

SMART COAST REPORT

AUGUST 2021



Strategizing



WHAT IS THE BEST ROUTE FOR LOCAL GOVERNMENTS TO TAKE WHEN THEY DO NOT AGREE WITH THE CALIFORNIA COASTAL COMMISSION RECOMMENDATIONS?

Within the coastal zone, local governments have Local Coastal Programs (LCPs) and Amendments (LCPAs) which help guide development with certain ground rules for future development and protection of coastal resources. A local government prepares the LCP (which can take years), adopts it, and then submits it to the California Coastal Commission (CCC) for review for consistency with Coastal Act requirements. Both the local government and CCC must agree to the LCP; it is not a unilateral decision for either party.

During this process, the local government and CCC are in communication negotiating the sections within the LCP. Usually the local government and CCC agree on most of the sections within the LCP, however there can be points of contention. The CCC can come forward recommending modifications to sections of the LCP and this is when the local government has to make a decision that would have the best outcome for their community.

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OPTIONS

1) The local government agrees with the CCC.

The local government can agree to the CCC recommendations and then the LCP is certified and permitting authority over most new development is handled on the local government level.

2) The local government negotiates.

The local government and CCC can negotiate over the points of contention. This can yield a back-and-forth discussion of what the right policy is for the local government and if both parties agree with the negotiated changes then the LCP is certified and permitting authority over most new development is handled on the local government level.

3) The local government can withdraw their LCP application for Coastal Commission certification.

If the local government believes the CCC recommendations do not fit their community. The local government can withdraw their LCP, either before or during a CCC hearing. Or, the local government can submit their own modifications back to the CCC for further consideration at a later date.

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4) What happens if a local government doesn't get their LCPA certified by the CCC?

If a local government does not get their LCPA certified by the CCC, the existing LCP will stay in place. However, if the CCC feels that the local government is failing to cooperate in implementing their existing LCP, the CCC can exercise their rights of appeal on coastal development permits by appealing projects up to themselves. In worst case scenarios, the State legislature gets involved and gives the CCC unilateral authority to adopt a LCP. This means the local government has no say in what's in the LCP. For example, this happened with the City of Malibu back in 2000 (AB 988).

So what option should a local government pursue? That really depends on the local government and what's best for their community. Local governments should try to work with the CCC to create the best possible LCP for the community. If it's not possible to work out certain issues, such as the 1977 development date, the local government needs to remember that even if a LCP goes forward to the CCC and there are recommendations the local government does not agree with, the local government has a chance to withdraw their LCP or modify and return to the CCC. Above all, the local government wants to make sure they don't fall into a scenario in which the CCC has unilateral decision making power over the LCP.

As a reminder, Smart Coast California is here as resource to help local governments navigate through the various options. Help spread the word!

AB 500 Update

SMART COAST CALIFORNIA DEBUTS AT CA LEGISLATURE

AB 500, a bill authored by Assemblymember Christopher Ward (San Diego area), seeks to exempt anyone applying to construct, among other things, an accessory dwelling unit (ADU) or junior ADU on the same site as an existing residential dwelling from having to obtain a coastal development permit, unless the Coastal Commission (CCC) determines that the site is at risk of experiencing an adverse environmental impact. AB 500 builds on previous legislation seeking to streamline and encourage the statewide development of ADUs.

While this goal is admirable, Smart Coast California has serious concerns with the bill.

This bill passed through the Assembly and is now in the Senate. It is the only bill we know of that was triple referred (a very rare occurrence) to Natural Resources and Water, Governance and Finance (Gov. & F.), and Housing. In early July, the author and several members of the Gov. & F. committee decided more study was needed given the complexity of the bill. The bill language now reads "On or before January 1, 2023, the commission shall conduct and complete a study to identify recommendations for policy changes that advance affordable housing in the coastal zone. The study may include recommendations regarding the commission's authority related to the development of lower income housing, streamlining of local government and commission review of affordable housing projects, and other provisions as necessary".

With a coalition, including the California Association of REALTORS® and the Building Industry Association, the author realized he needed to modify the bill, thus it became a "study bill".

SCCa believes that rather than promote affordable housing in the Coastal Zone, AB 500 would shift authority for affordable housing from local governments—comprised of elected officials who are closest to residents' and communities' needs and have been handling affordable housing for 40 years—to the CCC, an unelected statewide body with limited resources and no experience administering affordable housing issues. The following are more reasons why SCCa opposes AB 500:

1) The legislature has vested local governments, not the coastal commission, with responsibility for affordable housing in the coastal zone

In 1981, the Legislature made the conscious choice to vest the responsibility for low and moderate income housing in the coastal zone with local governments by deleting the reference to "housing opportunities for persons for low and moderate income" in Public Resources Code § 30213. By making this change, the Legislature specifically removed affordable housing from the CCC's policy purview—and eliminated the requirement for local coastal programs ("LCP") to include housing policies and programs.

