
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair

2021 - 2022 Regular

Bill No: AB 500
Author: Ward
Version: 6/30/21
Consultant: Favorini-Csorba

Hearing Date: 7/8/21
Tax Levy: No
Fiscal: Yes

LOCAL PLANNING: PERMITTING: COASTAL DEVELOPMENT: HOUSING

Grants the California Coastal Commission land use authority related to housing in the coastal zone.

Background

Local land use planning. Planning and approving new housing is mainly a local responsibility. The California Constitution allows cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

State law provides additional powers and duties for cities and counties regarding land use. The Planning and Zoning Law requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, among other requirements. Cities’ and counties’ major land use decisions—including most zoning ordinances and other aspects of development permitting—must be consistent with their general plans.

Local governments use their police power to enact zoning ordinances that shape development, such as setting maximum heights and densities for housing units, minimum numbers of required parking spaces, setbacks to preserve privacy, lot coverage ratios to increase open space, and others. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

Coastal Act of 1972. The California Coastal Commission (Coastal Commission) was established by voter initiative in 1972 (Proposition 20). 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. The Coastal Zone encompasses the land and water area along the entire California coast extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In areas with significant coastal resources, the Coastal Zone extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less. However, the Coastal Zone

excludes the San Francisco Bay and certain related bodies of water. In developed urban areas, the Zone generally extends inland less than 1,000 yards.

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 Act gives the state a unique role in planning and regulating the use of land and water along the coast. Specifically, within the coastal zone—unlike most other areas of California—the state possesses the authority to regulate development, which is broadly defined to include the construction of structures, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, among other projects..

The basic goals of the Coastal Act are to balance development along the coast with protecting the environment and public access. The Act includes specific policies that address issues such as shoreline public access and recreation, habitat protection, landform alteration, industrial uses, water quality, transportation, development design, ports, and public works. The Coastal Act tasks the California Coastal Commission with implementing these laws and protecting coastal resources. As such, entities seeking to undertake development activities within the coastal zone must first attain a coastal development permit (CDP) from the Coastal Commission.

The Coastal Commission may delegate some permitting authority to the 76 cities and counties along the coast if they develop plans—known as Local Coastal Programs (LCPs)—to guide development in the coastal zone. The LCPs specify the appropriate location, type, and scale of new or changed uses of land and water, as well as measures to implement land use policies (such as zoning ordinances). The Coastal Commission reviews and approves (“certifies”) these plans to ensure they protect coastal resources in ways that are consistent with the goals and policies of the Coastal Act. Local governments have incentives to complete certified LCPs, as they can then handle development decisions themselves (although stakeholders can appeal such decisions to the Coastal Commission). In contrast, any project undertaken in the coastal zone in communities without certified LCPs must attain a permit from the Coastal Commission.

Housing laws and the Coastal Zone. Several of the state’s housing laws include provisions to ensure that coastal resources are protected:

- State law requires local governments to ministerially permit specified accessory dwelling units (ADUs) and junior ADUs (JADUs). ADU law provides that it cannot be construed to supersede or in any way alter or lessen the effect or application of the Coastal Act, except that the local government shall not be required to hold public hearings for CDP applications for ADUs.
- State law, known as density bonus law (DBL) requires local governments to ministerially grant increases in density to projects that include affordable housing. DBL includes a similar provision to ADU law regarding the Coastal Act and also says that any benefits provided under DBL must be permitted in a manner that is consistent with the Coastal Act.

- The Housing Crisis Act of 2019 limits the ability of local governments to impose new permitting requirements on projects that have submitted a “preliminary application” and caps the number of hearings that a local government may hold before deciding to approve or deny a project. The Housing Crisis Act also includes the same provision regarding the Coastal Act, but adds that cities and counties can enact development policies, standards, or conditions necessary to implement or amend a certified local coastal program consistent with the Coastal Act.

Coastal Commission housing policies. In 1977, the Coastal Act’s policy provisions included the protection of affordable housing. Specifically, the Coastal Act provided that housing opportunities for persons and families of low and moderate income must be protected, encouraged, and where feasible, provided. 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. In addition, the Coastal Commission required that specified percentages of proposed housing units be set aside for low- and moderate-income households, specifically:

- A 25% inclusionary requirement on new construction of non-rental residential projects of 15 or more units and an in-lieu fee for projects of five to 14 units; and
- A 33% inclusionary requirement on condominium conversions of two units or more.

The Mello Act. Responding to concerns that the Commission’s policies inhibited housing development in the Coastal Zone, in 1981, SB 626 (Mello) repealed the Coastal Commission’s authority to protect, encourage, and provide affordable housing, and expressly prohibited the Commission from requiring LCPs to include housing policies and programs. At the same time, the Mello Act also prohibited conversion or demolition of housing occupied by low- and moderate-income individuals in the Coastal Zone, unless replacement housing is built in the same jurisdiction within three miles of the Coastal Zone. However, the Mello Act exempted demolitions or conversions in several cases, generally for smaller existing residential uses or where the proposed use is related to the coast. The Mello Act also required local governments and the Commission to modify any inclusionary requirement by the local government or Commission that was imposed prior to 1982 upon request of the permittee.

