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W6c

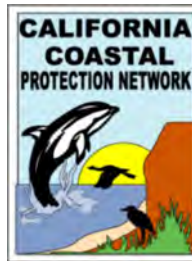
Prepared April 9, 2024 for April 10, 2024 Legislative Report

TO: Coastal Commission and Interested Persons

FROM: Kate Huckelbridge, Executive Director
Sarah Christie, Legislative Director
Sean Drake, Legislative Manager

SUBJECT: Additional hearing materials for W6c, Legislative Report

This package includes additional correspondence received in the time since the staff report was distributed.



April 05, 2024

Agenda Item W6c

Chair Caryl Hart
California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105
Via Electronic Delivery: ExecutiveStaff@coastal.ca.gov

RE: Public Comment on April 2024 Agenda Item Wednesday 6c - Legislative Report

Dear Chair Hart:

The undersigned organizations represent statewide and national constituencies committed to protecting coastal and ocean resources and upholding California’s landmark coastal protection law: the California Coastal Act of 1976. We assert the Coastal Act protects public access guarantees, low-cost recreational opportunities, wetlands, sensitive habitats, and the biological productivity of ocean waters. It requires new development to minimize energy use, reduce vehicle miles traveled, and avoid hazardous areas such as unstable bluffs and tsunami runup zones. Fifty years of Coastal Act implementation is the reason the California Coast belongs to all. **We urge the Coastal Commission to Oppose AB 2560 (Alvarez).**

Coastal Act policies are implemented through Coastal Development Permits issued by the California Coastal Commission (Coastal Commission) or local governments with certified Local Coastal Programs (LCPs). In the Coastal Zone, density bonus concessions, incentives, and waivers are fully available to the applicant so long as those concessions, incentives, and waivers are consistent with the Coastal Act.

An exemption obliterates the ability of the Coastal Commission to regulate a physically dynamic environment. Exempting the Coastal Act removes a substantial law which gives the Coastal Commission the ability to mitigate impacts to public access guarantees, lower-cost recreation opportunities, critical habitats such as wetlands, and sea level rise preparedness efforts. An exemption from the Coastal Act does not simply shorten the review period for a project. Mitigation of development impacts must not be construed as a prohibition. Further, the Coastal Commission has demonstrated a remarkable ability to balance competing priorities, including affordable housing.

The legislative intent of existing law makes *clear* the Density Bonus Law is required to be accommodated in a manner that harmonizes the Density Bonus Law and the Coastal Act.¹ All laws must be interpreted in a manner consistent with legislative intent.² Thus, the Coastal Commission or local agency implementing the Coastal Act is still required to approve a developer's request for density, concessions, and incentives regardless of a conflict with the LCP.³ As a result, the Density Bonus Law "shall be accommodated" even when implementing the Coastal Act.⁴

Harmonizing the Density Bonus Law and the Coastal Act is achievable. Similar to the goal of the Density Bonus Law, the Coastal Act requires:

"[when] reviewing residential development applications . . . the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning *plus the additional density permitted under Section 65915 of the Government Code.*"⁵

In addition, the Coastal Act recognizes "it is important for the 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."⁶ The Coastal Act requires the Coastal Commission "*shall* encourage housing opportunities for persons of low and moderate income."⁷

¹ A.B. 2797 (Bloom), Chapter 904, Statutes of 2019 ("[t]his bill would require that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted in a manner that is consistent with that law and the California Coastal Act of 1976.").

² *Foster v. United States*, 303 U.S. 118, 120 (1938) at 303; *see also People v. Christianson* (2023) 97 Cal. App. 5th 300 at 396 ("court does not interpret statute as to contravene apparent legislative intent"); *see also People v. Rhodius* 97 Cal. App. 5th 38 at 46 and *People v. Gonzalez* (2008) 43 Cal. 4th 1118 quoting *People v. Shabazz* (2006) 38 Cal. 4th 55 at 67 ("literal construction should not prevail if it is contrary to the legislative intent apparent in the statute").

³ ASSEMBLY HOUSING AND COMMUNITY DEVELOPMENT, A.B. 1287 BILL ANALYSIS (Apr. 10, 2023) at 9 (heard on Apr. 12, 2023) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1287.

⁴ *Id.*

⁵ CAL. PUB. RES. CODE § 30604(f) [emphasis added]; *see also* SB 619 (Ducheny), Chapter 793, Statutes of 2003.

⁶ CAL. PUB. RES. CODE § 30604(h)

⁷ CAL. PUB. RES. CODE § 30604(f) [emphasis added].

Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B highlights approaches the legislature should consider when enacting housing law in California. **This article describes the Coastal Act as follows:**

“The Coastal Act provides a strong analogous basis for California 40B legislation because it incorporates statutory features highly aligned to those proposed for California 40B, including a statewide policy initiative, a local land use permitting system prescribed by state law, and a state-level appellate review system.”⁸

This lends credence to the idea that rather than weakening the application of the Coastal Act, we should restore the original Coastal Act policy protecting and providing for affordable housing in the Coastal Zone. Between 1976 and 1981, this policy allowed the Coastal Commission to authorize the construction of approximately 5,000 deed-restricted affordable housing units in the Coastal Zone and prevented the demolition of approximately 1,300 existing units.⁹ Unfortunately, the legislature repealed this provision in 1981 and amended the Coastal Act to specifically preclude the Coastal Commission from requiring affordable housing units in Coastal Development Permits.¹⁰

The appropriate method to implement housing policy is to utilize the Coastal Act and Coastal Commission as a means to further affordable housing *not* as an obstacle. **Until then, we urge the Coastal Commission to Oppose AB 2560 (Alvarez).**

Sincerely,



Ashley Eagle-Gibbs
Executive Director
Environmental Action Committee of West Marin

Anna Christensen
Executive Director
Puvunga Wetlands Protectors

Garry Brown
Founder & President
Orange County Coastkeeper

Jack Eidt
Co-Founder
SoCal 350 Climate Action

Pamela Flick
California Programs Director
Defenders of Wildlife

Robert M. Gould, MD
President
San Francisco Bay Physicians for Social
Responsibility

⁸ Reid, Carolina K., et al., *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter, 25(2) AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT LAW*, 241–74 at 259, 261-62, available at <https://www.jstor.org/stable/26408189>

⁹ *Affordable Housing*, California Coastal Commission, (last accessed Mar. 25, 2024) <https://www.coastal.ca.gov/Housing/>.

¹⁰ CAL. GOV'T CODE § 65590; see also Joseph D. Smith AICP, *Yes, The California Coastal Commission Cares About Affordable Housing in the Coastal Zone.*, California Coastal Works (Jun. 29, 2023) available at <https://www.californiacoastalworks.com/post/affordable-housing-in-coastal-zone>.

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From: [Christopher Pederson](#)
To: [ExecutiveStaff@Coastal](#)
Cc: [Huckelbridge, Kate@Coastal](#); [Christie, Sarah@Coastal](#); [Drake, Sean@Coastal](#); [Warren, Louise@Coastal](#)
Subject: Public Comment on April 2024 Agenda Item Wednesday 6c - Legislative Report
Date: Saturday, April 6, 2024 5:58:58 PM

Dear Chair Hart and Commissioners:

I agree with staff that AB 2560 goes too far in effectively eliminating Coastal Act review of density bonus projects in the coastal zone. I strongly disagree with staff's defense of the status quo, however. Currently, opponents of density bonus projects can use LCPs as a weapon to thwart such projects even when the projects raise no significant Coastal Act concerns. The Commission should urge the bill's author to amend it so that density bonuses, waivers, incentives, concessions, and parking ratios (hereafter referred to collectively as "density bonuses") must be granted unless the local government or Commission finds based on a preponderance of evidence in the record that granting requested density bonuses would create a significant conflict with a requirement of Chapter 3 of the Coastal Act.

Currently, both the density bonus statute and the Coastal Act allow local governments and the Commission to deny a density bonus if it is inconsistent with either the Coastal Act or a certified LCP. (See Gov. Code, § 65915(m); Pub. Resources Code, § 30604(f).) Although LCPs are supposed to be consistent with the minimum requirements of Chapter 3, local governments can choose to make LCPs stricter than Chapter 3 requires and typically include a wide range of zoning standards and development requirements that in many circumstances go beyond what the Coastal Act requires or simply have no bearing on Coastal Act requirements. (See Pub. Resources Code, §§ 30005(a), 30108.6.)

Many provisions commonly included in LCPs can either entirely preclude multifamily housing, strictly limit how many units can be included in multifamily housing, or drive up the cost of constructing multifamily enough that it is infeasible to build or can only be built for the most affluent sector of the market. When such LCP provisions are necessary to prevent obstruction of public accessways, protect wetlands or ESHA, or avoid hazards such as flooding or shoreline erosion, that is a necessary consequence of protecting those resources of statewide concern.

