

Date of Hearing: April 24, 2023

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Luz Rivas, Chair

AB 1287 (Alvarez) – As Amended April 13, 2023

SUBJECT: Density Bonus Law: additional density bonus and incentives or concessions: California Coastal Act of 1976

SUMMARY: Provides 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 notwithstanding the California Coastal Act.

EXISTING LAW:

1) Pursuant to the Density Bonus Law:

- a) Requires a city or county to provide a developer that proposes a housing development within the city or county with a density bonus and other incentives or concessions, as specified, if the developer agrees to construct specified percentages of units for lower income households or very low income households, and meets other requirements. (Government Code (Gov Code) 65915 (b)(1))
- b) Provides that the Density Bonus Law does not supersede or in any way alter or lessen the effect or application of the Coastal Act, and requires 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 consistent with the California Coastal Act. (Gov Code 65915 (m))
- c) Requires the review of a housing element for jurisdictions located within a coastal zone to provide an additional analysis of units constructed, demolished and replaced within three miles of a coastal zone to ensure the affordable housing stock with the coastal zone is being protected and provided. (Gov Code 65588 (d))

2) Pursuant to the California Coastal Act of 1976 (Coastal Act):

- a) Regulates development in the coastal zone and requires a new development to comply with specified requirements. (Public Resources Code (PRC) 30000)
- b) 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)
- c) Defines “development” to mean, among other things, the placement or erection of any solid material or structure on land or in water. “Structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line. (PRC 30106)

- d) Provides that the scenic and visual qualities of coastal areas must be considered and protected as a resource of public importance. Permitted development must be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government must be subordinate to the character of its setting. (PRC 30251)
- e) Requires all new development to minimize risks to life and property in areas of high geologic, flood, and fire hazard; assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs; be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development; minimize energy consumption and vehicle miles traveled; and, where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. (PRC 30253 (f))
- f) Provides that the Legislature finds and declares that it is important for the California Coastal Commission (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. (PRC 30604 (g))

THIS BILL:

- 1) Requires that an applicant for a density bonus shall receive the additional following incentives or concessions:
 - a) Four incentives or concessions for projects that include at least 16% of the units for very low income households or at least 45% for persons and families of moderate income in a development in which the units are for sale.
 - b) Five incentives or concessions for a project in which 100% of all units are for lower income households (current law provides four incentives).
- 2) Strikes the current prohibition on the density bonus law from superseding the Coastal Act.
- 3) Requires any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under current law to be permitted notwithstanding the Coastal Act.

FISCAL EFFECT: Unknown**COMMENTS:**

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

While we must continue to support more affordable housing for low-income families, a holistic approach to the housing crisis requires we also tackle housing unaffordability for middle-income earners. AB 1287 does this by creating moderate income benefits, which would stack on top of the existing Density Bonus Law benefits.

Importantly, AB 1287 requires that a project maximizes the production of Very-Low, Low, or Moderate Income units, as allowed by current Density Bonus Law, before they can take advantage of the incentives in AB 1287. This structure ensures that the new Moderate Income Bonus never undermines existing incentives under Density Bonus Law. In fact, it even creates new economic reasons to maximize deeply affordable unit production, by offering an additional sweetener in the form of the stacked bonus and additional concessions.

- 2) **Affordable housing.** California state law recognizes that local governments play a vital role in developing affordable housing and requires each community's fair share of housing to be determined through a mandated regional housing needs allocation. In 1969, the state mandated that all California cities, towns, and counties to plan for the housing needs of our residents, regardless of income.
- 3) **Density Bonus Law.** California, like much of the country, is in the midst of a housing crisis that continues to exacerbate existing inequities. The median price for a single-family home in California in 2021 was \$786,750, which only 26% of households could afford to purchase. Options for affordable rentals are similarly limited. California ranks in the top seven states in the country for inadequate affordable housing stock, and more than half of the state's renter households were cost burdened in 2019, meaning that they spent more than 30% of their household income on rent.

California's Density Bonus Law was enacted in 1979 to provide housing developers tools to encourage the development of much needed affordable and senior housing. The Law achieves this objective by allowing developers to exceed the normal density restrictions when they meet certain criteria. Cities and counties are required to grant a "density bonus," which is an exceedance of the otherwise allowable project density, if a housing project would include affordable units for one or more of these demographics. The amount of the density bonus is codified as a sliding scale based on the percentage of affordable units provided and the demographics targeted. The law also allows for a 100% density bonus for residential developments that are 100% affordable. In addition to proving a density bonus, the law requires a city or county to provide up to four incentives or concessions to any project that qualifies for a density bonus, depending on the percentage of affordable units provided.

