



April 03, 2024

Assemblymember Christopher M. Ward, Chair
Assembly Committee on Housing and Community Development
1020 N Street, Room 156
Sacramento, California 95815

RE: AB 2560 (Alvarez) Oppose Unless Amended

Dear Chair Ward:

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, sea level rise preparedness efforts, 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.

The author of AB 2560 claims the Coastal Act has “played a pivotal role in preventing the development of enough housing to meet the demand on the coast.”¹ **This assertion is simply misguided.**

¹ Assm. David Alvarez, *AB 2560 (Alvarez): Expanding Coastal Housing Access*, available at https://a80.asmdc.org/sites/a80.asmdc.org/files/2024-03/AD80_AB2560_FactSheet.pdf.

Applicable Statutory Law

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 still fully available to the applicant so long as those concessions, incentives, and waivers are incorporated into the project in a manner that is consistent with the Coastal Act.²

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.³ All laws must be interpreted in a manner consistent with legislative intent.⁴ Legislative intent requires that the Coastal Commission or local agency implementing the Coastal Act must approve a developer’s request for density, concessions, and incentives regardless of a conflict with the LCP.⁵ As a result, the Density Bonus Law “shall be accommodated” even when implementing the Coastal Act.⁶

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.*”⁷

Existing law applied with legislative intent requires the following components of the Density Bonus Law be considered when balancing mitigation of impacts by the Coastal Act:⁸

- the Density Bonus Law “shall be interpreted liberally in favor of producing the maximum number of total housing units;”⁹
- density bonuses are granted without amending any LCP;¹⁰

² CAL. GOV’T CODE § 65915(m).

³ 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.”).

⁴ *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”).

⁵ ASSEMBLY COMM. HOUSING AND COMMUNITY DEVELOPMENT, A.B. 1287 ANALYSIS (Apr. 10, 2023) at 9 (heard on Apr. 12, 2023) available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1287.

⁶ *Id.*

⁷ CAL. PUB. RES. CODE § 30604(f) [emphasis added]; *see also* SB 619 (Ducheny), Chapter 793, Statutes of 2003.

⁸ A.B. 2797 *supra* note 3.

⁹ CAL. GOV’T CODE § 65915(r).

¹⁰ CAL. GOV’T CODE §§ 65915(f)(5); (j)(1).

- concessions or incentives must be granted without requiring discretionary approval;¹¹ and
- additional density bonuses must be granted upon meeting certain requirements.¹²

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.”¹³ The Coastal Act requires the Coastal Commission “*shall* encourage housing opportunities for persons of low and moderate income.”¹⁴

Applicable Case Law

In *Kalnel Gardens, LLC v. City of Los Angeles*, an appellate court reviewed the City of Los Angeles’ Planning Commission and City Council’s decision to deny a density bonus project. This superseded case is often given as an example of the Coastal Act undermining the proliferation of density bonuses.¹⁵

However, the Coastal Commission did not deny this project. It was the local jurisdiction, not the Coastal Commission, which denied the density bonus. Here, the trial court found granting of *the density bonus was proper and consistent with the Coastal Commission-approved Land Use Plan*.¹⁶

Recently, two appellate court cases outside the Coastal Zone have strengthened the Density Bonus Law. *Schreiber v. City of Los Angeles* held housing applicants no longer need to document why the requested incentives will reduce affordable housing costs. Instead, the locality must make its own affirmative evidentiary finding to rebut the presumption that reducing development standards reduces costs.¹⁷ Similarly, *Bankers Hill 150 v. City of San Diego* held that a locality “could *not* demand” a housing project adhere to design restrictions.¹⁸

None of these cases involved a denial of a density bonus by the Coastal Commission. In fact, it is now the Coastal Commission’s responsibility to ensure LCPs incorporate the *Schreiber* and *Bankers Hill 150* decisions as required by existing legislative intent and existing statutes within the Coastal Act.¹⁹

¹¹ CAL. GOV’T CODE § 65915(j)(1).

¹² CAL. GOV’T CODE § 65915(v).

¹³ CAL. PUB. RES. CODE § 30604(h)

¹⁴ CAL. PUB. RES. CODE § 30604(f) [emphasis added].

¹⁵ The decision in *Kalnel Gardens* is superseded by the duly adopted AB 2797 (Bloom), Chapter 904 which struck a balance between the Density Bonus Law and the Coastal Act on this issue. A.B. 2797 *supra* note 3.

¹⁶ *Kalnel Gardens, LLC v. City of Los Angeles*, 3 Cal. App. 5th 927 (2016) at 937.

¹⁷ *Scheiber v. City of Los Angeles*, 69 Cal. App. 5th 549 (2021) [emphasis added]; *see also* S.B. 713 (Padilla), Chapter 784, Statutes of 2023 (this bill also removed “incentives or concessions” and “waivers or reductions of development standards” from the list of items for which a locality may require reasonable documentation.”).

¹⁸ *Bankers Hill 150 v. City of San Diego* (2022) 74 Cal. App. 5th 755, review denied (May 11, 2022) [emphasis added].

¹⁹ A.B. 2797 *supra* note 3; CAL. PUB. RES. CODE § 30604(f), (g).

Unintended Consequences of a Coastal Act Exemption

An exemption from the Coastal Act does not simply shorten the review period for a project. An exemption obliterates the ability of the Coastal Commission to enforce public access guarantees and mitigate impacts to coastal resources. A Coastal Act exemption should be treated with the same consideration as an exemption to an analogous law such as the Porter-Cologne Act or State Lands Act.