Frequently, however, LCP provisions greatly restrict multifamily housing even when it raises no significant Coastal Act concerns - and sometimes those restrictions have consequences that conflict with the Coastal Act. For example, LCPs commonly include a panoply of provisions intended to ensure that new structures mimic other structures in a neighborhood: density limits, height limits, setback requirements, floor-to-area-ratio (FAR) requirements, the list goes on. The visual protection policy of the Coastal Act, however, does not require this. Section 30251 simply requires development to protect views to and along the ocean and scenic coastal areas and to be "visually compatible" with the character of surrounding areas.

Limiting the size of new structures in urban areas so that they are no larger than the prevailing pattern of existing development, as many LCPs do, has the cumulative effect of obstructing the requirement of Section 30250 to concentrate development in urbanized areas. By dispersing new housing, limits on new infill multifamily housing also contradict the Coastal Act requirement to minimize vehicle miles traveled. (Pub. Resources Code, § 30253(d).) Locating housing in areas with a more extreme climate than temperate areas along the coast also contradicts the Coastal Act's requirement to minimize energy consumption. (Id.) As the

Coastal Act itself points out, concentrating development near urban and commercial centers tends to be more protective overall than specific resource protection policies. (Pub. Resources Code, § 30007.5.)

In short, LCPs frequently include a host of rules that in many circumstances are not necessary to ensure that development complies with Chapter 3 requirements and that can often have seriously counterproductive effects.

Amending the density bonus statute and the Coastal Act to allow exceptions to such LCP provisions so long as the development complies with fundamental Chapter 3 requirements will protect significant coastal resources, help to address the state's housing crisis, and further the state's climate goals.

The staff report points out that some local governments have amended their LCPs to facilitate granting density bonuses in ways that protect significant coastal resources. This is laudable, but many other jurisdictions have not. The Commission lacks the authority to require recalcitrant local governments to submit LCP amendments. Even if it could, the exercise would be time consuming and a drain on both Commission and local government resources. State legislation can address this problem much more efficiently and effectively while still protecting significant coastal resources.

The staff report also maintains that the Commission has not denied affordable housing projects. That contention proves little. Now that a large majority of coastal jurisdictions have certified LCPs, local governments process most coastal development permit applications. Relatively few of those are appealable to the Commission. And a local government's denial of proposed housing is not appealable to the Commission even when it's located within the Commission's appellate jurisdiction. (See Pub. Resources Code, § 30603(a).)

In addition, the ambiguities in current law about how to reconcile the Coastal Act and the density bonus statute create the risk of (1) local governments denying density bonus projects when they do not have a strong Coastal Act basis for doing so, (2) encouraging appeals to the Commission of meritorious projects that cause delay and drive up costs, and (3) leading to litigation that further delays and drives up project costs. All of these possible scenarios can deter potential applicants from proposing density bonus projects in the coastal zone, thus depriving coastal cities of a potentially significant source of affordable housing.

These are not hypothetical concerns. For example, the Commission found last year that an appeal of a density bonus project in the City of Santa Cruz did not raise a substantial issue, but the appeal lingered before the Commission for more than three years before the Commission ultimately rejected it. That project is now tied up in litigation. (See *Save Santa Cruz Westside v. California Coastal Commission*, Santa Cruz County Superior Court, Case No. 23CV02170.)

The Commission should therefore work with Assemblymember Alvarez to amend AB 2560 in a way that protects significant coastal resources while also encouraging density bonus projects in the coastal zone. One way to do that would be to amend the density bonus statute and the Coastal Act in the following ways (changes to the statutes shown in strikethrough and underline):

Amend Government Code section 65915(m) to read as follows:

(m) ~~This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).~~ Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the an applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Chapter 3 (commencing with Section 30200) of Division 20 (commencing with Section 30000) of the Public Resources Code. Code. When acting on an application for a coastal development permit, the Coastal Commission or a local government may deny or modify a requested density bonus, concession, incentive, waiver or reduction of development standards, or parking ratio only if it finds based on a preponderance of evidence in the record that the request creates a significant conflict with a requirement of Chapter 3 (commencing with Section 30200) of Division 20 of the Public Resources Code. Code.

Amend Public Resources Code section 30604, subdivision (f) to read as follows:

The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency, or the commission on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on ~~substantial~~ a preponderance of evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site ~~in a manner that is in conformity~~ without creating a significant conflict with a requirement of Chapter 3 (commencing with Section 30200) or the certified local coastal program.

Thank you for your consideration of my comments.

Sincerely,

Christopher Pederson