In place of those prior mandates, the Legislature adopted the Mello Act, Government Code §§ 65590 and 65590.1. The Mello Act seeks to preserve and increase the number of affordable housing units in the coastal zone, and regulates all manners of conversion, demolition, change of use, subdivision, and new construction activities that involve existing or proposed housing units in the coastal zone—all through local governments.

2) AB 500 disregards the housing element process

California cities and counties are required to adopt comprehensive general plans, which must include a mandatory housing element. The housing element must identify and analyze the community's existing and projected housing needs—including affordability—and address the community's fair share of regional housing needs, which are determined by local government agencies, local councils of governments, and the Department of Housing and Community Development (HCD). HCD must review and approve a local government's housing element before it can be adopted.

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Indeed, the report from the Assembly Committee on Housing and Community Development's April 29, 2021 hearing on AB 500 explains that AB 500 "would enable the [Coastal] Commission to act as the oversight body for housing policy in the coastal zone, in a manner akin to how the Department of Housing and Community Development provides oversight by certifying the housing element of a local government's General Plan."

If AB 500 is approved as written, California residents seeking new housing will be caught in the middle of potentially conflicting State agency directives.

3) AB 500's grant of unbridled discretion could discourage new housing investments in the coastal zone

AB 500 would grant the CCC with unbridled discretion to develop housing policy, without any of the restrictions or safeguards contained in the Mello Act.

This "blank check" raises legitimate concerns about the CCC's potential policy response—particularly in light of the Commission's guidelines on affordable housing prior to 1981, which contemplated potentially onerous inclusionary housing requirements developed outside of the legislative process.

Granting broad housing policy authority without limitations to the CCC would create substantial uncertainty for residential developers, as new affordable housing requirements could be added on an "ad hoc" basis or late in the development process (such as during the appeal of an approved local coastal development permit to the Coastal Commission). Developers and residents benefit from predictability and certainty, not an unwritten playbook.



SCCa supports more, not less, housing investment in California's Coastal Zone, in part, to provide the much-needed housing for the employees of the Coastal Commission's priority land uses of agriculture, fishing, and visitor-serving. But, with the cost of construction materials soaring, there is already immense pressure on home builders. Imposing additional mandates outside of the checks and balances of the legislature or municipal government could have the unintended consequence of discouraging—or rendering financially infeasible—new residential investment in the Coastal Zone.

4) AB 500 would result in additional delay for housing projects

AB 500 would greatly expand the Coastal Commission's scope of authority and add an additional bureaucratic agency to the already complex approval process for housing developments. The Commission is notoriously short-staffed and overburdened with its existing mandates, which has resulted in extraordinary delays—even years—for administrative appeals. Such delays can become project killers, especially for smaller residential developments.

In addition, the implementation of affordable housing permit conditions will require additional staff time and resources not contemplated in the bill. As just one example, a common permit condition is the development of a housing agreement, which would require post-decision review, revision, and approval by the Coastal Commission's legal and recording staff, who presently are not expected to have expertise on this complicated topic. Delays in condition clearances would only serve to delay commencing construction on much-needed housing in the coastal zone.



A SMALL CITY CONTINUES TO POSE A BIG PROBLEM FOR THE COASTAL COMMISSION

In what appears to be an unprecedented act, for the second time since 2019, the City of Del Mar chose not to accept the California Coastal Commission's (CCC's) recommended revisions to their Local Coastal Program Amendment (LCPA).

In October 2019, the small coastal city of Del Mar became one of the first to push back against the CCC and their latest priorities for LCPA updates accounting for sea level rise. They also happen to be the first city to initially advance their LCPA to the CCC for consideration, a process which lead to an uproar from Del Mar's residents upon learning of certain controversial policies, such as managed retreat, the CCC expected to have included in the plan. However, the managed retreat provisions as well as the CCC's preferred definition of "existing development" would not be included in Del Mar's LCPA, putting the City directly at odds with CCC staff.

The proposal was ultimately pulled from consideration to allow for further review and coordination with staff, only to be re-submitted by the City on January 15, 2020 without revision. The CCC eventually set a hearing date of June 10, 2021, but not before sending the City an 84-page staff report with recommendations for 22 amendments to the proposal.

Following a thorough review of the staff report, Smart Coast California (SCCa) identified several areas of concern and activated local San Diego REALTORS®, equipping them with a detailed analysis and information to advocate against staff recommendations and in support of the Del Mar community. The REALTORS® went on to meet with the Mayor and City Manager of Del Mar, submitted a letter opposing the CCC recommendations and provided comment at the hearing.