Each of these Acts empowers a state body to exercise jurisdiction over an area of public concern. The Porter-Cologne Act, for example, defines the role of the State Water Resources Control Board. The State Lands Act defines the role of the State Lands Commission. By the same token, the Coastal Act defines the role of the Coastal Commission. Each of these entities were created to manage and balance competing interests over shared resources. For the Coastal Commission, the duty is to manage development with coastal resources and public access guarantees across 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,²⁰ lower-cost recreation opportunities,²¹ critical habitats such as wetlands,²² and sea level rise preparedness efforts.²³ Mitigation must not be construed as a prohibition. The Coastal Commission has demonstrated a remarkable ability to balance competing priorities, including the urgent need for affordable housing.

Literature Review

The following is a direct rebuttal of the citations used to support claims by supporters of AB 2560.

First, the author of AB 2560 cites *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B*.²⁴ This article 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.”²⁵

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

²⁰ CAL. PUB. RES. CODE §§ 30210-30214; 30252.

²¹ CAL. PUB. RES. CODE §§ 30210; 30213; 30220-30224.

²² CAL. PUB. RES. CODE §§ 30230-30237; 30240.

²³ CAL. PUB. RES. CODE § 30270.

²⁴ Assm. David Alvarez *supra* note 1 (footnote 1).

²⁵ 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>

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.²⁶ 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.²⁷

The author’s citation here urges them to use the existing regulatory infrastructure governing the Coastal Zone rather than broadly exempting housing policies from the Coastal Act.

Second, the author of AB 2560 cites a Public Policy Institute of California (PPIC) report.²⁸ This report provides explanations for the real and widespread housing crisis.²⁹ Unaffordable housing in “coastal areas” is listed as one of the reasons housing remains expensive for most Californians. *However, “coastal areas” is not a substitute for Coastal Zone.* The unaffordable coastal areas listed in the PPIC report are the metropolitan areas of San Francisco, Los Angeles, Orange County, San Jose, San Diego, Ventura, Oakland, and Stockton.

None of the counties that contain San Jose, Oakland, or Stockton have a Coastal Zone.³⁰ Among the least affordable metropolitan areas, San Francisco does not have a Coastal Zone in significantly urbanized areas.³¹ The San Francisco Board of Supervisors and the San Francisco Board of Supervisors’ Land Use and Transportation Committee approved a resolution expressing support for the Coastal Act in their land use decision-making processes.³²

The Los Angeles, Orange County, and San Diego metropolitan areas partially extend into the Coastal Zone.³³ As recent atmospheric rivers have demonstrated, it is also where consideration of hazardous sites and sea level rise preparedness in land use decision-making is needed most. It is important to remember critical infrastructure, such as the Great Highway, Port of San Diego, Port of Long Beach, and Port of Los Angeles, benefit from Coastal Commission requirements to incorporate adequate sea level rise preparedness measures within LCPs. Furthermore, the Coastal Commission’s enforcement of public access guarantees allows everyone from everywhere to enjoy the coast, regardless of restrictive attempts by private landowners in these areas.

²⁶ *Affordable Housing*, California Coastal Commission, (last accessed Mar. 25, 2024) <https://www.coastal.ca.gov/Housing/>.

²⁷ 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>.

²⁸ Assm. David Alvarez *supra* note 1 (footnote 2).

²⁹ Johnson et al. *Housing*, PUBLIC POLICY INSTITUTE OF CALIFORNIA (Jan. 2020) <https://www.ppic.org/wp-content/uploads/californias-future-housing-january-2020.pdf>

³⁰ *Maps & Jurisdictions* available at <https://www.coastal.ca.gov/maps/>.

³¹ *Id.*

³² RES. NO. 58-24, SAN FRANCISCO BOARD OF SUPERVISORS, available at <https://sfgov.legistar.com/View.ashx?M=F&ID=12705390&GUID=EBBEAB86-A207-4B42-A701-70C96E4253E1>

³³ See *Maps supra* note 30.

Third, supporters of AB 2560, refer to a 2021 brief by Meyers Nave to support their claims.³⁴ However, the report highlights AB 2797 (Bloom), Chapter 904, negates the idea that a proposed housing project could be denied as a result of a density bonus even if it violates the Coastal Act.³⁵ Thus, the Density Bonus Law remains intact, even in the Coastal Zone.

Ultimately, this bill takes aim at the wrong target. The Coastal Commission has never denied a fully affordable housing project in its 50-year history; it has approved numerous density bonus projects over the last decade; and it has worked with several local governments to incorporate density bonus policies into their LCPs. It has maximized the use of its authority to preserve density and championed the application of the “no net loss” policy to new construction. All AB 2560 does is remove coastal resource and public access protections.

The answer is to *restore* the original Coastal Act policy *protecting* and *providing* for affordable housing in the Coastal Zone just as the Coastal Commission was empowered to do between 1976 and 1981. The repeal of these provisions by the Mello Act wrongfully precludes the Coastal Commission from requiring affordable housing in the Coastal Zone.³⁶

We are happy to work with the author to develop legislation which utilizes the Coastal Act and Coastal Commission as a means to further affordable housing *not* as an obstacle.

Sincerely,

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³⁴ *Resources for AB 2560*, Circulate San Diego (last accessed Mar. 25, 2024) available at <https://www.circulatesd.org/ab2560>.

³⁵ Goetz and Sakai, *Guide to the California Density Bonus Law* (MEYERS NAVE rev. 2021), available at https://assets.nationbuilder.com/circulatesd/pages/7376/attachments/original/1707780196/California-Density-Bonus-Law_2021-Myers_Nave.pdf?1707780196.

³⁶ See CAL. GOV'T CODE § 65590; Joseph D. Smith AICP *supra* note 27.

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cc: Assemblymember Alvarez, District 80