Seeking to enhance the provision of affordable housing in the Coastal Zone, the Legislature subsequently adopted SB 619 (Ducheny, 2003), which directs the Commission to encourage housing opportunities for persons of low and moderate income, and specifically forbids local governments or the Commission from reducing the density of affordable housing projects unless there is no other way to ensure that coastal resources are protected.

The author wants to further encourage housing development in the Coastal Zone.

Proposed Law

Assembly Bill 500 grants the Commission authority related to housing in the coastal zone in several ways. First, AB 500 restores the requirement that housing opportunities for persons and families of low and moderate income be protected, encouraged, and where feasible provided. It

also prohibits the Commission from expressly demonstrating preference for housing projects or policies that directly compete with visitor-serving facilities.

Second, the bill provides that in non-hazardous areas, including areas that are not at significant risk of wildland fire, new development in areas with adequate public transit must preserve and enhance the supply of higher density residential, multifamily residential, or mixed-use development.

Third, AB 500 repeals the prohibition on the Commission requiring housing policies and programs in LCPs.

Finally, the bill requires a local government with a certified land use plan or fully certified LCP to amend their land use plan or LCP no later than January 1, 2024, to specify streamlining procedures for:

- ADUs and JADUs;
- Developments in which 100% of the units are affordable to lower income households, as defined in existing law; or
- Developments in which at least 25% of the units are designated for supportive housing.

The amendment must include provisions for the issuance of administrative permits, coastal development permit waivers, or other streamlined permitting procedures in nonhazardous areas where coastal resources and public access will not be negatively impacted. AB 500 requires the amendment to be submitted, processed, and approved consistent with the Commission's existing process for reviewing LCP amendments, including the time limits under existing law. The bill also provides that the Commission retains the authority to deny a permit waiver or exemption, process an appeal, or impose conditions necessary for a project to achieve consistency with the Coastal Act.

AB 500 includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. 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, affordable housing, 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, affordable housing, 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.”

2. Two masters. While planning and zoning largely remains a local matter, state law imposes comprehensive standards on local governments to ensure that they are zoning densely enough to accommodate their share of regional housing needs at very low, low, moderate, and above moderate income levels. The Department of Housing and Community Development (HCD) reviews local housing elements for compliance with state housing laws and certifies them—or doesn’t, if they haven’t identified enough developable sites or are not affirmatively furthering fair housing, among other requirements. Local governments that have certified housing elements are considered under state law to have zoned adequately to meet the projected need for housing in their jurisdiction. Since the passage of the Mello Act, local governments haven’t had to worry about the Coastal Commission second-guessing their housing decisions because the Commission was prohibited from requiring housing policies in LCPs. AB 500 (Ward) allows the Coastal Commission to dictate housing policies to local agencies, including to specifically ensure that new development enhances the supply of higher density residential development, even if they have met all of their existing obligations under law related to zoning. By doing so, it further removes from local officials’ hands the ability to shape their communities and potentially sets up local governments up to be caught in the middle of a conflict between HCD and the Coastal Commission. The Committee may wish to consider amending AB 500 to remove the ability of the commission to enhance density in the Coastal Zone and to retain the prohibition on requiring housing policies and programs in LCPs, except to the extent necessary to provide for streamlined processes for ADUs, affordable housing, and permanent supportive housing.

3. Rewind. The Mello Act terminated the commission’s affordable housing authority, including its inclusionary program. The Commission claims that the Commission approved nearly 5,000 permits for affordable housing in the 4 years prior to the enactment of the Mello Act. An academic review of the Commission’s inclusionary housing program, however, found that the commission was only responsible for approving between 767 and 1,560 affordable units, even including those units that were approved as affordable prior to the passage of the Mello Act. Furthermore, that review found no evidence to support that new construction projects could support the commission’s inclusionary requirements without government subsidy. Specifically, the study found, “Without the Orange County inclusionary requirements, bond assistance, and zoning incentives, the commission’s program would not have produced nearly the number of affordable units we attribute to it.” The study did credit the commission with denying requests for conversions or demolition of 1,150 affordable units. However, the Mello Act contained some limited demolition protections for affordable housing in the Coastal Zone, and more recently, SB 330 (Skinner, 2019) prohibits demolishing multi-unit dwellings of any kind without replacing those units, and any units that housed low-income tenants in the past five years or were legally protected affordable housing must be replaced with similarly protected units, so similar protections already exist in law. Accordingly, it is unclear whether restoring the authority that the commission had prior to the Mello Act would in and of itself increase affordable housing production in the Coastal Zone. The Committee may wish to consider amending AB 500 to impose a sunset on the new authority granted to the Commission and to require a study by the Legislative Analyst’s Office or another independent entity to determine the number of affordable units that would not have otherwise occurred while the Commission possesses expanded authority granted by the bill.