On June 7th, the Del Mar City Council voted 4-1 to withdraw the City's LCPA upon determination that the CCC staff recommendations did not appropriately take into consideration the unique character of their city and that their own proposal would sufficiently address the challenges posed by sea level rise.

The City's approach to their LCPA and opposition to CCC staff recommendations should come as no surprise to anyone familiar with the area.

The CCC's managed retreat policy calls for the relocation or removal of coastal structures, including homes, inland away from rising tidelines. But relocation of Del Mar's coastal homes is not an option for the community given the existing infrastructure, including the local highway, and neighborhoods located immediately inland (which actually sit lower in elevation than the homes adjacent the coast). The policy would force the removal of these homes in their entirety, amounting to millions in lost coastal real estate, and leave the entire neighborhood at risk of flooding. Meanwhile, the City's plan called for defensive measures such as sand replenishment, revetments and sea walls, which would protect the community for the foreseeable future.

While the staff report claimed a willingness to ultimately accept Del Mar's opposition to managed retreat, it did not support the City's definition of existing development, which states:

"Existing development shall mean any structure or development that was lawfully established, altered, and maintained pursuant to the Del Mar Municipal Code (or preceding San Diego County ordinances)."

The CCC instead advocates for the definition of existing development to be limited to only those homes in place prior to the implementation of the Coastal Act, January 1, 1977. The reason is that the Coastal Act specifically states that existing structures are entitled to develop a shoreline protection device when threatened by wave action. The CCC's definition would prevent homes built in 1977 or later from having access to these protective measures, thereby forcing their removal as seas continue to rise. In essence, resulting in a de facto managed retreat policy. According to the City's announcement following the hearing:

"During their meeting June 7, City Council members found that the Commission's modifications deviated substantially from Del Mar's adopted policies, including a Commitment Resolution from 2018 to reject any modifications that facilitate managed retreat."

The actions by the Del Mar City Council prevented the adoption of these controversial provisions...at least for now. In the meantime, SCCa continues to advocate for balanced coastal policies that recognize and protect the unique nature of our coastal communities and the families who call them "home".

IN CASE YOU MISSED IT

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MARKETING TOOLKIT

Smart Coast California has assembled a Marketing Toolbox of resources to promote our newsletter and calls for action.

POLICIES

Policies that have been adopted by the Smart Coast California Board of Directors.

ARTICLES OF INTEREST

Find articles related to sea level rise, coastline policies, and interesting local news.

REMINDER - SEA LEVEL RISE DISCLOSURE

Important update: As of June 2021, the California Association of REALTORS® (C.A.R.) added a disclosure for sea level rise in the Statewide Buyer and Seller Advisory (SBSA). Smart Coast California worked with C.A.R. for over a year to craft the language for this disclosure (below).

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7. SEA LEVEL RISE/COASTAL PROPERTIES: Sea level rise has the potential to affect coastal residents, recreation, and development. Coastal communities may or may not have addressed the potential impact. The following is a non-exclusive list of issues that may be impacted by sea level rise: (i) Shoreline, beach and bluff erosion; and sand replacement requirements; (ii) The effectiveness of seawalls and bulkheads, whether built with or without permits; (iii) Seaward construction, development or improvement to existing structures; (iv) The enactment of geological hazard abatement districts and assessments; and (v) The determination of the “mean high tide line” which is used to figure out the property’s boundary. Buyer is advised to consult with appropriate professionals, including having a geological inspection, to identify the affect of the listed conditions, if any, on the property. Brokers do not have expertise in this area.

Below is a non-exhaustive list of potential resources provided as a starting point for Buyer investigations into sea level rise, and not as an endorsement or guarantee that any federal, state, county, city or other resource will provide complete advice.

A. California Coastal Commission contact information:

<https://www.coastal.ca.gov/contact/#/>

B. State Lands Commission contact information:

<https://www.slc.ca.gov/contact-us/>

C. National Oceanic and Atmospheric Administration (sea level rise page):

https://search.usa.gov/search?affiliate=csc_search_all&query=sea-level-rise&submit=submit

D. California Coastal Commission (sea level rise page):

<https://www.coastal.ca.gov/climate/slri/>

E. Coastal Adaptation Planning Guidance: Residential Development (draft); California Coastal Commission:

<https://www.coastal.ca.gov/climate/slri/vulnerability-adaptation/residential/>



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IT TAKES A VILLAGE



RESPOND

Be it on the local level or statewide level, we need you to respond to calls for action. Your voice needs to be heard.



INVOLVED

Share information about our organization with others.



CONTRIBUTE

Smart Coast California has already accomplished a lot, but there's much more to be done to protect property rights. Won't you contribute today?



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