The Legislature continues to refine the Density Bonus Law, with new legislation taking effect on January 1 of this year providing additional flexibility to developers in meeting requirements for a density bonus. In addition, a 2021 appellate court ruling changed the types of information that local governments can require from density bonus applications seeking an incentive or concession.

According to the Commission, many local jurisdictions in the coastal zone have already adopted inclusionary housing ordinances separate from Density Bonus Law. Inclusionary housing ordinances generally require that any new multi-unit residential project include a certain percentage of affordable units, with no density bonus or other development standard

exception granted in return. Such requirements frequently range from 15% to 20%, and are typically framed in terms of providing such units on-site, contributing a fee to allow for the construction of such units off-site, or some combination thereof. Inclusionary housing ordinances are not insulated from Density Bonus Law. In jurisdictions where an inclusionary housing ordinance has stronger requirements than the Density Bonus Law, a developer is not required to propose any additional affordable units in order to receive the multitude of exceptions afforded by the Density Bonus Law.

The policies of the Coastal Act establish development standards intended to protect coastal resources. Where the Density Bonus Law allows development projects to exceed these development standards, the Coastal Act and Density Bonus Law conflict with one another, potentially significantly. The Density Bonus Law reinforces this conflict by stating that the granting of a density bonus or an incentive/concession does not require amending the applicable Local Coastal Plan (LCP) or issuing any discretionary approval. Current law in the Density Bonus Law (Gov. Code sec. 65915 (m)) seeks to avoid these conflicts and harmonize the two laws.

The Density Bonus Law provides that its provisions do not supersede or in any way alter or lessen the effect or application of the Coastal Act, and requires 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 consistent with the Coastal Act.

AB 1287 proposes to repeal that provision and instead require any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under current law to be permitted regardless of the Coastal Act.

- 4) **Housing development in the coastal zone.** The Commission administers the Coastal Act and regulates proposed development along the coast and in nearby areas. Generally, any development activity in the coastal zone requires a coastal development permit from the Commission or local government with a certified LCP. Eighty-five percent of the coastal zone is currently governed by LCPs drafted by cities and counties, and certified by the Commission. In these certified jurisdictions, local governments issue Coastal Development Permits (CDP) with detailed planning and design standards. There are 14 jurisdictions without LCPs – also known as “uncertified” jurisdictions – where the Commission is still the permitting authority for CDPs. The width of the coastal zone varies, but it can extend up to five miles inland from the shore, including private and public property.

The original Coastal Act of 1976 included PRC Sec. 30213 of the Coastal Act, which stated:

Lower cost visitor and recreational facilities and housing opportunities for persons of low and moderate income shall be protected, encouraged, and, where feasible, provided.

The definition of low- and moderate-income households was anyone earning up to 120% of the median income, which included about 2/3 of California households at the time.

In the first five years of the Coastal Act, the Commission successfully required the construction of more than 5,000 affordable, deed-restricted, owner-occupancy and rental units in high-

priced areas such as Laguna Niguel, San Clemente, and Dana Point. It also collected about \$2 million in in-lieu fees for additional housing opportunities throughout the state.

Over time, however, many local governments objected to the loss of local control and stated that the Coastal Act's housing policies were preventing them from preparing LCPs. Subsequently, in 1981, the Legislature adopted the Mello Act (SB 626, Mello, Chapter 1007, Statutes of 1981) to remove the housing policies out of the Coastal Act and by providing that *"No local coastal program shall be required to include housing policies and programs."* (PRC sec. 30500.1) That legislation allowed any developer who had not yet completed a coastal housing project to require the Commission to remove the affordable requirements from the permit and prohibited the Commission from requiring local governments to include affordable housing in their LCPs. As a result, affordable housing development waned in the coastal zone.

Despite this, the Commission has maintained its mandate to protect the coast and, as of 2019, had approved more than 90% of all development applications. In fact, the Coastal Act continues to require the Commission to encourage housing opportunities for persons of low and moderate income. It further prohibits, in reviewing residential development applications for low- and moderate-income housing, the issuing local agency, or the Commission on appeal, from requiring 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 permitted density.