4. Guardrails. The Commission is well known for taking bold action to protect and enhance California's coastline. AB 500 would enact several brief but broad provisions that give the commission wide latitude to advance policies that protect and enhance housing. However, builders, local governments, and others are concerned that granting the Commission new powers on housing might result in overreach. This fear is not unfounded: one of the seminal cases on what constitutes a regulatory taking when imposing exactions on development stems from a Coastal Commission decision that imposed conditions on a housing project that the United States Supreme Court found lacked an "essential nexus" because they were unrelated to the reduction in access produced by the new development (*Nolan v. California Coastal Commission*, 483 U.S. 825, 1987). Past experience offers some guide as well: when the Commission possessed the authority to regulate housing, it imposed inclusionary requirements as high as 33%, a level that is widely recognized in housing circles as inhibitory of most new development without government subsidy. By contrast, current law requires local governments to justify to HCD the economic feasibility of any inclusionary requirement over 15%, and if they can't, their inclusionary requirements are capped at 15%. The Committee may wish to consider narrowing the authority provided by the bill to exclusively focus on efforts to advance affordable housing, but only to the extent that the confines of other existing state laws and

5. Goose and gander. Anecdotal reports from affordable housing developers indicate that they do not pursue projects in the Coastal Zone, citing difficulties with the Commission as one of the reasons. The Commission responds that because of the Mello Act, they believe they are prohibited from considering housing in their decisions, and if the Commission had the ability to consider housing in their decisions, they could more effectively make tradeoffs between the need for affordable housing and coastal resources. However, state law already directs the Commission to "encourage housing opportunities for persons of low and moderate income," and provides that a local agency or the Commission cannot reduce density for affordable housing developments in the coastal zone unless it's needed to protect coastal resources. Accordingly, it is unclear that the Commission lacks the authority to make decisions that incorporate affordable housing considerations when it comes to reviewing affordable housing projects that come before it. However, additional strides could be made to specifically direct the Commission to smooth the path for affordable housing projects. For example, AB 500 requires local governments to put forth LCP amendments to streamline 100% affordable housing projects, ADUs, and permanent supportive housing, but does not impose requirements on the commission to adopt similar streamlining efforts. In fact, the bill specifically reserves the right for the Commission to deny permit waivers or exemptions for streamlined projects. The Committee may wish to consider amending AB 500 to provide more specific direction to the Commission on what actions it must, or must not, take when considering affordable housing projects.

6. This just in. The Senate Housing Committee recommends the following amendments to AB 500:

- Strike language prohibiting the Coastal Commission to expressly demonstrate preference for housing projects or policies that directly compete with visitor serving facilities. This addresses a concern that this could preclude hotel or motel owners from selling their properties and converting to housing for the homeless as contemplated by Project Roomkey.

- Require that if the Coastal Commission proposes an inclusionary ordinance in the Coastal Zone, that the inclusionary housing requirements are consistent with existing state law governing the adoption of inclusionary ordinances for local governments.
- Strike language limiting dense housing approval in areas near transit. This addresses a concern that higher density housing would be concentrated near transit rather than in a more equitable fashion, such as areas that also have traditionally excluded denser housing.
- Require local governments in the Coastal Zone to include streamlining for low barrier navigation centers in their local coastal plans, in addition to ADUs and permanent supportive housing. This ensures that by right approval for these projects are reflected in LCPs, as required by AB 101 (Budget and Fiscal Review, 2019).

7. Mandate. The California Constitution requires the state to reimburse local agencies for the costs of new or expanded state mandated local programs. Because AB 500 adds to the duties of local officials with respect to development within the Coastal Zone, Legislative Counsel says that it imposes a new state mandate. The measure states that if the Commission on State Mandates determines that the bill imposes a reimbursable mandate, then reimbursement must be made pursuant to existing statutory provisions.

8. Triple referral. The Senate Rules Committee has ordered a triple referral of AB 500: first to the Senate Natural Resources and Water Committee, which approved the bill at its June 29th hearing on a vote of 6-2; then to the Senate Governance and Finance Committee to hear issues of local authority; and finally to the Senate Housing Committee. However, due to the on-going COVID-19 pandemic, the referral to Senate Housing was rescinded.

9. Prior legislation. AB 663 (Bloom, 2017) contained provisions similar to AB 500, but contained a January 1, 2023, sunset and did not include the streamlining or density provisions of AB 500. AB 663 died on the Assembly Floor.

Assembly Actions

Assembly Natural Resources Committee:	7-3
Assembly Housing and Community Development Committee:	6-2
Assembly Appropriations Committee:	11-5
Assembly Floor:	53-20

Support and Opposition (7/5/21)

Support: Azul; Bolinas Community Land Trust; California Democratic Party Renters Council; Central Coast Alliance United for A Sustainable Economy; Coastal Commission; Coastal San Pedro Neighborhood Council; Ground Game LA; Natural Resources Defense Council; People Organized for Westside Renewal; San Diego Regional Chamber of Commerce; San Francisco Rising Alliance

Opposition: Building Owners and Managers Association; Building Owners and Managers Association of California; California Apartment Association; California Association of Realtors; California Building Industry Association; California Building Industry Association; California Business Properties Association; City of Carlsbad; City of Newport Beach;

Commercial Real Estate Development Association, Naiop of California; Institute of Real Estate Management; International Council of Shopping Centers; Naiop, the Commercial Real Estate Development Association; Smart Coast California

-- END --