies, local governments and non-profits on projects funded by the in-lieu fees. These projects include support for the Santa Monica Hostel, the restoration of the Crystal Cove Cottages in Orange County, and nearly 200 new campsites in State Parks. The Coastal Commission has undertaken an effort to document all past in-lieu fee requirements, and millions of dollars of these fees remain unspent.

Comments submitted by the Senate Housing Committee. "In recent years, the Legislature has gone to great lengths to respond to the housing crisis. It has done so by making it easier to approve denser, multifamily housing; requiring locals to plan and zone for denser housing in areas closer to transit and in infill sites; and investing heavily in desperately needed affordable housing for lower income families. In addition, recent and current legislative efforts seek to reverse the impacts of racist land use policies such as redlining, and abolish discriminatory zoning practices such as single-family zoning, particularly in high opportunity areas. The Senate Housing Committee is supportive of ensuring these efforts are applied equally across all areas of the state, including the Coastal Zone, and to authorize the Coastal Commission to protect and encourage housing opportunities for low and moderate income households. But it is equally important to ensure the application of higher density housing within the coastal zone is not too narrowly focused, as limiting the application of dense housing could further segregation. The Legislature should also be clear about the kinds of housing policies that the Coastal Commission is authorized to impose."

Recent related legislation

AB 663 (Bloom, 2017) would have reinstituted the Coastal Act's affordable housing policies for five years. (*This bill failed on the Assembly floor.*)

SUGGESTED AMENDMENTS

AMENDMENT 1

On p. 4, line 6, after “rise,” please insert:

“and areas not at significant risk of wildland fire, including, but not limited to, Very High Fire Hazard Severity Zones in Local Responsibility Areas, as defined in section 51177 of the Government Code,”

SUPPORT

Azul

Bolinas Community Land Trust

California Coastal Commission

Central Coast Alliance United for a Sustainable Economy

Coastal San Pedro Neighborhood Council

OPPOSITION

California Apartment Association (unless amended)

California Association of Realtors (unless amended)

California BOMA (unless amended)

California Building Industry Association (unless amended)

California Business Properties Association (unless amended)

California State Association of Counties

City of Newport Beach (unless amended)

Institute of Real Estate Management (unless amended)

International Council of Shopping Centers (unless amended)

League of California Cities

NAIOP of California (unless amended)

Rural County Representatives of California

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