The Commission, in fact, has never denied a single affordable housing project in its history. Furthermore, permit review doesn't appear to be a roadblock to development. In terms of affordable housing project application turnaround times, permits are subject to the Permit Streamlining Act, thus the Commission must comply with those deadlines. Further, the Commission finds 'No Substantial Issue' on most of the appeals received, and turns permit applications around in 49 days.

- 5) **This bill.** AB 1287 would skirt the Coastal Act for permitting density bonuses, concessions, incentives, waivers or reductions of development standards, and parking ratios. Notwithstanding the Coastal Act null and voids coastal protections afforded to housing development in the coastal zone.
- 6) **Protecting the coastal zone.** A central tenet of the Commission and foundational pillar of the Coastal Act is equitable access to coastal resources. The Coastal Act, through coastal development permits, provides unique protections to the coastal zone that are separate and distinct from the California Environmental Quality Act. The Coastal Act includes consideration of the prevention of sprawling developing, protection of views to and along the ocean and scenic coastal areas, and maintenance and enhancement of public access to the coast. Further, all new development is required to minimize risk to life and property in areas of high geologic, flood, and fire hazard; assure geologic stability; minimize energy consumption and vehicle miles travelled, and, where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

As Mary Shallenberger, Coastal Commissioner from 2004-2017, wrote in 2019:

Relaxing development controls in the coastal zone isn't the answer because over-regulation was never the problem. The problem is there is little market-based incentive to build this type of housing to begin with, compounded by the fact that the Legislature stripped the regulatory authority from the agency that was doing more than any other to provide actual affordable units.

The Commission's January 2022 report, *Report on the Historical Roots of Housing Inequity and Impacts on Coastal Zone Demographic Patterns*, explains that one thing that makes tackling the affordable housing shortage difficult are the myriad overlapping jurisdictional authorities and housing policies that apply to one particular area. Commission staff and other housing advocates would benefit from research on the various housing policies applicable to the coastal zone and how they interact with each other and the Coastal Act. These include the Mello Act of 1982 and subsequent Mello Act Ordinances, the Density Bonus Law, the Housing Accountability Act, Coastal Act and LCP policies on accessory dwelling units, the California H.O.M.E. Act, inclusionary zoning initiatives, and others. Understanding this ecosystem of policy and legislation is an important part of designing effective policy solutions that are compliant with existing law.

The author may wish to consider this recommendation from the Commission, which could inform future legislation on this subject.

- 7) **Committee amendments.** To preserve the protections of the Coastal Act, *the Committee may wish to consider* striking the amendments to Sec. 65915 (m) and maintaining that provision of current law as it stands.
- 8) **Double referral.** This bill was heard in the Assembly Housing Committee on April 12, where it was approved 8-0.

REGISTERED SUPPORT / OPPOSITION:

Support

Abundant Housing LA
Bay Area Council
Buildcasa
California Community Builders
California Yimby
Circulate San Diego
Civicwell
Council of Infill Builders
East Bay for Everyone
East Bay Yimby
Eden Housing
Fieldstead and Company, INC.
Greenbelt Alliance
Grow the Richmond
Housing Action Coalition
How to Adu
Midpen Housing
Mountain View Yimby

Napa-Solano for Everyone
National Association of Hispanic Real Estate Professionals (NAHREP)
Northern Neighbors SF
Orange County Business Council
Peninsula for Everyone
People for Housing - Orange County
Progress Noe Valley
San Francisco Yimby
San Luis Obispo Yimby
Sand Hill Property Company
Santa Cruz Yimby
Santa Rosa Yimby
Silicon Valley @ Home
Silicon Valley Leadership Group
South Bay Yimby
Southside Forward
Spur
Urban Environmentalists
Ventura County Yimby
Yimby Action

Opposition:

Azul
California Contract Cities Association
California Coastal Commission
California Coastal Protection Network
California Coastkeeper Alliance
Citizens Preserving Venice
Coastal Environmental Rights Foundation
Coastal San Pedro Neighborhood Council
Environmental Action Committee of West Marin (EAC)
Environmental Center of San Diego
Environmental Defense Center
Friends, Artists and Neighbors of Elkhorn Slough
Humboldt Bay keeper
New Livable California
Ocean Conservation Research
Orange County Coastkeeper
Pacific Palisades Community Council
Planning and Conservation League
Public Trust Alliance, a Project of The Resource Renewal Institute
Resource Renewal Institute
San Diego Coastkeeper
Sierra Club California
So Cal 350 Climate Action

Turtle Island Restoration Network
Westwood South of Santa Monica Blvd. Homeowners Association

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