

Date of Hearing: March 13, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 584 (Hart) – As Amended March 6, 2023

SUBJECT: California Coastal Act of 1976: coastal development: emergency waiver.

SUMMARY: Increases the value of a structure from \$25,000 to \$125,000 to be eligible for an exemption from the permit requirements under the California Coastal Act under specified conditions, and adjusts the value of the cap to be adjusted annually based on the Consumer Price Index.

EXISTING LAW, pursuant to the Coastal Act of 1976 (Public Resources Code § 30000, et seq.):

- 1) Establishes the California Coastal Commission to protect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency. (PRC § 30004)
- 2) Requires any person wishing to perform or undertake any development in the coastal zone, in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, to obtain a coastal development permit. (PRC § 30600)
- 3) Defines “structure,” for purposes of development, as any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (PRC § 30106)
- 4) Requires issuance of a coastal development permit if the proposed development is in conformity with the certified local coastal program.
- 5) Authorizes the requirement of having to obtain a permit to be waived when immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, as specified. Provides that the waiver provision does not authorize the permanent erection of structures valued at more than \$25,000. (PRC § 30611)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Need for the bill.** According to the author,

At a time when climate change and natural disasters are affecting California’s infrastructure and shores, emergency permits and waivers are a critical resource to

public agencies and regulatory bodies. AB 584 is a simple but essential legislation to give the Coastal Commission more flexibility in issuing emergency waivers to restore fallen structures after natural disasters. The measure would allow California's departments and agencies to clean-up our roads, trails, and oceans swiftly and ensure the safety of Californians.

- 2) **Coastal Act.** When the Coastal Act was enacted in 1976, the Legislature declared that some of the basic goals for the coastal zone, among others, included ensuring orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

The California Coastal Commission administers the Coastal Act and works in partnership with local governments to protect shoreline public access and recreation, terrestrial and marine habitats, views of the coast and scenic coastal areas, agricultural lands, and more, by regulating proposed development along the coast and in nearby areas. As such, the Coastal Commission develops criteria for coastal development permits to ensure that development along the coast occurs in a way that conserves, sustains, and makes prudent use of California's natural and recreational coastal resources.

- 3) **Coastal development.** Generally, any "development" activity in the coastal zone requires a coastal development permit from the Coastal Commission or local government with a certified Local Coastal Program. The width of the coastal zone varies, but it can extend up to five miles inland from the shore, including private and public property, and three miles out to sea.

"Development" is broadly defined by the Coastal Act, but includes demolition, construction, replacement, or changes to the size of a structure; grading, removal of, or placement of rock, soil, or other materials; clearing of vegetation in, or that provides, sensitive habitat; impeding access to the beach or public recreational trails; changing the intensity of use of land, such as using a single family home as a commercial wedding venue; and, repair or maintenance activities that could result in environmental impacts.

- 4) **Emergency waivers.** Under emergency situations, a permit waiver may be granted. When immediate action by a person or public agency performing a public service is required to protect life and public property from imminent danger, or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by natural disaster, serious accident, or in other cases of emergency, permit requirements can be waived by the Coastal Commission within three days before/after the disaster.

Those permit waivers are limited to structures valued at \$25,000 or less. While having a monetary cap on the emergency waiver is important because it ensures that the Coastal Commission isn't waiving major projects that truly should be processed through an emergency permit, the low dollar amount in statute effectively limits the Coastal Commission's ability to provide emergency permit waivers.

Emergency waivers are rare during "normal" times because the Coastal Commission processes most emergency projects through emergency *permits*. One reason is that the \$25,000 limit on permanent structures has become prohibitively low over the years due to inflation.

As an example, the California Department of Transportation (CalTrans) needed to replace some rockfall netting along Highway 1 in Big Sur that had been damaged. This type of work would be an ideal example for an emergency waiver because CalTrans was just replacing something that was already there. However, though the project was relatively small, the Coastal Commission was informed by CalTrans staff that neither the rockfall netting nor basically anything else CalTrans constructs is worth less than \$25,000, so emergency waiver was generally unavailable to them. The affected 44.6-mile stretch of Highway 1 was closed until CalTrans could clear the debris, which ended up costing the department a \$1.3 million emergency contract.

While the need for emergency permit waivers is not frequent, at times there can be a deluge of emergency projects along the coast when use of the emergency waivers would be really beneficial, such as the recent series of atmospheric rivers. In those moments, it's helpful for Coastal Commission to be able to quickly waive the emergency projects that deserve waivers so that they can focus on all the other emergency projects that need emergency permits.

Last month, the Executive Director of the Coastal Commission reported that, during the atmospheric rivers and collateral storm damage, there were 10 emergency permits given to public agencies and one emergency waiver. These storms brought record-breaking rainfall, winds, storm surge and snowfall to many regions of the state, resulting in devastating flooding, mudslides and storm damage.

Emergency Permits require a follow up coastal development permit for the work to ensure that any work done under emergency conditions will be either removed or modified to be consistent with the Coastal Act in the long-term. Waivers are just that—they are issued for work that is development under the Coastal Act, but does not raise any Coastal Act issues.

- 5) **Is \$125k an appropriate threshold?** During the COVID-19 pandemic, the world felt the impacts of the supply chain backup and resultant cost increases on the prices of key commodities and increasing the cost of construction. The White House's *Housing and Inflation* report in 2021 noted the pandemic-related market disruptions, like increased demand and rising building costs as well as other long-term supply constraints in the market contributed to record increases in prices.

More simply put – and setting aside today's cost of building – when \$25,000 limit was set in 1976, property values were significantly lower. If using basic inflation calculator to measure the buying power of the dollar over time, \$25,000 in 1976 is comparable to \$128,000 in today's market.

Increasing the cap to what it would be today with inflation will allow Coastal Commission staff to re-capture the value of the emergency waiver as a regulatory tool, and in turn will allow staff to serve public agency partners even more nimbly during times of widespread crisis. Additionally adjusting the cap annually for inflation pursuant to the Consumer Price Index will prevent future statutory walls like the current one presents to obtaining emergency permit waivers.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Realtors

Opposition

None on file

Analysis Prepared by: Paige Brokaw / NAT. RES. /